24th ANNUAL INTERNATIONAL MARITIME LAW ARBITRATION MOOT

In the matter of arbitration held in Guangzhou

UNIVERSITAS INDONESIA

Veritas, Probitas, Iustitia | Est. 1849

MEMORANDUM FOR CLAIMANT

ON BEHALF OF	**AGAINST**
Tomahawk Maritime S.A.	**Veggies of Earth Banking Ltd.**
Trust Company Complex	Room 1818, 18/F Farmers Building
Ajeltake Road, Ajeltake Island	18 Gardens Road
Majuro, Marshall Island	Tuen Mun
Panama	Hong Kong SAR
MH 96960	
(CLAIMANT)	**(RESPONDENT)**

TEAM Y

COUNSEL

Indry Septiarani | James Austin Gunawan | Priskila Saur N. Br. N. | Regita Eka Maritza

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SPC Interpretation on PRC Arbitration Law	Supreme People's Court Of the People's Republic of China Interpretation on PRC Arbitration Law
UNCITRAL Model Law	United Nations Commission on International Trade Law Model Law on International Commercial Arbitration

BOOKS AND ARTICLES	
Aikens, *eds.*	Aikens, Richard, Richard Lord, Michael Bools. *Bills of Lading*. (2nd Ed.)
Baughen	Baughen, Simon. *Shipping Law.* (4th ed.). Taylor & Francis Group.
Black	Black, Henry Campbell. *Black's Law Dictionary: Definitions of The Terms and Phrases of American and English Jurisprudence, Ancient and Modern 4th ed*. St. Paul, MN: West Pub. Co., 1968.
Born	Born, Gary. *International Commercial Arbitration*. (3rd ed.) Kluwer Law International.
Foxton, *et. al.*	Foxton, David, *et. al*. *Scrutton on Charterparties and Bills of Lading.* (24th ed.). Sweet & Maxwell.

Gay	Gay, Robert. "Damages Which Are Not Disposed of by Demurrage: What is a Separate Type of Loss?" *The Journal of International Maritime Law* 27, Issue 3 (2001).
Giffard	Giffard, H. H. S., & Hogg, H. of St. M., Quintin. (n.d.). *Halsbury's Laws of England*. Butterworths.
Halsbury's Laws of Singapore	*Halsbury's Laws of Singapore*. Singapore: LexisNexis, 2020.
McKendrick	McKendrick, Ewan. *Contract Law*. (5th ed.). Red Globe Press.
Peel	Peel, Edwin, and G. H. Treitel. *The Law of Contract*. London: Sweet & Maxwell, 2015.
Redfern and Hunter	Redfern, Alan, and Martin Hunter. *Redfern and Hunter on International Arbitration*. (6th Ed.). Oxford.
Schofield	Schofield, John. *Laytime and Demurrage* (6th ed.). Informa Law.
Wilson	Wilson, John Furness. *Carriage of Goods by Sea* (7th ed.). Pearson.

ENGLISH CASES AND AWARDS	
Abidin Daver	*The "Abidin Daver"* [1984] 1 Lloyd's Rep 339
Al Assam v Tsouvelekakis	*Ammar Al Assam and Others v Dimitrios Tsouvelekakis* [2022] EWHC 451 (Ch)
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Channel Tunnel Group v Balfour Beatty Construction	*Channel Tunnel Group Ltd. and Another v Balfour Beatty Construction Ltd. and Ors.* [1993] AC 334
Enercon GmbH v Enercon (India)	*Enercon GmbH and Wobben Properties GmbH v Enercon (India) Ltd.* [2012] EWHC 689
ERG Raffinerie Mediterranee v Chevron USA	*ERG Raffinerie Mediterranee SpA v Chevron USA Inc (t/a Chevron Texaco Global Trading)* [2006] WL 1732503

Fidelitas Shipping Company v V/O Exporthcleb	*Fidelitas Shipping Company Ltd v V/O Exportchleb* [1963] 2 Lloyd's Law Report
Ford v Cotesworth	*Ford v Cotesworth* [1870] LR 5 QB 544
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Harman v Gandolph	*Harman v Gandolph and Others* [1815] 171 ER 152
Hick v Raymond	*Hick v Raymond & Reid* [1893] AC 22
Kiril Klaturov, KMKH Eood v Revetas Capital	*Kiril Klaturov, KMKH Eood v Revetas Capital Advisors LLP, Eric Assimakopoulos* [2024] EWHC 495 (Comm)

Advisors, Eric Assimakopoulos	
Leibinger v Stryker Trauma GmbH	*Leibinger v Stryker Trauma GmbH* [2005] EWHC 690 (Comm)
Marks & Spencer v BNP Paribas	*Marks and Spencer Plc v BNP Paribas Securities Services Trust Company (Jersey) Limited* [2015] UKSC 72
Norfolk Homes v North Norfolk District Council, Norfolk County Council	*Norfolk Homes Limited v North Norfolk District Council, Norfolk County Council* [2020] EWHC 504 QB
Peruana SA v Seguros Del Peru	*Naviera Amazonica Peruana SA v Compania Internacionale De Seguros Del Peru* [1988] Lloyd's Rep. 116-122
Peterson Farms v C&M Farming	*Peterson Farms Inc. v C&M Farming Ltd.* [2004] 1 Lloyd's Rep 603
Polar	*Herculito Maritime Limited and Others v Gunvor International BV and Others ("Polar")* [2020] EWHC 3318 (Comm)
Pole v Leask	*Pole v Leask* [1860] 28 Beav 562
Port of Tilbury v Stora Enso	*Port of Tilbury (London) Ltd. v. Stora Enso Transport & Distribution Ltd.* [2009] EWCA Civ 16
Porteous v Watney	*Porteous v Watney* [1878] 3 QBD 534
Premium Nafta v Fili Shipping	*Premium Nafta Products Limited and Others v Fili Shipping Company Ltd. and Others* [2007] UKHL 40

Reidar v Acros	*Aktieselskabet Reidar v Acros Ltd* [1927] 1 KB 352.
Shagang v Daewoo	*Shagang South-Asia (Hong Kong) Trading Co. Ltd. v Daewoo Logistics* [2015] EWHC 194
Shashoua v Sharma	*Roger Shashoua and Others v Mukesh Sharma* [2009] EWHC 957 (Comm)
SHV & Trading SAS v Naftomar	*SHV Gas Supply & Trading SAS v Naftomar Shipping & Trading* [2005] EWHC 2528 (Comm)
Sierra Leone v SL Mining	*Sierra Leone v SL Mining Ltd.* [2021] 1 C.L.C.
Societe v Geys	*Societe Generale, London Branch v Geys* [2012] UKSC 63
Sonatrach Petroleum v Ferrell International	*Sonatrach Petroleum Corpn (BVI) v Ferrell International Ltd* [2002] 1 All ER (Comm) 627
Spiliada Maritime Corp v Cansulex	*Spiliada Maritime Corporation v Cansulex Ltd.* [1987] A.C. 460
Stolt Tankers v Landmark Chemicals	*Stolt Tankers Inc. v Landmark Chemicals SA* [2001] WL 1479871
Sulamerica v Enesa	*Sulamerica Cia Nacional de Seguros SA v Enesa Engenharia SA* [2013] 1 W.L.R. 102
Svenska Petroleum Exploration AB v Lithuania (No.2)	*Svenska Petroleum Exploration AB v Lithuania (No.2)* [2005] 2 C.L.C. 965
The Channel Ranger	*Caresse Navigation Ltd. v Office National De L'Electricite and Others ("Channel Ranger")* [2013] EWHC 3081 (Comm)

The "Altus"	*Total Transport Corporation v. Amoco Trading Co (The "Altus")* [1985] 1 Lloyd's Law Report 423
The "Eternal Bliss"	*K Line Pte Ltd v. Priminds Shipping (Hong Kong) Co Ltd (The "Eternal Bliss")* [2021] EWCA Civ 1712
The "Future Express"	*The "Future Express"* [1992] 2 Lloyd's Rep 79
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The Bonde	*Richco International Ltd. v. Alfred C. Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136
The Bremen Max	*Farenco Shipping Co. Ltd. v Daebo Shipping Co. Ltd. v. Dampskibsselskabet Norden A/S, Deiulemar Shipping SPA* [2008] EWHC 2755 (Comm)
The Heidelberg	*Partenreederei M/S "Heidberg" and Vega Reederei Friedrich Dauber v Grosvenor Grain and Feed Co. Ltd., Union Nationale des Cooperatives Agricoles de Cereales and Assurances Mutuelles Agricoles (The Heidelberg)* [1994] 2 Lloyd's Rep 287
The Laemthong Glory (No. 2)	*Laemthong International Lines Co. Ltd. v Artis (The Laemthong Glory) (No.2)* [2004] EWHC 2738 (Comm)
The Miramar	*Miramar Maritime Corporation v Holborn Oil Trading Ltd* [1984] AC 676
The Moorcock	*The Moorcock* [1889] 14 PD 64
The Nika	*Fimbank Plc v Discover Investment Corporation (The Nika)* [2021] 1 Lloyd's Rep 109
The Nikmary	*Triton Navigation Ltd. v Vitol SA (The Nikmary)* [2003] EWHC 65 (Comm)

The Official Receiver for Northern Ireland v Mary	*The Official Receiver for Northern Ireland v Mary Susan Cecilia O'Brien* [2012] NICh 12
The Oriental Envoy	*Transamerican Steamship Corporation v Tradax Export S.A. (The Oriental Envoy)* [1982] 2 Lloyd's Rep 266
The Sienna	*Unicredit Bank AG v Euronav IV* [2023] EWCA Civ 47
The Spalmatori	*Union of India v Compania Naviera Aeolus SA (The Spalmatori)* [1964] AC 868
The Spiros C	*Tradigrain SA v King Diamond Shipping SA (The Spiros C)* [2000] 2 Lloyd's Report 319
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William & Sons v Ak	*William Alexander & Sons v Aktieselskabet Dampskibet Hans* [1920] AC 88
Yasmine v David	*Yasmine Clarke v David Lloyd and Others* [2011] EWHC 4079 (QB)
Yoo Design v Illiv	*Yoo Design Services Ltd. v Iliv Realty Pte. Ltd.* [2021] EWCA Civ 560
Shirlaw v Southern Foundries	*Shirlaw v Southern Foundries (1926) Ltd.* [1939] 2 K.B. 206

SINGAPOREAN CASES AND AWARDS	
BNA v BNB	*BNA v BNB and BNC* [2019] SGCA 84
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Nasaka Industries v Aspac Aircargo Services	*Nasaka Industries (S) Pte. Ltd. v Aspac Aircargo Services Pte. Ltd.* [1999] 2 SLR(R) 817
Navig8 Ametrine	*ING Bank NV, Singapore Branch v The Demise Charterer of the Ship or Vessel "Navig8 Ametrine"* [2022] SGHCR 5
STI Orchard	*Oversea-Chinese Banking Corporation Ltd v Owner and/or Demise Charterer of the Vessel "STI Orchard" and Winson Oil Trading Pte. Ltd.* [2022] SGHCR 6
The Maersk Princess	*Standard Chartered Bank (Singapore) Ltd. v. Maersk Tankers Singapore Pte. Ltd. (The Maersk Princess)* [2022] SGHC 242
The Neptra Premier	*The Neptra Premier* [2001] SGHC 223
The Star Quest	*The Star Quest* [2016] SGHC 100
UCO Bank v Golden Shore Transportation	*UCO Bank v Golden Shore Transportation Pte. Ltd.* [2006] SLR(R) 1
Yue You 902	*Oversea-Chinese Banking Corporation Limited and Owner and/or Demise Charterer of The Vessel "Yue You 902"* [2019] SGHC 106

CHINESE CASES AND AWARDS	
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Reply of SPC to Longlide	Reply of the Supreme People's Court to the Request for Instructions on an Application to Affirm the Validity of an Arbitration Agreement between *Anhui Longlide Wrapping and Printing Co., Ltd and BP Agnati S.R.L*.

LIST OF ABBREVIATIONS

	Abbreviation	Term
A	Arbitration Agreement	Arbitration agreement contained in the B/L
B	B/L	Bill of Lading No. COW-001A
C	Cargo	The cargo
	Charterer	Yu Shipping Ltd
	COGSA 1992	The United Kingdom's the Carriage of Goods by Sea Act 1992
	Claimant	Tomahawk Maritime S.A.
D	Discharge LOI	The Letter of Indemnity provided by the Charterer on 3 October 2023
L	Laycan	The strict lay days/canceling date of the Claimant's future fixture which commences from 1 to 14 October 2023
M	Moot Problem	"International Maritime Law Arbitration Moot 2024 Moot Problem" (26 December 2023), https://www.swansea.ac.uk/media/IMLAM-2024-Moot-Problem.pdf.
N	NoA	Notice of Arbitration
	NoR	Notice of Readiness
O	Original Parties to the VCP	The Charterer and the Claimant
P	Parties	Tomahawk Maritime S.A. (Claimant) and Veggies of Earth Banking Ltd. (Respondent)
	Payment LOI	Payment Letter of Indemnity from the Shipper
	PRC	The People's Republic of China

R	Respondent	Veggies of Earth Banking Ltd.
	Rider Clauses	The rider clauses contained in the Voyage Charter party between the Claimant and the Charterer
S	SCMA	Singapore Chamber of Maritime Arbitration
	Shipper	Goods Oil Sdn Bhd
	SPC	The Supreme People's Court of The People's Republic of China
T	TCP	Time Charter Party between the Claimant and its next fixture's charterer
U	Ultimate Buyer	Gileum Refinery Co Ltd
	UNCITRAL	United Nations Commission on International Trade Law
V	VCP	Voyage Charter Party
	Vessel	MT NIUYANG Vessel owned by the Claimant

SUMMARY OF FACTS

[1] The Parties to this Arbitration are Tomahawk Maritime S. A. ("**Claimant**"), a company registered in Panama and the owner of the MT NIUYANG vessel ("**Vessel**"), and Veggies of Earth Banking Ltd ("**Respondent**"), a bank from Hong Kong.[1] The Claimant entered into a Voyage Charter party ("**VCP**") with Yu Shipping Ltd ("**Charterer**") for an employment to carry crude palm oil ("**Cargo**") from Bintulu to Busan.[2] The VCP contains rider clauses ("**Rider Clauses**") which includes the agreement to arbitrate in the event of conflict arises ("**Arbitration Agreement**").

[2] The Charterer and the Claimant ("**Original Parties to the VCP**") agreed that the Cargo will be delivered by 30 September 2023 as the Vessel has future fixture to deliver a cargo to Kaohsiung, Taiwan through a 2-year time charterparty ("**TCP**") with a strict lay days/canceling date from 1 to 14 October 2023 ("**laycan**").[3] The Vessel sailed from Port Bintulu to Busan on 6 September 2023 as evidenced from the Bill of Lading No. COW-001A ("**B/L**"). It arrived at Busan on 20 September 2023. The Notice of Readiness ("**NoR**") had been tendered and accepted on the same day.[4]

[3] On 3 October 2023, the Charterer provided a Letter of Indemnity ("**Discharge LOI**") to the Claimant substituting the B/L to release the Cargo as the receiver had not taken the delivery of the Cargo.[5] The Cargo was discharged on 4 October 2023 and the Vessel sailed to Kaohsiung on 8 October 2023. Nevertheless, the adverse wind and sea conditions hindered the Vessel's progress to Kaohsiung leading to the cancellation of the TCP on 16 October 2023. The Claimant negotiated with its charterer leading to the continuation of the TCP with a hire rate lower from the initial agreement.[6]

[4] Consequently, the Claimant suffered losses due to the Respondent's failure in taking the delivery of the Cargo. The Claimant commenced the Arbitration by issuing the Notice of Arbitration ("**NoA**") on 22 December 2023 to the Singapore Chamber of Maritime Arbitration ("**SCMA**"). The Claimant seeks compensation for the difference of the hire rate for its TCP. The Respondent then submitted a counterclaim of an alleged misdelivery of the Cargo.

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[1] Moot Problem, p. 7: Statement of Claim, ¶2.
[2] Moot Problem, p. 4: Statement of Claim, Annex A (B/L).
[3] Moot Problem, p. 25: Statement of Claim, Annex B (Rider Clauses).
[4] Moot Problem, p. 8: Statement of Claim, ¶9.
[5] Moot Problem, p. 9: Statement of Claim, ¶13.
[6] Moot Problem, p. 9: Statement of Claim, ¶¶14-15.

SUBMISSIONS ON PROCEDURAL MATTERS

SUBMISSION I: THE TRIBUNAL HAS THE JURISDICTION TO HEAR THE DISPUTE

[1] Clause 78 VCP has nominated English Law as the governing law of the VCP but did not specify the law to govern the Arbitration Agreement.[7] As such, English Law shall also apply to the Arbitration Agreement (i.e., the arbitration clause), including determining the seat of arbitration in the present case and its validity under the applicable law.[8]

[2] The Claimant argues that the current dispute should be referred to arbitration pursuant to Clause 78 VCP, which the Parties have agreed therein to be subject to the SCMA Rules. In response, the Respondent submits that this Tribunal should not have jurisdiction as the putative seat of arbitration should be in Guangzhou rendering the Arbitration Agreement invalid due to the applicability of Article 16 of The People's Republic of China ("**PRC**") Arbitration Act.[9] Due to the contest of jurisdiction, this Tribunal has the power to rule out its own jurisdiction as regulated under Rule 30.1 SCMA Rules.[10]

[3] Presently, the Claimant submits that the Tribunal should find its jurisdiction to hear the present dispute because (**I**) the Arbitration Agreement is valid under Singaporean Law as Singapore is the seat of arbitration, while (**II**) Guangzhou merely serves as the place of arbitration, and alternatively, (**III**) if Guangzhou is the seat of arbitration, the Arbitration Agreement is still valid in this dispute as SCMA is an arbitration commission under the PRC Law.

I. The Arbitration Agreement is valid under Singaporean Law as Singapore is the seat of arbitration

[4] In determining the validity of the Arbitration Agreement, it is crucial to assert which law is used to govern it. Therefore, the Claimant argues that **(A)** the Parties have agreed to the adoption of SCMA Rules, and pursuant to its Rule 32.1, Singapore shall be deemed as the Parties' chosen seat; **(B)** Since the seat is in Singapore, the Arbitration Agreement is subject to Singaporean Law to determine its validity; Finally, (**C**) As Singaporean Law governs the Arbitration Agreement, the International Arbitration Act (Chapter 143A) ("**IAA**") shall prevail to determine its validity.

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[7] Moot Problem, p. 28: Statement of Claim, Annex B (Rider Clauses).
[8] *Svenska Petroleum Exploration AB v Lithuania (No.2)*, ¶¶76 – 77; *Arsanovia v Cruz City*, ¶¶1 – 3; *Habas Sinai v VSC Steel*, ¶101.
[9] Moot Problem, p. 36: Statement of Defence and Counterclaim, ¶¶5, 6, 8.
[10] SCMA Rules, Rule 30.1.

A. The Parties have agreed to the adoption of SCMA Rules, and pursuant to its Rule 32.1, Singapore shall be deemed as the Parties' chosen seat

[5] By adopting the SCMA Rules, the Parties not only agreed on the procedural rules but also the seat-determining provision. This approach was taken by Sir Michael Burton in *Sierra Leone v SL Mining*, which ruled that when a party has agreed to insert a certain institutional rule under the arbitration agreement, they also had consented to all provisions under it.[11]

[6] In this case, the Parties are deemed to have agreed on Singapore as the seat of arbitration by adopting SCMA Rules in Clause 78 VCP. Rule 32.1 SCMA Rules expressly provides that Singapore shall be the seat of arbitration,[12] and this is the only provision that expressly mentions the seat.

[7] The Claimant notes that Clause 78 VCP also mentions that the arbitration shall be held in Guangzhou. However, Guangzhou shall merely be deemed as the place of arbitration as clarified further below. Therefore, Rule 32.1 SCMA Rules shall be regarded as the only parameter to determine Singapore as the seat of arbitration.

B. As Singaporean Law governs the Arbitration Agreement, the IAA shall prevail to determine its validity

[8] The incorporation of Rule 32.1 SCMA Rules also imports Singaporean Law as the governing law of the Arbitration Agreement indicated by the application of the International Arbitration Act (Chapter 143A) ("**IAA**") when Singapore has been chosen as the seat.[13] Currently, the Parties did not have any objection regarding it. Therefore, the Arbitration Agreement's validity shall be determined under the IAA.

[9] Having established above that Singaporean Law applies, the Claimant will now refer to a specific regulation under Singaporean Law that provides the conditions of an arbitration agreement validity, namely the IAA.

[10] Article 2A(3) IAA stipulates that a valid arbitration agreement must be evidenced in writing form.[14] Further, Article 2A(8) IAA also provides that any reference in a bill of lading to a charterparty that

[11] *Sierra Leone v SL Mining Ltd*, ¶5.
[12] SCMA Rules, Rule 32.1.
[13] Moot Problem, p. 39, Statement of Reply and Defence to Counterclaim, ¶¶4, 5.
[14] IAA, Article 2A (3).

contains an arbitration clause shall constitute an arbitration agreement in writing.[15]

[11] In this case, the provision has been evidenced in writing and has been successfully incorporated into the B/L.[16] Therefore, as the Arbitration Agreement has fulfilled the requirements under the IAA, it shall be deemed valid, and the arbitration proceedings shall be executed.

II. Guangzhou merely serves as the place of arbitration

[12] The Respondent submitted that Guangzhou is the putative chosen seat of arbitration under Clause 78 VCP.[17] Conversely, the Claimant contends that Guangzhou shall not be deemed as the seat as (**A**) The Parties have performed their right to choose Guangzhou as a place of arbitration, whereby the seat and place of the arbitration may be different. Furthermore, **(B)** Guangzhou is a neutral place to arbitrate.

A. The Parties have performed their right to choose Guangzhou as a place of arbitration, whereby the seat and place of the arbitration may be different

[13] The seat and place of arbitration have different effects in an arbitration agreement.[18] Both elements ought to be differentiated as the seat is meant to be a place for the justice administration country in deciding over an arbitration, while the place is merely a location to conduct the arbitration hearings.[19] In this regard, this Tribunal shall differentiate between the seat and place of arbitration.

[14] Article 20(2) of the United Nations Commission on International Trade Law ("**UNCITRAL**") Model Law provides that the place of arbitration may be agreed upon by the parties under an agreement.[20] Hamblen J. in *Shagang v Daewoo* established that the Parties had the right to designate a particular country to hold the arbitration proceedings by mentioning "*to be held…*".[21] Moreover, the chosen location for arbitration may be the most neutral for the Parties and it may not necessarily be the same as the location of the seat.[22]

[15] In this case, the Parties have performed the right in choosing Guangzhou as a particular place of arbitration as stipulated in Clause 78 VCP,[23] which fulfills Article 20(2) UNCITRAL Model Law.

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[15] IAA, Article 2A (8).
[16] Moot Problem, p. 31, Annex C Statement of Claim, ¶1.
[17] Moot Problem, p. 5, Response to Notice of Arbitration, ¶2.
[18] *Braes of Doune v Alfred McAlpiine*, ¶¶13, 15; *Peruana SA v Seguros Del Peru*, p. 121; Redfern and Hunter, ¶4.170.
[19] *Shashoua v Sharma*, ¶¶26, 27; *Enercon GmbH v Enercon (India) Limited*, ¶¶62, 63; *BNA v BNB*, ¶65.
[20] Article 20(2) of the UNCITRAL Model Law.
[21] *Shagang v Daewoo*, ¶¶20, 46; *Garuda v Birgen Air*, ¶25; Born, ¶14.04.
[22] *Peruana SA v Seguros Del Peru*, p. 120; *Shagang v Daewoo*, ¶¶34, 37; Redfern and Hunter, ¶3.206.
[23] Moot Problem, p. 28: Annex B Statement of Claim, ¶78.

Furthermore, the wording used therein is similar to what is described by Hamblen J. above, namely "... *Arbitration, if any, to be held in Guangzhou…*". This indicates that Guangzhou is the chosen location by the Parties to arbitrate.

B. Guangzhou is a neutral place to arbitrate

[16] Eder J. in *Enercon GmbH v Enercon (India)* established that a neutral place holds a sense to be understood as an arbitration location with no favor on each party.[24] Therefore, when a location is purely neutral, it is a strong indication that such a location is selected as the place of arbitration.

[17] The condition of no favor is reflected by the absence of connected factors which indicates that a location should not be deemed suitable for arbitration.[25] To prove its connecting factors, the connecting factors consist of (1) the parties' personal connection; (2) the relevant events and transactions; (3) the substantive law of the dispute, (4) other proceedings; and (5) the shape of litigation.[26]

[18] The Parties do not have any connected factor to Guangzhou as the chosen place of arbitration. Firstly, both nationalities of the Claimant and the Respondent are consecutively Panama and Hong Kong, not Guangzhou.[27] Secondly, the shipping of the goods went from Malaysia to South Korea.[28] Thirdly, as agreed in Clause 78 of the VCP, the substantive law of the dispute is English Law.[29] Fourthly, none of the elsewhere proceedings are found in the Parties' relations. Fifthly, the litigation process, which includes the claim,[30] defense,[31] and reply,[32] submitted by the Parties, were based on the SCMA Arbitration Rules. Hence, as Guangzhou does not show any connecting factor, Clause 78 of the VCP shall be interpreted as the Parties' intention to choose a neutral place in conducting the arbitration proceedings and not a seat.

[19] The Respondent argues that Guangzhou is the seat of arbitration. This would be an incomprehensible interpretation as the seat would determine the judicial authority that supervises the arbitration conduct, and it is a well-established private international law principle that such judicial authority of the

[24] *Enercon GmbH v Enercon (India)*, ¶62; *Premium Nafta v Fili Shipping*, ¶6; *CXG v CXI*, ¶65.
[25] *Unwired Planet v Huawei*, ¶94; *Spiliada Maritime Corporation v Cansulex*, pp. 460-488; *Abidin Daver*, p. 343.
[26] *Al Assam v Tsouvelekakis*, ¶¶33, 34; *JIO Minerals v Mineral Enterprises*, ¶42; Halsbury's Laws of Singapore, ¶¶ 75.091–75.095.
[27] Moot Problem, p. 7: Statement of Claim, ¶1, 2.
[28] Moot Problem, p. 7: Statement of Claim, ¶3.
[29] Moot Problem, p. 28: Annex B Statement of Claim, ¶78.
[30] Moot Problem, p. 7: Statement of Claim.
[31] Moot Problem, p.35: Statement of Defence and Counterclaim.
[32] Moot Problem, p. 39: Statement of Reply and Defence to Counterclaim.

arbitration procedure shall bear a certain nexus with the parties. There is no nexus between Guangzhou, the Parties, and the VCP. Meanwhile, the nexus with Singapore is apparent by the Parties' adoption of the SCMA Rules. Consequently, this does not support the interpretation that the seat of arbitration is in Guangzhou.

III. Alternatively, if Guangzhou is the seat of arbitration, the Arbitration Agreement is still valid in this dispute as SCMA is an arbitration commission under the PRC Law

[20] In the event that the Tribunal decides that Guangzhou shall be deemed as the seat of arbitration, the Claimant submits that (**A**) the Arbitration Agreement is governed by English law and is a valid clause. In alternative, (**B**) the Arbitration Agreement would still be valid even if it is governed by PRC Law.

A. The Arbitration Agreement is governed by English law and is a valid clause

[21] The Claimant submits that even with the appointment of Guangzhou as the seat of arbitration, the governing law of the Arbitration Agreement is English Law as (**i**) in the absence of explicit choice of law governing the Arbitration Agreement, the law of the VCP shall apply. Therefore, (**ii**) the Arbitration Agreement is valid as it fulfills the requirement under English Law.

i. In the absence of an explicit choice of law governing the Arbitration Agreement, the law of the VCP shall apply

[22] It is common to find a clause stating which law will apply in a contract that has connections to multiple nations or territories, each with its own legal system. If the contract also includes an arbitration clause, it is reasonable to interpret the governing law clause as applying to the arbitration clause for the sole reason that the parties have agreed that the arbitration clause will be governed by the designated system of law for the main contract.[33] The Claimant contends that because there is no clause establishing the governing law for the Arbitration Agreement, the Tribunal should apply the law of the contract as the governing law. Thus, English Law shall apply.

[23] In *Sonatrach Petroleum v Ferrell International,* Colman J summarized that where the main contract explicitly specifies a governing law but the arbitration agreement within it does not, the arbitration agreement will typically be governed by the law chosen for the main contract.[34] This approach would

[33] *Sulamerica v Enesa*, ¶11; *Channel Tunnel Group v Balfour Beatty Construction*, p. 357; Redfern and Hunter, ¶3.12.
[34] *Sonatrach Petroleum v Ferrell International,* ¶32; *Sulamerica v Enesa,* ¶11; *Black Clawson v Papierwerke,* ¶40.

not be any different in a case where the arbitration clause provides for arbitration to take place in a different country from the country whose law has been chosen to govern the contract as exemplified in *Leibinger v Stryker Trauma GmbH*.[35]

[24] In the present case, the main contract is a VCP that is governed by English Law. This is evidenced in Clause 78 of the VCP which states "*English law to apply to the CP*".[36] Therefore, this Tribunal then should apply English Law as the governing law of the Arbitration Agreement.

ii. The Arbitration Agreement is valid as it fulfills the requirement under English Law

[25] The formal requirement of an arbitration agreement under English Law is regulated under Section 5 of the English Arbitration Act 1996 which stipulates that the arbitration agreement must be made in writing. The agreement will be regarded to be 'in writing' if the agreement is made in writing (whether it is signed by the parties), if the agreement is made by exchange of communications in writing, or if the agreement is evidenced in writing.[37]

[26] In the present case, the Arbitration Agreement is contained in a written VCP dated 1 September 2023.[38] Therefore, as the formal requirement under Section 5 of the English Arbitration Act 1996 has been fulfilled, the Arbitration Agreement is valid. Therefore, the Tribunal has jurisdiction over the present dispute.

B. The Arbitration Agreement would still be valid even if it is governed by PRC Arbitration Law

[27] In the event that the Tribunal decides that the appointment of Guangzhou makes the Arbitration Agreement governed by PRC Law, the Claimant argues that the Arbitration Agreement is still valid. The main argument by the Respondent is that the SCMA is not a recognized arbitration commission under the PRC Arbitration Act. However, the Claimant submits that (**i**) the appointment of SCMA Rules shall be equal to the appointment of SCMA as the arbitration commission and (**ii**) SCMA is recognized as an arbitration commission under the PRC Arbitration Law.

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[35] *Leibinger v Stryker Trauma GmbH*, ¶38; *Peterson Farms Inc v C&M Farming Ltd*, ¶¶43 – 46; *Svenska Petroleum Exploration AB v Lithuania (No.2)*, ¶¶76 – 77.
[36] Moot Problem, p. 28: Annex B Statement of Claim, ¶78.
[37] Section 5, English Arbitration Act 1996.
[38] Moot Problem, p. 28: Annex B Statement of Claim, ¶78.

i. The appointment of SCMA Rules shall be equal to the appointment of SCMA as the arbitration commission

[28] The Respondent submitted that the Arbitration Agreement is not valid as it did not contain a specific arbitration commission and instead just referred to certain institutional rules.[39] On the contrary, the reference to a certain institutional rule shall be deemed as an appointment of the arbitration commission as regulated under Article 4 The Supreme People's Court of The People's Republic of China ("**SPC**") Interpretation on PRC Arbitration Law.

[29] Article 4 SPC Interpretation on PRC Arbitration Law states that if an arbitration agreement only stipulates the arbitration rules applicable, then the arbitration institution may be determined through the agreed-upon arbitration rules.[40] This approach has been taken in the case of *Beliun Licheng*, where the parties have chosen ICC Rules and did not appoint ICC directly to govern the arbitration agreement. The SPC has applied development to their finding by stipulating that in the condition where the parties understood that by agreeing on arbitration under a certain institutional rule, the parties had accepted that the arbitration would be administered by the said arbitration institution and deemed the arbitration clause as valid.[41]

[30] This situation is like the present case, where the arbitration clause stipulates mere institutional arbitration rules instead of the institution itself. This Tribunal should see that with the appointment of SCMA Rules, the Parties have chosen SCMA as the arbitration commission. Consequently, the Arbitration Agreement has fulfilled all the requirements stipulated under Clause 16 PRC Arbitration Act and shall be deemed as valid.[42]

ii. SCMA is recognized as an arbitration commission under the PRC Law

[31] The Respondent submitted that the Arbitration Agreement shall be deemed as invalid due to SCMA not being a recognized arbitration commission under the PRC Law.[43] However, the recent development of PRC's Arbitration Law has trumped the Respondent's outdated interpretation of the law.

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[39] Moot Problem, p. 5: Response to Notice of Arbitration, ¶2.
[40] SPC's Interpretation on PRC Arbitration Law, Article 4.
[41] *Reply of SPC to Beilun Licheng.*
[42] PRC Arbitration Law, Article 16 (3).
[43] Moot Problem, p. 36: Statement of Defence and Counterclaim, ¶8.

[32] In the past year, the Chinese regime has made a development in recognizing foreign arbitration institutions in the Arbitration Agreement. This was reflected in the case of *Longlide*, where the SPC found the arbitration agreement with the ICC as valid. The SPC approach of validating the arbitration agreement with a foreign arbitration institution seemed to fit with the foreign institution into the definition of arbitration commission in the act. It showed that the PRC arbitration regime had started to recognize the Chinese-seated foreign arbitration.[44]

[33] Subsequently, Article 16 (3) PRC Arbitration Law concerning the requirements of the arbitration commission selected by the parties shall be deemed completed.[45] Commencing the arbitration with SCMA as the institution shall not be reluctantly ignored as it has fulfilled the requirements under the PRC Law. Therefore, as the arbitration commission requirement has been fulfilled, the arbitration agreement shall be deemed valid under the PRC Law.

SUBMISSION ON THE MERITS OF THE DISPUTE

SUBMISSION II: THE RESPONDENT IS LIABLE FOR THE CLAIMANT'S LOSS OF NEXT FIXTURE PROFITS

[34] Laytime is an express provision under a voyage charter party that regulates the permitted time to complete loading and unloading operations.[46] The breach of laytime would lead to the payment of demurrage and the consequential damages it caused. In this matter, the Claimant submits that the Respondent is liable for the Claimant's loss of future profits as (**I**) the Respondent failed to take the delivery of the Cargo within the laytime in the B/L. Consequently, (**II**) the Claimant is entitled for the consequential losses incurred due to the breach of the B/L. In the alternative, (**III**) the Respondent has breached its obligation to take the delivery of the Cargo within a reasonable time.

I. The Respondent failed to take the delivery of the Cargo within the laytime in the B/L

[35] The Respondent is liable for the Claimant's loss as it has failed to take the delivery of the Cargo within the laytime stated in the VCP that has been incorporated to the B/L. This laytime provision serves as a contract to the Respondent given that the terms have been incorporated in the B/L.

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[44] *Reply of SPC Anhui Longlide.*
[45] PRC Arbitration Law, Article 16 (3).
[46] *ERG Raffinerie Mediterranee v Chevron USA*, ¶18, Schofield, ¶4.18; Wilson, p. 51.

[36] A bill of lading will incorporate a charter party when there is an incorporation clause indicating that the terms referenced "*...per charter party*," exist.[47] Any holder of the bill will read such incorporation clauses that indicate their willingness to accept the terms from the charter party.[48] If a consignee demands delivery of the cargo to the shipowner by presenting the B/L, those incorporated terms will serve as a contract to the consignee.[49]

[37] In this case, the Respondent has breached the laytime provision in the B/L. The Respondent on 29 November 2023 is the consignee[50] who claimed to be the holder of the B/L and demanded the delivery of the Cargo to the Claimant.[51] As a holder of the B/L, it accepted the laytime provision given that the term has successfully been incorporated to the B/L.

[38] The front page of the B/L states that "*...all conditions…of the said Charter apply to and govern the rights of the parties concerned in the shipment*…". Furthermore, the next paragraph of the same B/L stipulates that "*The contract of carriage evidenced by this Bill of Lading is between the shipper, consignee and/or owner…named herein…,*"[52] indicating that the Respondent as a consignee accepted the terms under the contract of carriage including the incorporated VCP.

[39] The duration of laytime lasts for 96 (ninety-six) total running hours since the Vessel arrives at the port or when the NoR has been tendered.[53] Given the Vessel arrived at the port on 20 September 2023 and the NoR was tendered on the same day,[54] the laytime commenced on 20 September 2023 and finished on 24 September 2023. Despite that, the Respondent had never taken the delivery of the Cargo which led to the Cargo being discharged on 3 October 2023 with the Discharge LOI provided by the Charterer to the Claimant.[55] Hence, the Respondent has breached the laytime term in the VCP.

II. Consequently, the Claimant is entitled for the payment of demurrage and the consequential damages from the Respondent

[40] As the Respondent has breached the laytime provision, the Claimant submits that it is entitled for the

[47] *Porteous v Watney*, p. 4.; *Fidelitas Shipping Company v V/O Exportchleb*, p. 124; *Polar*, ¶33; *The Channel Ranger*, ¶31.
[48] *Fidelitas Shipping Company v V/O Exportchleb*, p. 124.
[49] *Gullischen v Stewart Brothers*, p. 189; *The Heidelberg*, p. 310.
[50] Moot Problem, p. 4: Notice of Arbitration.
[51] Moot Problem, p. 10: Statement of Claim, ¶17.
[52] Moot Problem, p. 4: Notice of Arbitration.
[53] Moot Problem, p. 12: Statement of Claim, Annex A (VCP).
[54] Moot Problem, p. 8: Statement of Claim, ¶9.
[55] Moot Problem, p. 9: Statement of Claim, ¶¶13-14; p. 33: Statement of Claim, Annex D (Discharge LOI).

payment of demurrage and the consequential damages from the Respondent as (**A**) the Respondent is liable for the payment of demurrage pursuant to Clause 27 Rider Clauses and (**B**) the Claimant is entitled for the consequential damages as it is distinct from the loss covered by demurrage.

A. The Claimant is entitled for the payment of demurrage from the Respondent pursuant to Clause 27 Rider Clauses

[41] The Claimant submits that the Respondent is liable for the payment of demurrage pursuant to Clause 27 Rider Clauses. The party who is liable for demurrage will depend on the agreement between the parties.[56] A consignee of cargo may be liable for it if there is a statement in the contract of carriage saying that it should bear the cost of demurrage.[57]

[42] In the present case, Clause 27 Rider Clauses expressly states that "*...the consignee and the receivers of the cargo are also responsible and liable for the payment of demurrage.*"[58] The Respondent is liable to pay for the demurrage as it is the consignee identified in the B/L,[59] and is the receiver as it demanded the Cargo's delivery.[60] The Respondent itself has admitted in its Statement of Defence and Counterclaim that the Claimant is entitled for the payment demurrage[61] indicating its acknowledgement of its liability. Therefore, the Respondent is liable for the payment of demurrage.

B. Additionally, the Claimant is entitled for the consequential damages as it is distinct from the damages occurring due to demurrage

[43] In addition to the demurrage, the Claimant argues that the Respondent is also liable for the consequential damages directly flowing from the breach of laytime. As established in *Reidar v Acros*[62] and *The "Altus"*,[63] a shipowner will be entitled to recover damages in addition to demurrage when such loss is distinct from the loss covered by a demurrage fee.

[44] Demurrage is a cost that must be paid by the liable party to the shipowner to compensate for the period when the vessel waits at the port because the cargo has not been taken yet when the laytime has ended.[64]

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[56] *The Miramar*, p. 681.
[57] *Harman v Gandolph*, pp. 152-153; *The Miramar*, p. 681; *William & Sons v Ak*, p. 100; Foxton, *et. al.*, ¶15-055; Baughen, p. 249.
[58] Moot Problem, p. 24: Statement of Claim, Annex B (Rider Clauses),
[59] Moot Problem, p. 4: Notice of Arbitration.
[60] Moot Problem, p. 10: Statement of Claim, ¶17; p. 37: Statement of Defence and Counterclaim, ¶17.
[61] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶14.
[62] *Reidar v Acros*, p. 363.
[63] *The "Altus"*, pp. 435-436.
[64] *The Spalmatori*, p. 899; *The Oriental Envoy*, p. 271; *Stolt Tankers v Landmark Chemicals*, ¶46; Schofield, p. 358.

In *Chandris v Isbrandtsen Moller*, the judge concluded that a demurrage provision covers only certain types of losses which usually is the prospective freight that a shipowner is likely to suffer because the vessel is still waiting on the port beyond the stipulated lay days.[65]

[45] Other than that, demurrage may cover the vessel's running expenses when the vessel is staying at the port beyond the laytime[66] and the damages of the cargo[67]. In conclusion, *a contrario* interpretation from these cases would suggest that there are losses that are not sufficiently covered by demurrage which may be recovered in addition to demurrage. This would include the earnings that would have been generated by a shipowner if a charterer loaded a cargo within the laytime.[68]

[46] Those losses are materially different from the present dispute as the consequential loss suffered by the Claimant due to the Respondent's breach of laytime as it is not a loss that will be settled by the total amount of demurrage accumulated based on the total days that the Vessel stayed at the port in Busan. This will be demonstrated in the table below.

	Duration (In days)	**Amount (in USD)**		**Total (In USD)**
		Per hour	**Per day**	
Initial TCP Hire Rate	730 (365 days x 2 years)	-	35,000	25,550,000
Negotiated TCP Hire Rate		-	30,000	21,900,000
			Loss of Profits	**3,650,000**
Demurrage (estimated)	10 (24 September - 4 October 2023)	1,500	36,000	**360,000**
			Difference	**<u>3,290,000</u>**

[47] The demurrage rate is USD 1,500 per hour,[69] or cumulatively USD 36,000 per day. As the laytime expires on 24 September 2023 and the Cargo is discharged on 4 October 2023, the loss covered by the demurrage to compensate for the 10 days that the Vessel stayed at the Port in Busan is USD 360,000. This amount is remarkably different from the consequential loss incurred by the Claimant.

[65] *Chandris v Isbrandtsen Moller*, p. 249.
[66] *The Nikmary*, ¶47; Gay, p. 181.
[67] *The "Eternal Bliss"*, ¶7.
[68] *Reidar v Acros*, p. 352.
[69] Moot Problem, p. 13: Statement of Claim, Annex A (VCP).

[48] The discrepancy between the initial and present hire rates of the TCP is USD 3,650,000. The difference between the negotiated rate and the demurrage is USD 3,290,000. Conclusively, the demurrage in the present case only covers the loss incurred within the four days that the Vessel stayed at the port in Busan and does not cover the consequential damages.

III. Alternatively, the Respondent has breached its implied obligation to take the delivery within the reasonable time

[49] If the Tribunal finds that the breach of laytime is insufficient to prove the Claimant's entitlement for the consequential damages, the Claimant submits that it is entitled as the Respondent has breached the implied term of the VCP.

[50] The judges in *The Bonde*[70] and *The Eternal Bliss*[71] decided that damages in addition to demurrage can only be recovered when a shipowner is able to prove there is a breach of a separate obligation aside from the breach of laytime, therefore, a separate loss occurred.

[51] Presently, the Respondent has breached its implied obligation to take the delivery of the Cargo within a reasonable time as it never took such delivery. However, the Respondent argues that the implied term does not exist as a laytime provision governs the period in taking the delivery of the cargo.[72]

[52] Responding to this, the Claimant submits that it is entitled to the consequential damages in addition to demurrage as (**A**) the law implies an obligation for the consignee to accept the delivery of a cargo within a reasonable time and (**B**) the implied term by fact as it is necessary, obvious, and does not contradict the express term. As the implied term exists, (**C**) the Respondent failed to fulfill its obligation in taking the delivery of the Cargo within a reasonable time.

A. The law implies an obligation for a consignee to accept the delivery of a cargo within a reasonable time

[53] The implied term exists as the law implies an obligation for a consignee to accept the delivery of the Cargo within a reasonable time. The law will imply a term if it is necessary given the nature of a specific type of contract.[73] Therefore, an implied term that exists by law should automatically apply unless the

[70] *The Bonde*, p. 142.
[71] *The Eternal Bliss*, ¶52.
[72] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶13.
[73] *Societe v Geys*, ¶55; *Alan Bates and Others and Post Office*, ¶691; Peel, ¶6-043; McKendrick, p. 354.

parties express their disagreement with it.[74]

[54] In shipping contracts, it has been decided in *Fowler v Knoop,*[75] *Ford v Coteswort,*[76] and *The Spiros C,*[77] that a consignee is bound by a duty to take the delivery of the cargo within a reasonable time. This duty arises to reciprocate the shipowner which discharges the cargo within a reasonable time.[78] As such, a consignee does not have an entitlement to make the vessel wait for an unlimited time.[79]

[55] Similarly, the Respondent as the consignee identified in the B/L has the obligation to accept the delivery of the Cargo in a reasonable time. This obligation exists as the nature of a shipping contract which does not allow the consignee to make the vessel to endlessly wait for the acceptance of a delivery. Hence, the law imposes such an obligation to a consignee of a bill of lading.[80]

B. The implied term exists by fact as it provides business efficacy to the VCP, is obvious, and does not contradict the laytime provision

[56] Principally, an implied term by fact will exist if it provides business efficacy to a contract or "obvious that it goes without saying" and does not contradict the express term.[81] This analysis should be from the perspective of a reasonable person with a relevant background against the terms of the contract and surrounding circumstances who would read the contract at the time it was made.[82]

[57] To this end, the Claimant submits that the implied term (**i**) provides business efficacy to the VCP, (**ii**) is obvious, (**iii**) does not contradict the laytime term. Hence, the implied term obliging the Respondent to take the delivery of the Cargo within a reasonable time exists despite the existence of Clause E Part I VCP which regulates the laytime.

i. The implied term provides business efficacy to the VCP

[58] The implied term for the Respondent to take the delivery of the Cargo in a reasonable time provides

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[74] *Societe v Geys,* ¶55.
[75] *Fowler v Knoop,* p. 303.
[76] *Ford v Cotesworth,* p. 546.
[77] *The Spiros C,* ¶72.
[78] *The Spiros C,* ¶72*; Fowler v Knoop,* p. 303.
[79] *The Spiros C,* ¶21.
[80] *Fowler v Knoop,* p. 303; *Ford v Cotesworth,* p. 546; *The Spiros C,* ¶72.
[81] *BP Refinery v Hastings,* p. 10; *Yoo Design v Illiv,* ¶48; *Mark & Spencer v BNP Paribas,* ¶18; *Norfolk Homes v North Norfolk District Council, Norfolk County Council,* ¶19; *Pan Ocean v Daelim Corporation,* ¶39; *PLZ Soccer v STV Central,* ¶29; *Zahid v Duthus Group Investments,* ¶19.
[82] *Mark & Spencer v BNP Paribas,* ¶23; *Transfield Shipping v Mercator Shipping,* ¶11; *GWR Property v Forrest Outdoor Media,* ¶28.

business efficacy to the VCP. In *The Moorcock,* Lord Hoffman stated that a term will be implied if it provides efficacy as intended by the parties to such contract.[83] *Marks & Spencer v BNP Paribas,*[84] *Candey v Bosheh,*[85] and *Klaturov v Revetas Capital Advisors,*[86] further stated that a term will be implied if the contract will lack commercial or practical coherence without it.

[59] In the present case, the Original Parties to the VCP agreed that the VCP should function as a contract for the shipment of the Cargo which must not hinder the Claimant from fulfilling its future fixture's obligation. This is seen through the fact that this crucial information was communicated by the parties throughout the negotiation and the Original Parties of the VCP inserted the next employment clause.[87] This means that the Parties reminded relevant parties to the shipment that they must perform their obligation within a reasonable time.

[60] For the Claimant to meet its future fixture, relevant parties including the Respondent as the consignee and the holder of the B/L must take delivery within the reasonable time. Hence, this implied term exists despite the existence of the laytime term. If the only term relating to the delivery is the laytime, the VCP will not be effectively performed as the Original Parties to the VCP intended. Because of this, the implied term provides business efficacy to the VCP.

ii. The implied term is obvious

[61] The implied term to take the delivery of the Cargo within a reasonable time exists as it is obvious. An implied term must be obvious that a party during the negotiation of the contract will immediately agree if the other party hypothetically suggests that the implied term should be made as an express term in the contract.[88] In other words, the term must be obvious that 'it goes without saying'.[89]

[62] Presently, any person in the shoes of the Charterer will conclude that the implied term exists as the Claimant explicitly informed the Charterer throughout the negotiation of the VCP that the Vessel has entered a TCP. The TCP has a strict Laycan which connotes that there is a possibility that the Claimant's next charterer will cancel the TCP if the Claimant fails to meet the Laycan.

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[83] *The Moorcock*, p. 68.
[84] *Mark & Spencer v BNP Paribas*, ¶21. See also *Yoo Design v Illiv*, ¶51.
[85] *Candey v Bosheh*, ¶82.
[86] *Kiril Klaturov, KMKH Eood v Revetas Capital Advisors, Eric Assimakopoulos*, ¶177.
[87] Moot Problem, p. 7: Statement of Claim, ¶6: p. 25: Statement of Claim, Annex B (Rider Clauses).
[88] *BP Refinery v Hastings*, p. 10; *Shirlaw v Southern Foundries*, p. 227; *Mark & Spencer v BNP Paribas*, ¶21.
[89] *Shirlaw v Southern Foundries*, p. 227; *Yasmine v David*, ¶17; *Geoffrey v Mirror Group Newspapers*, ¶¶45-46.

[63] This is further supported by the fact that the Original Parties to the VCP inserted information relating to the Claimant's next employment under Clause 38 Rider Clauses which implies that all parties including the Respondent as a consignee to perform the contract within the reasonable time to prevent the cancellation of the Claimant's next fixture. In conclusion, the implied term is obvious as a reasonable person will find that the implied term exists.

iii. The laytime and implied terms do not contradict each other

[64] The implied term in the present case does not contradict the laytime term. If the test of obviousness or the business efficacy of an implied term is met, the only time such a term will not be implied is when it contradicts the express term stipulated in a contract.[90]

[65] In the *Port of Tilbury (London) Ltd v. Stora Enso Transport & Distribution Ltd*, the court is dealing with whether a port authority that entered into an agreement to facilitate import goods with a paper importer can recover a minimum payment of its service.[91] The importer tried to evade its responsibility through stating that the contract impliedly does not allow the port to demand that payment. However, the court found that the term was in contrast with the express clause agreed by the parties.[92]

[66] That case is different from the case at hand. The current implied term does not contradict the duration to take the delivery of the Cargo stipulated in the laytime. The total running hours for the laytime is 96 (ninety-six) hours[93] while the implied term in question would impose the obligation for the Respondent to take the delivery of the Cargo any time prior to the Claimant's subsequent fixture.[94] It did not impose that the Respondent has the obligation to take the delivery earlier than the laytime. Hence, the laytime and the implied terms do not contradict each other.

C. As the implied term exists, the Respondent has failed to take the delivery of the Cargo within the reasonable time

[67] As the implied term exists, the Respondent breached its obligation to take the delivery of the Cargo as it did not take the Cargo even after the laytime expired. A reasonable time for performing a contract is

[90] *BP Refinery v Hastings*, p. 10; *Marks & Spencer v BNP Paribas*, ¶21; *Port of Tilbury v Stora Enso*, ¶26.
[91] *Port of Tilbury v Stora Enso*, ¶26.
[92] *Ibid.*
[93] Moot Problem, p. 12: Statement of Claim, Annex A (VCP).
[94] Moot Problem, p. 40: Statement of Reply and Defence to Counterclaim, ¶9.

construed based on the circumstances surrounding the events.[95]

[68] Lord Watson in *Hick v. Raymond & Reid* further stated that an obligation is done in a reasonable time when a party performed its obligation without unreasonable act.[96] In that case, an act would be unreasonable when a consignee failed to take the delivery of the Cargo due to a delay that has been caused or contributed by itself.[97] If there are circumstances which prevented the discharge of the Cargo and it is beyond the consignee's control, the consignee will not behave unreasonably.[98]

[69] In the present case, the Respondent has failed to take the delivery of the Cargo within reasonable time due to its unreasonable act in delaying the delivery of the Cargo. The Respondent should have taken the delivery of the Cargo within the laytime or in the alternative on 30 September 2023. This date is the date that the delivery of the Cargo should have been completed as agreed by the Original Parties to the VCP to ensure that the Claimant will be able to meet its future fixture's Laycan.[99]

[70] This very same information is also the reason why the Charterer repetitively reminded the Respondent concerning its obligation to take the delivery ever since the Cargo arrived in Busan on 20 September 2023 and even until the reasonable time to take the delivery of the Cargo almost ended.[100] Despite the continuous reminder from the Charterer, the Respondent neither attempted to take the delivery of the Cargo nor instructed the Charterer to discharge the Cargo. In fact, the Respondent only tried to demand the delivery of the Cargo on 29 November 2023 to the Claimant.[101] As such, the Respondent has behaved unreasonably which leads to the delay of the delivery of the Cargo. Because of that, the Respondent has breached the implied term.

SUBMISSION III: THE CLAIMANT IS NOT LIABLE FOR MISDELIVERY OF THE CARGO

[71] The Claimant submits that it is not liable for the misdelivery of the Cargo as (**I**) the Respondent does not have the title to sue as it is not the lawful holder of the B/L pursuant to Article 5(2)(a) of the United

[95] *Hick v Raymond*, p. 29; *The Official Receiver for Northern Ireland v Mary*, ¶17; SHV *& Trading SAS v Naftomar*, ¶23.
[96] *Hick v Raymond*, p. 29; *Astea v Time Group*, ¶142; *Barkby Real Estate Development v Cornerstone Telecommunications Infrastructure*, ¶77.
[97] *Hick v Raymond*, p. 29
[98] *Hick v Raymond*, p. 32.
[99] Moot Problem, p. 7: Statement of Claim, ¶6.
[100] Moot Problem, p. 46-49: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[101] Moot Problem, p. 10: Statement of Claim, ¶17.

Kingdom's Carriage of Goods by Sea Act 1992 ("**COGSA 1992**") because it does not obtain the B/L in good faith and (**II**) the Respondent's loss occurred due to its own action of consenting to the delivery of the Cargo without the production of the B/L. In any event, (**III**) the Charterer complied to the Discharge LOI provided by the Charterer. Therefore, (**IV**) the Respondent is only entitled for nominal damages.

I. The Respondent does not have a title to sue as it is not the lawful holder of the B/L pursuant to Section 5(2)(a) COGSA 1992 as it does not obtain the B/L in good faith

[72] The Respondent argues that the Claimant committed misdelivery as it did not deliver the Cargo to the Respondent as the lawful holder of the B/L.[102] The Respondent bases this position by claiming that it looked at the Cargo as security for the loan of the Charterer and it possessed the B/L since 3 October 2023.[103] In contrast, the Claimant submits that the Respondent is not the lawful holder of the B/L pursuant to Section 5(2)(a) COGSA 1992 as it did not view the Cargo as security for the loan. Thus, the Respondent does not have any title to bring a misdelivery claim.

[73] Section 2(1)(a) COGSA 1992 states that one of the ways for a party to attain all rights of suit under a contract of carriage is through being the lawful holder of a bill. Pursuant to Section 5(2)(a) COGSA 1992, a party will become a lawful holder when there are two requirements that are fulfilled, which are becoming the identified consignee in the related bill and being its holder in good faith.

[74] *The Aegean Sea* stated that good faith as defined by Section 5(2) COGSA 1992 is honest conduct in obtaining a bill and not a broad concept of reasonable commercial standards of fair dealing.[104]

[75] In the present case, the Respondent is not the lawful holder of the B/L even though it is the holder due to its position as a consignee identified in the B/L because it did not obtain the bill through honest conduct as (**A**) it does not view the Cargo as a security for its loan and (**B**) attempts to bring the purported security due to the insolvency of the Charterer.

A. The Respondent does not view the Cargo as a security for its loan

[76] The Respondent does not view the Cargo as a security for its loan as it failed to carry out measures in taking the delivery of the Cargo. In *The "Future Express",* the judge stated that a consignee who is also

[102] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶17.
[103] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶¶15-16.
[104] *The Aegean Sea*, p. 60; *UCO Bank v Golden Shore Transportation*, ¶40; *STI Orchard*, ¶¶59-60; *Navig8 Ametrine*, ¶38; *Yue You 902*, ¶101; Aikens, *eds.*, ¶8.58.

a bank will not have a right to sue if it does not view the cargo as a security of its loan although the financial arrangement between the bank and its client states that it is the pledgee of the cargo.[105] The judge based its decision by looking at the factual circumstances in which the bank did not intend to be a pledgee after receiving the bill as it was aware that the cargo had been discharged to another party but did not raise any protest toward such discharge.[106]

[77] In this case, the Respondent does not view the Cargo as security for the loan as it never took the delivery of the Cargo. Prior to the delivery of the Cargo to the Gileum Refinery Co Ltd ("**Ultimate Buyer**"), the Charterer repeatedly informed the Respondent that the Cargo was ready to be taken and it may invoke Clause 57 Rider Clauses to release the Cargo without production of the B/L through attaching the VCP.[107] The Respondent could not have been unaware of such a clause as it also approved the Payment Letter of Indemnity from the Shipper ("**Payment LOI**") stating that the delivery without production of the B/L will commence.[108] Nonetheless, the Respondent neither raised any issue pertaining to the delivery nor took the delivery of the Cargo.

[78] The Respondent may attempt to argue that it will take the delivery of the Cargo once it receives the B/L from the Shipper.[109] Nevertheless, this is unlikely due to two reasons. Firstly, the Respondent never discussed solutions with the Charterer and/or the Claimant to ensure that it can take the delivery of the Cargo after the expiration of the period for taking such delivery and just provided liberty to the Charterer to conduct any means in preventing the occurrence of demurrage.[110]

[79] Secondly, the Respondent had never communicated to the Claimant or the Charterer that it wished to take the delivery of the Cargo even after it received the complete copies of the B/L from the Shipper a day prior to the discharge of the Cargo[111]. Considering these factual circumstances, the Respondent never viewed the Cargo as a security of its loan which consequently eliminates its right to sue.

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[105] *The "Future Express",* p. 93. See also *The Maersk Princess*, ¶49.
[106] The "*Future Express*", ¶93.
[107] Moot Problem, pp. 47, 49: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[108] Moot Problem, p. 45: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[109] Moot Problem, p. 46: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[110] *Ibid.*
[111] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶16.

B. The Respondent attempts to bring the purported security due to the insolvency of the Charterer

[80] The Respondent did not become the lawful holder of the B/L in good faith as it only attempted to bring the purported security only when the Charterer is insolvent. A bank did not become the lawful holder of the B/L as it only tried to enforce its security of the Cargo after it found out that its customer is insolvent albeit the financial arrangement between the bank and the customer which state that the bank pledged the Cargo as its security.[112]

[81] Presently, the Respondent only tries to perfect its security by claiming to be the lawful holder of the B/L and demanded for the delivery of the Cargo almost two months after it possessed the B/L.[113] Since it first possessed all copies of the B/L on 3 October 2023,[114] it never requested to take the delivery of the Cargo despite knowing that there were issues relating to the Charterer's cash flow.[115]

[82] It was only on 29 November 2023 that the Respondent wrote to the Claimant claiming to be the holder of the B/L.[116] By this time, the Respondent could have realized that the Charterer is insolvent as Carry on Advisory Services LLP has been appointed as the Charterer's interim liquidator.[117] As such, the Respondent attempts to bring its purported security due to the insolvency of the Charterer. Conclusively, the Respondent did not become a lawful holder in good faith pursuant to Section 5(2)(a) COGSA 1992.

II. Even if the Respondent has the title to sue, the Respondent's loss occurred due to its own action as it consented to the delivery of the Cargo without the production of the B/L

[83] The Respondent suffered losses due to its own action as it consented to the delivery of the Cargo without the production of the B/L. As established in *The Nika*[118] and *The Sienna*,[119] a bank is not entitled to damages due to a delivery of a cargo without the production of a bill of lading if the effective cause of loss is not due to such a misdelivery but other actions unrelated to the shipowner.

[84] Specifically in *The Sienna,* actions unrelated to the shipowner which leads to the bank's loss include the

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[112] *STI Orchard*, ¶¶59-60.
[113] Moot Problem, p. 5: Statement of Claim, ¶4.
[114] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶13.
[115] Moot Problem, p. 46: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[116] Moot Problem, p. 10: Statement of Claim, ¶17.
[117] Moot Problem, p. 10: Statement of Claim, ¶16.
[118] *The Nika*, ¶34.
[119] *The Sienna*, ¶¶121-122.

consent of a bank for a delivery without the production of a bill of lading. In that case, the judge found that a bank consented to such delivery when it was aware and impliedly authorized for a discharge of a cargo without the production of a bill.[120] Other than that, a bank will consent to the delivery of the cargo without the production of a bill if its lack of action suggests that it has acquiesced to such a delivery.[121]

[85] To this end, the Claimant submits that the Respondent consented to the delivery of the Cargo without the production of the B/L because (**A**) the Respondent impliedly authorized such delivery as it instructed the Charterer to conduct any necessary means to complete the shipment and (**B**) it acquiesced to the delivery of the Cargo to the Ultimate Buyer.

A. The Respondent impliedly authorized the delivery of the Cargo as it instructed the Charterer to conduct any necessary means to complete the shipment

[86] The Respondent impliedly authorized the discharge of the Cargo without the production of the B/L through its instruction to the Charterer to conduct any necessary means in preventing the occurrence of demurrage and completing the shipment.

[87] An implied actual authority refers to the authority that is not expressly given by the principal but is understood as an authority by an agent to carry out its obligation. This implied authority exists to carry out the express authority.[122] Hence, a party who receives an implied authority has the liberty to do whatever is necessary or ordinarily incidental to the execution of an express authority.[123]

[88] In the present case, the Respondent impliedly authorized the discharge of the Cargo without the production of the B/L. On 3 October 2023 and when the Charterer reminded the Respondent that the Vessel must leave quickly, the Respondent expressly stated to the Charterer that it would leave all matters to the Charterer's to prevent the occurrence of a demurrage so long the loan will be repaid.[124] This means that the Respondent fully authorized the Charterer to do anything that is deemed proper according to its knowledge to prevent the Claimant's loss.

[89] Given the express authority from the Respondent who is also the consignee of the B/L, the Charterer

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[120] *The Sienna*, ¶92; *The Nika*, ¶26; *The Maersk Princess*, ¶57.
[121] *STI Orchard*, ¶70.
[122] *Glencore Agriculture v Conqueror Holdings*, ¶36.
[123] *Pole v Leask*, p. 482.
[124] Moot Problem, p. 46: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).

concluded its implied authority to discharge the Cargo since the laytime had expired and the Claimant must meet its future fixture. This is necessary as its task as a charterer is to discharge the Cargo and the Respondent's task as a consignee is to take the delivery of the Cargo.

[90] Besides, the only requirement of the Respondent's authority is the guarantee that the Charterer will repay its loan back.[125] At that time, the Ultimate Buyer had purchased the Cargo from the Charterer and the remaining step that needed to be done was only the process of submitting the Export L/C from the Ultimate Buyer to the Respondent.[126] This situation gave the Charterer confidence that it would be able to repay its loan back to the Respondent.

[91] Consequently, the Respondent impliedly authorized the discharge of the Cargo without the production of the B/L. In conclusion, the Respondent authorized the delivery of the Cargo without the presentation of the B/L.

B. The Respondent acquiesced to the delivery of the Cargo to the Ultimate Buyer

[92] In addition, the Respondent acquiesced to the delivery of the Cargo to the Ultimate Buyer as it did not exercise its right to take the delivery of the Cargo. Acquiescence refers to the act of a person suggesting that he assents for his right to be breached. The act is concluded if a person sees someone is about to infringe on their rights and conduct actions that suggest that he consents to such a breach. When proved, the person will lose its right to complain about the other person's action.[127]

[93] In general, there are three circumstances that must exist to conclude there has been an acquiescence.[128] Firstly, the person who is allegedly infringing the other party's right must be mistaken for his own rights and act on the faith of his mistaken belief. Secondly, the party whose right is thought to be breached must be aware of his own rights and know the alleged mistaken belief of the other party. Thirdly, he must also encourage the other party to allegedly infringe his right either directly or through abstaining from exercising his legal right.

[94] Those circumstances are fulfilled in the present case. Firstly, the Claimant mistook its own right and

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[125] *Ibid*.
[126] Moot Problem, pp. 46-47: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[127] Giffard, ¶924. Cited in *The Neptra Premier*, p. 9; Black, p. 40.
[128] Giffard, ¶1473. Cited in *The Star Quest*, ¶¶61-62; *Nasaka Industries v Aspac Aircargo Services*, ¶70.

acted on such a belief to deliver the Cargo to the Ultimate Buyer. This is because the Discharge LOI provided by the Charterer stated that the receiver of the Cargo would be the Ultimate Buyer instead of the Respondent.[129] As such, the Claimant followed the Discharge LOI and discharged the Cargo on 4 October 2023 to the Ultimate Buyer.[130]

[95] Secondly, the Respondent knows its right to take the delivery of the Cargo because the Charterer had actively informed the Respondent that the Cargo had arrived and was ready to be discharged per the Respondent's instruction.[131] Moreover, it also understood that it can instruct the Charterer to deliver the Cargo without the production of the B/L pursuant to Clause 57 Rider Clauses.[132]

[96] Thirdly, the Respondent is aware of the Claimant's mistaken belief. The Respondent knows that the Cargo has been sold to the Ultimate Buyer and it will receive an Export L/C from the Ultimate Buyer.[133] At the same time, it is conscious that the delivery of the Cargo will be conducted without the presentation of the B/L pursuant to Clause 57 Rider Clause[134] and the Payment LOI given by the Shipper[135]. In view of these conditions, the Respondent should know that there is a possibility that the Charterer will ask the Claimant to release the Cargo to the Ultimate Buyer. Especially, the Respondent itself gave the liberty to the Charterer to conduct appropriate actions to complete the shipment of the Cargo.[136] The Claimant will most likely comply with such request as it is deemed as its obligation pursuant to Clause 57 Rider Clauses.

[97] Fourthly, the Respondent abstained from exercising its legal right to take the delivery of the Cargo. The Respondent had never taken the delivery of the Cargo even though it had the option to take the delivery without the production of the B/L.

[98] The Respondent may attempt to argue that it will discharge the Cargo once it receives the B/L. However,

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[129] Moot Problem, p. 33: Statement of Claim, Annex D (Discharge LOI).
[130] Moot Problem, p. 9: Statement of Claim, ¶¶13-14.
[131] Moot Problem, pp. 47-49: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[132] Moot Problem, p. 28: Annex B Statement of Claim, ¶78.
[133] Moot Problem, p. 47: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[134] Moot Problem, p. 28: Annex B Statement of Claim, ¶78.
[135] Moot Problem, p. 45: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).
[136] Moot Problem, p. 46: Statement of Reply and Counterclaim, Annex A (Correspondences between the Charterer and the Respondent prior to the discharge of the Cargo).

the Respondent had never taken the Cargo even if it received all copies of the B/L a day before the Cargo's discharge.[137] In fact, it never presented the B/L to the Claimant when it recently procured the B/L. As the circumstances fulfill the requirements of acquiescence, the Respondent's action constitutes as an acquiescence.

III. In any event, the Claimant complied to the Discharge LOI provided by the Charterer

[99] The Respondent contends that the Claimant has misdelivered the Cargo as the Claimant should have delivered the Cargo to the Respondent and only upon the presentation of the B/L.[138] Nevertheless, the Claimant submits that its action is in accordance with the instruction given by the Charterer which subsequently gives rise to the indemnification from the Charterer to the Claimant.

[100] *The Bremen Max* stated that a charter party clause concerning the delivery of the cargo through a letter of indemnity in place of a B/L is an obligation that should be complied by an owner in return for the charterer's undertaking.[139] The owner must deliver the cargo to the party specified in the letter of indemnity if the clause of the charterparty which relates to the option to deliver the cargo does not specify the party to whom the delivery will be made. The owner does not need to inquire whether that party is entitled for the delivery of the goods as the charterer is the one dealing with it.[140] If not followed, the shipowner will not be able to request for an indemnity from the charterer.[141]

[101] In the present case, the Claimant complies with the Charterer to deliver the Cargo to the Ultimate Buyer as stated in the Discharge LOI. Clause 57 VCP only mentions that the Claimant should deliver the Cargo pursuant to the Discharge LOI from the Charterer in the absence of the B/L.[142] The clause does not specify the party to whom the delivery will be made.

[102] The Discharge LOI provided by the Charterer mentioned that the Claimant should deliver the Cargo to the Ultimate Buyer. In return for such delivery, the Charterer will indemnify the Claimant against any liability, loss, or damage.[143] The non-compliance of this request would prevent the Claimant in receiving indemnity when delivering the Cargo without the production of the B/L. In conclusion, the Claimant

[137] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶16.
[138] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶17.
[139] *The Bremen Max*, ¶34; *The Laemthong Glory (No. 2)*, ¶51.
[140] *The Bremen Max*, ¶¶34-35.
[141] *The Bremen Max*, ¶34.
[142] Moot Problem, p. 28: Statement of Claim, Annex B (Rider Clauses).
[143] Moot Problem, p. 33: Statement of Claim, Annex D (Discharge LOI).

complied with the Charterer's request in the Discharge LOI.

IV. Consequently, the Respondent is only entitled for nominal damages

[103] The Respondent claimed damages in the amount of USD 4,249,752.50 through alleging that the Claimant committed misdelivery.[144] Regardless, the Respondent cannot claim for such loss as it occurred due to the Respondent's own action. Hence, it is only entitled for nominal damages.

[104] A bank as a holder of a bill who has consented to the delivery of a cargo without the production of a bill cannot claim substantial damages arising due to a misdelivery.[145] At best, that party can only receive nominal damages as an acknowledgment of the breach of the contract of carriage.[146]

[105] In the present case, the Respondent is only entitled to nominal damages as the misdelivery occurs due to its own action which consented to such delivery and the financial collapse of the Charterer as the Respondent's client. Hence, the Respondent is only entitled to nominal damages as a recognition that such a breach occurred.

[144] Moot Problem, p. 37: Statement of Defence and Counterclaim, ¶19.
[145] *The Nika*, ¶27; *Navig8 Ametrine*, ¶33.
[146] *Ibid*.

PRAYERS FOR RELIEF

For the reasons submitted above, the Claimant respectfully requests this Tribunal to:

DECLARE that:

I. The Tribunal has jurisdiction over the present dispute.

II. The Respondent is liable for demurrage and the consequential damages; and

III. The Claimant is not liable for the misdelivery of the Cargo.

further

ADJUDGE that the Respondent is liable to the Claimant for:

I. Pay for the sum of USD 3,650,0000;

II. Pay the amount of interest the Respondent is ordered to compensate the Claimant; and

III. Pay all cost of the arbitration, including the Claimant ‘s representative’s cost and expenses.

further

ADJUDGE that the Claimant is not liable to the Respondent to:

I. Pay the amount of freight and landing cost in the amount of USD 4,249,742.50 for the misdelivery of the Cargo; and

II. Such further or other relief as the Tribunal deems fit.