THE 13TH LAWASIA INTERNATIONAL MOOT COMPETITION

KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

2018

BETWEEN

CHUIZI LEISHEN'S LLC

(CLAIMANT)

&

ROBUSTESSE ESPACIAL SOLUCION CORP

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF JURISDICTION

The parties, Chuizi Leishen's LLC and Robustesse Espacial Solucion Corp, have agreed to submit the following dispute in the Kingdom of Cambodia in accordance with the Kuala Lumpur Regional Centre of Arbitration Rules 2017[1]. The applicable law of contract shall be the UNIDROIT Principles.

[1] Page 3, Paragraph 15(f) of the record.

QUESTIONS PRESENTED

1. Whether the agreement to arbitrate is incapable of being performed due to the impecuniosity of the Respondent.
2. Whether the request of the Claimant to join Vader as a party to the Arbitration be granted by the Tribunal.
3. Whether there was a valid acceptance of the Claimant's offer.
4. What relief should the Tribunal grant?

STATEMENT OF FACTS

1. Chuizi Leishen's LLC (hereinafter referred to interchangeably as **"CL"** or **"Claimant"**) is a commercial company duly incorporated under the laws of the People's Republic of China in 2000.
2. Robustesse Espacial Solucion Corp (hereinafter referred to as **"RES"** or "**Respondent"**) is a Limited Company duly incorporated under the laws of Cambodia in January 2013. RES is a wholly owned subsidiary of Vader Ltd, a commercial company incorporated under the laws of the United Kingdom in 1950.
3. RES was established to carry out Vader's Asian business as Vader's CEO, Mr. Auld Chap saw the possibility of the United Kingdom leaving the European Union. RES's main business activity is the production and selling of bricks.
4. In February 2013, the CEOs of Vader and CL met to discuss business. During their discussion, they found a mutual business opportunity and they came to an accord on most of the terms for their future venture. They decided that a formal contract should be executed at a later point in time by the respective company representatives.
5. Mr. Kalai Deewarvala, a Malaysian-Indian living in Singapore was appointed by CL as their representative for the purpose of negotiating the contract between CL and RES (collectively, "**The Parties**") and to head all Belt and Road projects.
6. Mr. Armando Parades, a Mexican was employed as Managing Director of RES. His position empowered him to execute any and all agreements on behalf of RES in Cambodia and ASEAN.
7. By September 2013, Mr. Parades and Mr. Deewarvala had concluded and signed a contract between CL and RES. The contract was structured as an exclusive distribution agreement.

8. The Contract provided for four brick deliveries by RES in 2017, on the last working day of March, June, September and December with payment for these deliveries to be made by CL five days before each delivery.
9. The Contract included an arbitration agreement that would govern disputes arising out of the contract.
10. The respective parties then agreed to extend the contract for four more deliveries in 2015 with a 15% price increase in the price of bricks (the "**First Incentive**").
11. The same was done for a further four deliveries in 2016.
12. Meanwhile, on 23rd June 2016, Vader's board of directors passed a motion such that no further financing, compliance monitoring, or directives would be given by Vader to RES. Mr. Parades had full control over RES's activities.
13. The parties begun to negotiate for further deliveries in 2017. Negotiations lasted 4 months till 23rd November 2016, when the disputed events arose.
14. Mr. Parades proposed for a 35% bonus (the "**Second Incentive**") to be thrown in at the end of each year, and a 15% price increase in the price of bricks to which RES would commit to 4 deliveries in 2017 and 4 deliveries in 2018.
15. Mr. Deewarvala responded to this offer with an Indian head nod, a side-ways nod.
16. Mr. Deewarvala was of the view that they had reached an agreement whereas Mr. Parades was of the view that they had failed to reach an agreement.
17. The misunderstanding was realised in mid-March 2017 when CL contacted RES to confirm the date of the next delivery.
18. CL served RES with a Notice of Arbitration on 15th August 2017 leading to the arbitration proceedings today.
19. RES contend that their impecuniosity would render the arbitration agreement incapable of being performed.

SUMMARY OF PLEADINGS

The Respondent submits as follows: -

1. The agreement to arbitrate is incapable of being performed due to the impecuniosity of the Respondent.

The agreement to arbitrate is incapable of being performed as further costs and deposits will eventually be imposed on the Respondent under Rule 14(4) and Rules 14(5) of the KLRCA Rules 2017. The Respondent will be unable to afford these costs which may lead to termination of arbitration proceedings under Rule 14(7). Secondly, Article 40(3) of the Cambodian Arbitration Act 2006 provides for the termination of proceedings when the continuation of proceedings has become unnecessary or impossible. Lastly, it would be more practical for parties to seek redress in the local courts, which is lawfully allowed in accordance with several decided cases that will be submitted upon later on.

2. The request of the Claimant to join Vader as a party to arbitration should not be granted by the tribunal.

Rules 9(1) of the KLRCA Rules 2017 provides for the joinder of parties to arbitration. Vader should not be joined as a party to arbitration as they are not prima facie bound by the arbitration agreement. Vader was never a signatory to the contract or the arbitration agreement, nor did they undertake to be bound by the arbitration agreement. Secondly, the doctrine of the corporate veils separates Vader and RES (shareholder and corporation respectively) and distinguishes them as two separate legal entities.

3. There was no valid acceptance of the Respondents offer.

The offer[2] of the Respondent was never accepted by the Claimants on the following grounds. Firstly, there was a rejection of the Respondents offer based on the conduct of Mr. Deewarvala. Secondly, even if there was no rejection, the conduct of Mr. Deewarvala does not amount to an acceptance on the basis of ambiguity. Thirdly, the reasonable person would not interpret the Claimants conduct as an acceptance. Fourth, the conduct of Mr. Deewarvala is inconsistent with past practices of acceptance adopted by the parties. Lastly, the conduct of the Claimant subsequent to the alleged conclusion of the contract is inconsistent with an acceptance of the contract.

4. Relief the tribunal should grant.

With regards to the Claimant's claims, firstly, the contract should not be declared existent and enforceable as there was no valid acceptance of the Respondents offer. Secondly, even if the contract is however found to be existent and enforceable, the claim for specific performance should be disallowed as the exceptions to an award of specific performance under Article 7.2.2 of the UNDROIT Principles apply. Lastly, in the event the contract is declared existent and enforceable, the terms of the contract would have to be set in writing.

With regards to the Respondent's counter-claims, should the tribunal find that the alleged contract is existing and enforceable, the Respondents for the purposes of the proceedings limit their claims to the claim for the 35% bonus in 2016, interest for late payment of this bonus and costs.

[2] Moot problem at [34].

PLEADINGS

The Respondent submits as follows: -

1. THE AGREEMENT TO ARBITRATE IS INCAPABLE OF BEING PERFORMED DUE TO IMPECUNIOSITY.

A. Further costs will arise which may result in termination of arbitration if left unpaid.

(i) Rule 14(5) of the KLRCA Rules 2017 states that "During the course of the arbitral proceedings the Director may request further deposits from the parties which shall be paid by the parties in equal shares within 21 days of such request."

(ii) Rule 14(7) of the KLRCA Rules 2017 states that "If the required deposits are not paid in full, the Director shall give the other Party an opportunity to make the required payment within a specified period of time. If such payment is not made, the arbitral tribunal may, after consultation with the Director, order the suspension or termination of the arbitral proceedings or any part thereof."

(iii) From these provisions, it is evident that further costs and deposits will arise, which the Respondents will be unable to pay.

(iv) Failure to make these payments will most likely result in termination as the Director will likely terminate proceedings[3] as the arbitrators and the arbitration institution will not be remunerated.

(v) The argument to proceed with arbitration proceedings should be looked at as a whole, and if continued, should be seen to the end. This is contrary to the present case as the Respondents will not be able to see these proceedings to the end,

[3] Rule 14(7), KLRCA Rules 2017.

B. The continuation of proceedings has become impossible.

(i) The Cambodian Arbitration Act 2006 provides for the termination of arbitration proceedings if the arbitral tribunal finds that the continuation of proceedings has become unnecessary or impossible.[4]

(ii) Impossibility is explained in the Cambodian Civil Code.[5] The Code defines that what may be deemed as impossible is to be looked at from an economic standpoint.

(iii) From an economic standpoint, the Respondents are clearly depleted of their financial resources as they have been operating with no profits, and heavy establishment and operational cost. This mean that RES barely broke even against their immediate expenses and overheads.[6]

(iv) This goes to show that from an economic standpoint, in accordance with the Cambodian Arbitration Act and the Cambodian Civil Code, performance of the arbitration agreement is impossible.

(v) Clearly, the threshold of impossibility is higher than incapability. Therefore, the arbitration agreement is incapable of being performed. In accordance with the Cambodian Arbitration Act[7], the arbitration proceedings may be terminated due to this impossibility.

[4] Article 40(3), Commercial Arbitration Law of the Kingdom of Cambodia, 2006.
[5] Article 392(1), Civil Code of Cambodia, 2008.
[6] Moot problem at [26]
[7] Article 40(3), Cambodian Arbitration Law of the Kingdom of Cambodia, 2006.

C. The more practical approach would be for the parties to seek redress in the local courts.

(i) The parties can seek redress in the courts as the court have the authority to assume jurisdiction of the case. This would be a more practical approach.

(ii) The German Federal Court[8], has held that that the impecunious party can validly commence state court litigation, as it was the only available option for the plaintiff to pursue his case as the inability of the plaintiff to afford the costs of the arbitration may render an arbitration clause incapable of being performed.

(iii) Further, the German Federal Court held in another case[9] that "By its contents, an arbitration agreement is designed to assign certain legal disputes from state courts to arbitral panels. It is however not designed to cut off the rights of one party to seek legal protection. Therefore, if an arbitration agreement, for whatever reason, turns out to be inexecutable for practical or factual reasons, any party has the right to [extraordinarily] terminate the arbitration agreement for good reason".

(iv) In short, the court will be able to assume jurisdiction if the arbitration agreement is inexecutable for practical or factual reasons.

(v) Presently, the arbitration agreement is inexecutable for both practical and factual reasons.

(vi) Practically, it would be logical for the matter to be heard in the local courts where both parties will be able to participate and file their own claims and counter-claims relatively cheaply unlike arbitration where the immense costs are preventing the Respondent from funding the Respondent's share of the Claimants claim as well as their own counter-claim.[10]

[8] Case No. ZR 33/0, German Federal Court
[9] BGHZ 41, 104, German Federal Court of Justice
[10] Moot problem at [51], [61]

(vii) Factually, in is not disputed that the Respondents are impecunious and unable to afford any of the costs that have or may arise throughout the course of arbitration due to their dire financial state.[11]

(viii) For these reasons, the arbitration agreement is incapable of being performed due to the impecuniosity of the Respondent. The better alternative would be for the parties to take the matter to the local courts where the courts will be able to assume jurisdiction.

2. THE CLAIMANTS REQUEST TO JOIN VADER AS A PARTY TO ARBITRATION SHOULD NOT BE GRANTED.

A. Vader is not prima facie bound by the arbitration agreement.

(i) Rule 9(1) of the KLRCA Rules 2017 provides for the process in which a third-party can be joined as a party to arbitration. It states:

> *Any Party to an arbitration or any third party (the "Additional Party") may request one or more Additional Parties to be joined as a party to the arbitration (the "Request for Joinder"), provided that all parties to the arbitration and the Additional Party give their consent in writing to the joinder, or provided that such Additional Party is prima facie bound by the arbitration agreement.*

(ii) Vader neither gave consent in writing to be joined to the arbitration proceedings nor are they prima facie bound by the arbitration agreement for the following reasons.

(iii) On the facts, Vader was never a signatory to the contract or the arbitration agreement.

(iv) In an ICC Award[12] the Claimants were aware that they were contracting with the subsidiary who was carrying out the operations and not the parent company. The Tribunal

[11] Moot problem at [26]
[12] ICC Award No. 4402, 1983.

refused to extend the arbitration agreement to the parent company, which was a non-signatory and held that if Claimants had wanted to include the parent company in the agreement and therefore the arbitration clauses, they could have so requested before signing the agreement.

(v) Similarly, if the Claimants intended for Vader to be bound by the arbitration agreement as well, they should have requested to include Vader into the original agreement.

(vi) Further, although the CEO of Vader participated in the negotiations of the contract[13], it is insufficient to hold Vader prima facie bound by the arbitration agreement on this basis.

(vii) In another ICC Award[14], the tribunal found no evidence of an agreement to arbitrate merely because the non-signatory participated in the contract negotiation, noting "if the Claimant had intended [the non-signatory] to be a party to either the Contract or its arbitration clause it could have so insisted at that time."

(viii) If the Claimant had originally intended for Vader to be bound by the arbitration agreement, the Claimant should have taken the necessary steps to include Vader in the arbitration agreement. The record is bereft of any evidence to indicate that Vader was ever intended to be bound by the arbitration agreement by both parties (CL and RES).

(ix) On these grounds, Vader is not prima facie bound by the arbitration agreement and Rule 9(1) of the KLRCA Rules 2017 does not apply in this case. Therefore, Vader should not be joined as a party to arbitration.

[13] Moot problem at [10].
[14] ICC Award No. 1075889.

B. Vader and RES are separate legal entities under the doctrine of the corporate veil.

(i) The doctrine of the corporate veil is "A legal concept that separates the personality of a corporation from the personalities of its shareholders, and protects them from being personally liable for the company's debts and other obligations".[15]

(ii) Cambodian law recognizes this doctrine. The Cambodian Law on Commercial Enterprises Act[16] which states that "A subsidiary has legal personality separate from their principals from the date of its registration…".

(iii) In relation, Vader (the subsidiary) and Vader (the sole shareholder) are to be treated as two separate legal entities and Vader cannot be held liable for the actions of RES. To hold Vader liable for the actions of RES would require the Claimants to pierce the corporate veil.

(iv) To pierce the corporate veil and impute liability to Vader, the Claimants have the burden of proving fraud or illegal activity on part of Vader.[17]

(v) The record is bereft of any evidence whatsoever that Vader was involved in fraud or any illegal activity. Therefore, the corporate veil cannot be pierced.

(vi) On these grounds, Vader is to be treated as a separate legal entity from RES and cannot be liable under the arbitration agreement undertaken by RES.

3. THERE WAS NO VALID ACCEPTANCE OF THE RESPONDENT'S OFFER.

A. The Claimants rejected the Respondents offer.

(i) Article 2.1.5 of the UNIDROIT Principles lays out the governing rules of a rejection. It states:

[15] Salomon v Salomon & Co Ltd (1897) AC 22
[16] Article 284, Cambodian Law on Commercial Enterprises, 2005.
[17] Salomon v Salomon & Co Ltd (1897) AC 22

> *An offer may be rejected either expressly or impliedly. In the absence of an express rejection the statements by, or the conduct of, the offeree must in any event be such as to justify the belief of the offeror that the offeree has no intention of accepting the offer.*

(ii) The conduct of Mr. Deewarvala in response to Mr. Parades's offer amounted to a rejection. Mr. Deewarvala responded to the offer with an Indian nod, a sideways head nod.[18]

(iii) The Journal of Humanities and Social Sciences[19] states that the universal motion of dissent is a sideways headshake.

(iv) This motion by Mr. Deewarvala is consistent with Mr. Parades's belief that his offer was rejected and that Mr. Deewarvala had no intention of accepting his offer.[20]

(v) These facts are consistent with the governing rules of rejection in the UNIDROIT Principles as the conduct of Mr. Deewarvala was sufficient to justify Mr. Parades's belief that Mr. Deewarvala had no intention of accepting the offer.

(vi) However, even if the conduct of Mr. Deewarvala does not amount to a rejection, it does not amount to a valid acceptance on the grounds elaborated below.

B. The conduct of Mr. Deewarvala does not constitute a valid acceptance.

(i) Article 2.1.6 of the UNIDROIT Principles lay out the conditions of an acceptance. It states that "statement made by or other conduct of the offeree indicating assent to an offer is an acceptance".

(ii) As submitted earlier, the conduct of Mr. Deewarvala indicated dissent and not assent.

[18] Moot problem at [35].
[19] Journal of Humanities and Social Sciences, International Organization of Scientific Research, 2017.
[20] Moot problem at [36].

(iii) However, even if it did not indicate dissent, it is insufficient to validly convey assent due to the ambiguity of his conduct.

(iv) The German Federal Court[21] in interpreting the conduct of parties cited Article 2.1.6 of the UNIDROIT Principles and held that when regarding ambiguous statements, "the internationally recognized rule that ambiguous statements are to be interpreted "contra proferentem" applies; meaning that ambiguities are to be resolved to in favour of the other party.

(v) Here, Mr. Deewarvala responded with a sideways head nod. According to the Journal of Humanities and Social Sciences[22], the universal motion for assent is a nod whilst the universal motion for dissent is a sideways motion.

(vi) The conduct of a sideways nod indicates both horizontal and vertical movement which forms largely ambiguous conduct.

(vii) Therefore, Mr. Deewarvala's conduct should be interpreted contra proferentum, in favour of the Respondent.

(viii) Therefore, the Respondents submit that the conduct of Mr. Deewarvala is insufficient to amount to a valid acceptance.

C. The reasonable person would not interpret the conduct of Mr. Deewarvala as an acceptance.

(i) Article 4.2 of the UNIDROIT Principles states that "such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances".

[21] Case No. VIII ZR 410/12, German Federal Court of Justice
[22] Journal of Humanities and Social Sciences, International Organization of Scientific Research, 2017.

(ii) As earlier submitted, the universal motion of dissent is a sideways motion[23]. Therefore, the reasonable person would interpret Mr. Deewarvala's conduct as a rejection.

(iii) However, even if the preceding ground is inapplicable, the circumstances of the two parties leading up to the final conduct has to be taken into consideration.

(iv) Both parties have been negotiating for more than 4 months[24] and a further 4 hours on the final day. To the reasonable person in the same shoes as the Respondent, the conduct of Mr. Deewarvala would simply be another failed attempt for the parties to reach an accord on the terms of the contract.

(v) Further, to the reasonable person in a case involving a contract worth more than 3 billion United State Dollars[25], it would make no commercial sense to rely upon an ambiguous head movement of the Claimant as a basis to conclude a contract and for a claim such as this.

(vi) The German Federal Court case[26] cited above also referred to Article 4.2 of the UNIDROIT Principles, stating that in interpreting ambiguous conduct in accordance with Article 4.2, the 'contra proferentem' rule applies.

(vii) Therefore, the even the reasonable person in these same circumstances would not interpret the conduct of the Claimant as a valid acceptance.

[23] Journal of Humanities and Social Sciences, International Organization of Scientific Research, 2017.
[24] Moot problem at [28]
[25] Moot problem at [58]
[26] Case No. VIII ZR 410/12, German Federal Court of Justice

D. The conduct of the Claimant is inconsistent with past practices established between the parties.

(i) Article 4.3 of the UNIDROIT Principles states that "In applying the preceding article (Article 4.2), regard shall be had to all the circumstances, including, practices which the parties have established between themselves".

(ii) In their previous dealings, acceptance was always clear cut and unequivocal.

(iii) The first contract was contract was concluded via a signature.[27]

(iv) The first extension was concluded via a handshake.[28]

(v) The second extension was concluded in writing via emails.[29]

(vi) However, the conduct of Mr. Deewarvala concerning the contract in dispute was an ambiguous motion of the head[30] which is inconsistent with their past practices.

(vii) This inconsistency works hand in hand to justify the interpretation of the reasonable person that there was no valid acceptance of the offer.

E. The conduct of the Claimant subsequent to the conclusion of the alleged contract is inconsistent with the notion that the contract was accepted.

(i) Article 4.3 of the UNIDROIT Principles states that "In applying the preceding article (Article 4.2), regard shall be had to all the circumstances, including, the conduct of the parties subsequent to the conclusion of the contract".

(ii) Part of the contract was the payment of a "35% bonus of the total contract price every year, from now on".[31]

[27] Moot problem at [13].
[28] Moot problem at [22].
[29] Moot problem at [24].
[30] Moot problem at [35].
[31] Moot problem at [34]

(iii) As this contract was allegedly concluded in November 2016, the 35% bonus should have been paid at the end of the year 2016 as well.

(iv) However, the Claimants failed to make payment of this bonus.[32]

(v) Therefore, failure on the Claimants' part to pay this bonus reaffirmed the Respondents' understanding that the Claimant had rejected the contract and no contract had ever come into existence.

4. RELIEF THE TRIBUNAL SHOULD GRANT.

The Claimants request.

(i) The Claimant has requested for the contract to be declared existing and enforceable, specific performance of the first two deliveries of 2017, and for the terms of the contract to be reduced to writing.

A. Declaration

(i) The Respondents submit that the contract should not be declared existing and enforceable as there was no valid acceptance of the offer, therefore there was no formation of the contract.

B. Specific Performance

(i) However, even if the tribunal finds that the contract is existing and enforceable, the Claimants claim for specific performance should not be awarded on two grounds. Firstly, the exceptions to specific performance under Article 7.2.2 of the UNIDROIT Principles apply. Secondly, there was a fundamental breach on part of the Claimant.

[32] Moot problem at [58(a)]

(ii) On the first ground, article 7.2.2 of the UNDROIT Principles states that "Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

(iii) In the International Arbitration Court[33], specific performance was rejected on the basis of Article 7.2.2(e) of the UNIDROIT Principles as the claim had to be made within a reasonable time after the party became aware of the non-performance. The Claimants had waited a period of 5 months which was deemed to be too long.

(iv) Similarly, in the present case, the Claimants waited from March 2017 till August 2017, a period of 5 months, before initiating arbitration proceedings. In this time, the Claimant made no effort to request performance from the Respondent.

(v) Therefore, on the facts, the Claimant did not require performance within a reasonable period of time. The exception to allowing specific performance would then apply.

(vi) On the second ground, there was a fundamental breach on part of the Claimant. From the record it is clear that the Respondent intended to terminate the contract with the Claimant.[34] unless further monetary incentive were forthcoming if they were to continue to contract with the Claimant. This monetary incentive was suggested to be in the form of a 35% bonus.[35]

(vii) Therefore, the continuation of the contract was contingent upon the payment of the bonus as the Respondent would have not continued to contract with the Claimant in the absence of this bonus.

[33] Case number 147/2005 - International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation.
[34] Moot problem at [31].
[35] Moot problem at [31], [34].

(viii) The Respondent intended for the bonus to be paid at the end of each year, 'from now on'.[36]

(ix) It is evident from the facts that the Respondent would only have extended the contract if the Claimant had agreed to pay the 35% bonus. As the Claimant failed to do so, it amounts to a fundamental breach which therefore allows the Respondent to repudiate the contract and the Respondents are no longer required to perform their obligations under the contract.

(x) On these grounds, the Claimants claim for specific performance should be disallowed.

C. Setting of terms in writing

(i) Should the tribunal find that the contract is existent and enforceable, the tribunal would then have to set the terms of the contract in writing.

(ii) Since issuance of the notice of arbitration (August 2017)[37] and now (November 2018), the time for five of the deliveries has come and gone, including the two deliveries that the Claimant seeks, leaving a remaining one delivery.

(iii) In the circumstances, the initial two deliveries in March and June 2017 would have to be deferred to later dates as well.

(iv) Therefore, it would be left to the discretion of the arbitral tribunal to set the deferred dates of these deliveries in writing.

[36] Moot problem at [34].
[37] Moot problem at [46]

The Respondents request.

(i) In the event that the contract is declared existent and enforceable, the Respondents counter-claim for payment of the 35% bonus in the year 2016 and interest for late payment of this bonus, as well as costs.

(ii) As earlier submitted, as the bonus was to be paid 'from now on',[38] the Claimants would have to make payment on the bonus in the year 2016 as well. The Claimants would now also have to pay interest on this amount due to late payment on their part.

(iii) With regards to costs, Article 42 of the KLRCA Rules 2017 states that "The costs of the arbitration shall in principle be borne by the unsuccessful party or parties". Therefore, the Respondents claim for costs shall be borne by the unsuccessful party upon the award by the tribunal

[38] Moot problem at [34]

PRAYERS FOR RELIEF

For the aforementioned reasons, the Respondent respectfully requests the tribunal to find that:

1. the agreement to arbitrate is incapable of being performed due to the Respondent impecuniosity.
2. the request of the Claimant to join Vader as a party to arbitration be disallowed.
3. there was no valid acceptance of the Respondents offer.

The Respondent respectfully requests the tribunal to award in favour of the Respondents.