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ARBITRAL AWARD

Case No. I6155-23

22 May 2023

The Claimant: [Claimant]

The Respondent: [Respondent]

The Arbitral Tribunal: Eugene Thong as sole arbitrator

Seat of arbitration – Moscow, Russian Federation

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I. CASE BACKGROUND

Moscow, Russian Federation **Case No. I6155-23**

27 May 2023

1. On 27 October 2021, [Claimant] ("**Claimant**") and [Respondent] ("**Respondent**") entered into a Forwarding Contract [No] for Freight Transportation Organization ("**Contract**"), pursuant to which (1) the Claimant as forwarder was to provide freight forwarding services to the Respondent as client, by organising international transportation or transportation across Russia by rail, road, sea or other modes of transport, and (2) the Respondent was to make certain payments in consideration for these services.[1]

2. The freight forwarding services were to be provided on the basis of requests made by the Respondent ("**Requests**").[2]

3. On 23 November 2021, the Respondent requested the Claimant to organise carriage of 50 40-feet high cube shipper-owned containers on the route from [railway station 1] ([Terminal 1]) in Poland to [railway station 2] in Mongolia, on CY-FOR terms.

4. On 19 December 2022, the following containers were accepted for carriage at [railway station 1] in Poland, as confirmed by their corresponding SMGS consignment notes:

	Container serial number	SMGS consignment note serial number
1.	[No]	[No]
2.	[No]	[No]
3.	[No]	[No]
4.	[No]	[No]
5.	[No]	[No]
6.	[No]	[No]
7.	[No]	[No]
8.	[No]	[No]
9.	[No]	[No]
10.	[No]	[No]
11.	[No]	[No]
12.	[No]	[No]
13.	[No]	[No]
14.	[No]	[No]
15.	[No]	[No]
16.	[No]	[No]
17.	[No]	[No]

[1] Clause 1.1 of the Contract.
[2] Clause 1.3 of the Contract.

	Container serial number	SMGS consignment note serial number
18.	[No]	[No]
19.	[No]	[No]
20.	[No]	[No]
21.	[No]	[No]
22.	[No]	[No]
23.	[No]	[No]
24.	[No]	[No]
25.	[No]	[No]
26.	[No]	[No]
27.	[No]	[No]
28.	[No]	[No]
29.	[No]	[No]
30.	[No]	[No]
31.	[No]	[No]
32.	[No]	[No]
33.	[No]	[No]
34.	[No]	[No]
35.	[No]	[No]
36.	[No]	[No]
37.	[No]	[No]
38.	[No]	[No]
39.	[No]	[No]
40.	[No]	[No]
41.	[No]	[No]
42.	[No]	[No]
43.	[No]	[No]
44.	[No]	[No]
45.	[No]	[No]
46.	[No]	[No]
47.	[No]	[No]
48.	[No]	[No]
49.	[No]	[No]
50.	[No]	[No]

5. On 5 January 2022, the containers were delivered to the point of destination, [railway station 2] in Mongolia.

6. The Claimant then issued the following invoices as part of its provision of freight forwarding services to the Respondent:

   - Invoice no. [No] dated 16 February 2022 of USD 3 484,25;
   - Invoice no. [No] dated 16 February 2022 of USD 18 149;
   - Invoice no. [No] dated 16 February 2022 of USD 1 596,52; and
   - Invoice no. [No] dated 8 April 2022 of USD 1 188,50.

7. The Respondent has paid invoice nos. [No] and [No], but invoice nos. [No] and [No] ("**Two Invoices**") totalling USD 19 337,50 remain outstanding.

8. From 22 May 2022 to 14 December 2022, the Claimant corresponded with the Respondent by email in an attempt to resolve the issue through negotiation, and even sent a Letter of Claim to the Respondent by post on 26 May 2022, but these were to no avail.

II. THE PARTIES AND THEIR REPRESENTATIVES

9. The Claimant is [Claimant], a company incorporated under the laws of the Russian Federation ([OGRN]; [INN]) with its registered address at [address]. Its postal address is [address].

10. In this arbitration, the Claimant is represented by Ms [Name],[3] whose email address is [e-mail].

11. The Respondent is [Respondent], a company incorporated under the laws of the People's Republic of China ([Unified Social Credit Code]) with its registered address at [address]. Its alternative address, as indicated in the Contract, is [address].

12. In this arbitration, the Respondent is represented by Mr [Name],[4] whose email address is [e-mail].

13. The Claimant and Respondent are each referred to as a "**Party**" and collectively referred to as the "**Parties**".

[3] Power of Attorney issued by the Claimant dated 25 October 2022.
[4] Power of Attorney issued by the Respondent dated 16 March 2023.

III. THE CONTRACT AND ARBITRATION CLAUSE

14. The dispute between the Parties arises out of the Contract, entered into and signed by the Parties, read in conjunction with Annex [No] to the Contract, dated 27 October 2021 ("**Annex**").

15. The arbitration clause is set out at Clause 9.3 of the Contract ("**Arbitration Clause**"):

> ***9. DISPUTE RESOLUTION***
>
> […]
>
> *9.3 If the Parties fail to achieve mutual agreement through negotiations, all disputes, differences or claims, arising herefrom or in relation herewith, including those regarding its execution, violation, termination or ineffectiveness, shall be settled by arbitration at the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration" in accordance with the Arbitration Rules*
> *The seat of arbitration shall be Moscow, the Russian Federation.*
> *English language shall be used in the arbitration.*
> *The Parties agree that disputes for claims under thirty four thousand (34,000) US dollars shall be resolved in accordance with the expedited arbitration procedure under Chapter 7 of the Arbitration Rules, in which case no oral hearings shall be held under the expedited arbitration procedure.*

IV. THE APPLICABLE RULES, LANGUAGE, SEAT, *LEX ARBITRI* AND GOVERNING LAW

16. Pursuant to Clause 9.3 of the Contract, all disputes shall be settled by arbitration under the auspices of the Russian Arbitration Center ("**RAC**") in accordance with the RAC's arbitration rules. Under Article 2(2) of the Arbitration Rules 2021 (International Commercial Arbitration) of the RAC ("**Rules**"), an arbitration shall be administered in accordance with the Rules effective on the date of commencement of arbitration. As this arbitration was commenced by way of the Claimant's Statement of Claim ("**Claim**") submitted to the RAC on 27 January 2023,[5] the Rules apply.

17. Specifically, pursuant to Clause 9.3 of the Contract, "*disputes for claims under thirty four thousand (34,000) US dollars shall be resolved in accordance with the expedited arbitration procedure under Chapter 7 of the Arbitration Rules, in which case no oral hearings shall be held under the expedited arbitration procedure*". Given that the total amount in dispute comprising the Claimant's claims only is USD 19 337,50,[6] the expedited arbitration procedure under Chapter 7 of the Rules applies, with no oral hearing being held in this proceeding. In addition, pursuant to Article 27(1)(4) of the Rules, application of the expedited arbitration procedure means that the arbitral award must be rendered no later than 90 days from the date of the constitution of the Tribunal (as defined at paragraph 21 below), i.e. by 23 May 2023.

18. Pursuant to Clause 9.3 of the Contract, the language of arbitration is English.

19. Pursuant to Clause 9.3 of the Contract, the seat of arbitration is Moscow, the Russian Federation. The law of the seat is the applicable *lex arbitri*. Under Article 1(1) of the International Commercial Arbitration Law of the Russian Federation (No. 5338-1 of 7 July 1993) ("**ICA Law**"), the ICA Law applies to international commercial arbitrations, and under Article 1(3), an arbitration may be deemed international if the place of business of at least one party is outside of the Russian Federation. Since the Respondent has its place of business in the People's Republic of China, this arbitration may be deemed international, and the ICA Law therefore applies to this proceeding.

[5] RAC's letter to the Parties dated 13 February 2023, para. 9.
[6] Claim submitted on 27 January 2023, p. 5.

20. Pursuant to Clause 9.1 of the Contract, the governing law is such that:

> *9.1 When fulfilling their obligations hereunder, the Parties shall take into account provisions of international legislation regulating transportation of goods for each specific type of transport (AIGT, MTT, CIS Tariff Policy, GBRT, CIM-COTIF, Incoterms and other international norms), and also provisions of national transport law and regulations of those states, through the territory of which the itinerary runs. In all other matters not covered herein, the Parties shall be guided by the legislation of the Russian Federation. The Parties shall take into account that document control (form and order of document issuance) related to transportation outside the territory of the Russian Federation shall be performed in conformity with international business practices and rules of relevant states, at the territory of which transportation is performed.*

V. CONSTITUTION OF THE ARBITRAL TRIBUNAL

21. On 20 February 2023, the Board of the RAC appointed the following as sole arbitrator to constitute the arbitral tribunal ("**Tribunal**"), and the RAC informed the Parties of the constitution of the Tribunal on 22 February 2023:

> **Mr Eugene THONG**
> THE ARBITRATION CHAMBERS
> 28 Maxwell Road #03-18
> Maxwell Chambers Suites
> Singapore 069120
> Tel: +65 6538 1277
> Fax: +65 6538 1727
> Email: eugenethong@arbiter.com.sg

VI. PROCEDURAL HISTORY

22. A summary of the procedural steps taken in this arbitration are set out in the following table:

Date	Event
27 January 2023	The Claimant submitted to the RAC its Claim against the Respondent by uploading it to the RAC's Online Arbitration System ("**OAS**") and despatched the same by post to the Respondent.[7]
2 February 2023	The RAC, *inter alia*, (1) notified[8] the Parties of the suspension of the Claim due to a defect therein and determined that the defect be rectified by 13 February 2023, in accordance with Article 9(4) of the Rules; and (2) invited the Respondent to comment on the use of the email address [e-mail] for document exchange in the arbitration.
9 February 2023	The Claimant rectified the defect in its Claim and addressed all other issues raised in the RAC's letter to the Parties dated 2 February 2023.

[7] On 25 January 2023, the Claimant sent the electronic copy of its Claim to the Respondent at [e-mail]. On 26 January 2023, the Claimant also despatched the Claim to the Respondent's alternative address ([address]) via Russian Post (tracking number: [No]). On 9 February 2023, the Claimant despatched the Claim to the same address via DHL (tracking number: [No]) and to the Respondent's registered address via Russian Post (tracking number: [No]).

[8] On 2 February 2023, the Notice of Suspension of the Claim was uploaded to the OAS and sent to the Claimant via email at [e-mail]. On 3 February 2023, the Notice of Suspension of the Claim was despatched to the Claimant's registered and postal addresses via Russian Post (tracking numbers: [No], [No]) and to the Respondent's alternative address via Major Express courier service (tracking number: [No]).

13 February 2023	The RAC, *inter alia*, (1) notified[9] the Parties of the commencement of arbitration on 27 January 2023, in accordance with Article 9(5) of the Rules; and (2) indicated that the Respondent should raise any objections it might have to the use of the email address [e-mail] for document exchange in the arbitration by 20 February 2023.
20 February 2023	The Board of the RAC appointed Mr Eugene THONG as sole arbitrator.
22 February 2023	The RAC notified[10] the Parties of the Board's appointment of Mr Eugene THONG as sole arbitrator, and the Tribunal was thereby constituted on the same day, pursuant to Article 14(3) of the Rules.
24 February 2023	Mr Eugene THONG signed the Declaration of Arbitrator, by which he confirmed his impartiality and independence towards the Parties and assumed the powers of an arbitrator.
27 February 2023	The RAC (1) notified[11] the Parties of the appointment of Ms Ekaterina PETRENKO as assistant to the Tribunal ("**Assistant**") at the Tribunal's request; and (2) circulated in the same email the Assistant's declaration and bio, as well as the sole arbitrator's declaration and *curriculum vitae*.
28 February 2023	The Tribunal sent[12] its first letter to the Parties ("**First Letter**") by email (and registered mail as well for the Respondent), (1) noting that the Respondent had not raised any objection to the use of the email address [e-mail] within the time limit (i.e. 20 February 2023) or otherwise and that accordingly such email address would be valid for delivery of documents in the arbitration pursuant to Article 7 of the Rules; (2) inviting the Respondent to submit its Response to the Claim within 15 days from its receipt of the First Letter; and (3) proposing to hold a case management conference with the Parties via videoconference on 8 March 2023 at [time] to settle the Procedural Schedule and any other matters relating to the conduct of the arbitration. Attached to the First Letter was a draft Procedural Schedule on which the Parties were invited to comment by 7 March 2023. On the same day, the Respondent requested that the email address [e-mail] be copied in on correspondence. In a second email, the Respondent indicated that (1) it was ready to pay the debt, but (2) it "*could not understand the type of service of these two bills*", i.e. the Two Invoices, being invoice nos. [No] and [No], and (3) it would pay up after it understood the Two Invoices and knew how much it had to pay.
2 March 2023	The Tribunal (1) invited the Respondent to provide a power of attorney in accordance with Article 33 of the Rules to evidence its representative's/s'

[9] On 13 February 2023, the Notice of Commencement was uploaded to the OAS and sent to the Parties via email at [e-mail] and [e-mail]. On 14 February 2023, the Notice of Commencement was despatched to the Claimant's registered and postal addresses via Russian Post (tracking numbers: [No], [No]) and to the Respondent's registered and alternative addresses via Major Express courier service (tracking numbers: [No], [No]).

[10] On 22 February 2023, the Notice of Constitution of the Tribunal was uploaded to the OAS and sent to the Parties via email at [e-mail] and [e-mail]. On the same day, the Notice of Constitution of the Tribunal was despatched to the Claimant's registered and postal addresses via Russian Post (tracking numbers: [No], [No]) and to the Respondent's registered and alternative addresses via Major Express courier service (tracking numbers: [No], [No]).

[11] On 27 February 2023, the Notice of Appointment of Assistant to the Tribunal, Assistant's declaration and bio, as well as the sole arbitrator's declaration and *curriculum vitae* were uploaded to the OAS and sent to the Parties via email at [e-mail] and [e-mail]. On the same day, the documents were despatched to the Claimant's registered and postal addresses via Russian Post (tracking numbers: [No], [No]) and, on 28 February 2023, to the Respondent's registered and alternative addresses via Major Express (tracking numbers: [No], [No]).

[12] On 28 February 2023, the First Letter was uploaded to the OAS and were despatched to the Claimant's registered and postal addresses via Russian Post (tracking numbers: [No], [No]) and to the Respondent's registered and alternative addresses via Major Express (tracking numbers: [No], [No]).

	powers; (2) informed the Parties that the Respondent received the First Letter on 28 February 2023 and that therefore the Response was due by 15 March 2023; (3) proposed that the case management conference be held on 9 March 2023 at [time] instead of 8 March 2023, as the latter date was a public holiday in Russia; and (4) specified that the time limit for the Parties to comment on the draft Procedural Schedule remained unchanged.
8 March 2023	The Respondent forwarded an email chain in Chinese, highlighting correspondence between one [Name] ("**Ms [Name]**"), "*the representative of [Claimant]*", and itself, which was "*about this single s business cooperation offer between both sides*". The Respondent emphasised that "*the total cost of each container is 3050 USD*". On the same day, the Tribunal replied and, *inter alia*, highlighted that English is the language of arbitration and invited the Respondent therefore to provide an English translation of all documents not already in English.
9 March 2023	The Respondent provided the original Chinese text of the relevant email and its English translation. The Claimant responded that the email was "*not about [Terminal 1] fee*", drawing attention to the statement in the email that "*if the container is in the [Terminal 1] yard, you have to solve the yard fee by yourself*", and concluded that "*the cost of services at the [redacted] Terminal was not taken into account in the rate*". It also referred to paragraphs 1 and 2.5 of the Annex, explaining that "[a]*n agreement on billing from [Terminal 1] to [Claimant] and then to [Respondent] was reached later*". On the same day, the case management conference was held with the Tribunal, Parties and the RAC in attendance. During the conference, the Parties discussed and agreed, *inter alia*, (1) that Clause 9.2 of the Contract [13] had been complied with by way of correspondence including emails sent during the period 22 May 2022 – 14 December 2022 and the Claimant's Letter of Claim despatched to the Respondent on 26 May 2022; and (2) on the Procedural Schedule, including that the time limit for the Respondent to submit its Response and any Counterclaim would be extended to 21 March 2023, where the acceptance of any Counterclaim would be subject to full payment of the arbitration fee applicable. The Tribunal sent out an email issuing [14] Procedural Order No. 1 and the Procedural Schedule recording the above and other relevant matters later the same day, including that the Respondent was invited to provide power/s of attorney in respect of its representative/s as soon as possible, as agreed during the conference.
10 March 2023	The Respondent provided a power of attorney.
14 March 2023	As the power of attorney provided by the Respondent was inadequate, the Assistant, acting pursuant to the Tribunal's instructions, requested that it provide another power of attorney that was dated and signed.
16 March 2023	The Respondent provided a power of attorney that was dated and signed.

[13] Clause 9.2: "*The Parties shall resolve all disputes arising in the process of the execution hereof through negotiations. The Party, which received a claim, shall review it and reply in written form on the merits of the claim (either confirm its consent for full or partial satisfaction of the claim, or inform on full refusal to satisfy) not later than one month after the date of receipt of the claim.*"

[14] On 9 March 2023, Procedural Order No. 1 and the Procedural Schedule were uploaded to the OAS and sent to the Parties via email at [e-mail] and [e-mail]. On 10 March 2023, the documents were despatched to the Claimant's registered and postal addresses via Russian Post (tracking numbers: [No], [No]) and to the Respondent's registered address via Major Express courier service (tracking number: [No]).

20 March 2023	The Respondent submitted its Response ("**Response**").
22 March 2023	The Tribunal requested that the Respondent clarify by 3 April 2023 what remedies it was seeking and whether it had any counterclaims, inviting the Respondent at the same time to elaborate further on its Response in accordance with the provisions under Article 12(1) of the Rules. The time limit under the Procedural Schedule for filing the Response to any Counterclaim was accordingly suspended, pending the requested clarification from the Respondent.
27 March 2023	The Respondent provided clarification regarding its Response.
28 March 2023	The Tribunal (1) indicated its understanding that the Respondent sought dismissal of the Claimant's claims and did not otherwise have any counterclaims or further comments; (2) noted that any counterclaim could not be accepted anyway as no arbitration fee had been received by the RAC from the Respondent; (3) indicated that there was therefore no need for the Claimant to submit any Response to Counterclaim; and (4) reminded the Parties that they remained free as always to engage external legal counsel to assist them in the arbitration.
29 March 2023	The Respondent requested guidance on transmission of documents to the OAS.
30 March 2023	The Tribunal (1) indicated that the Parties should have already received an email from the RAC with instructions regarding the OAS; (2) suggested that any Party not in receipt of such email check its spam or junk folder; and (3) updated that the RAC would provide further guidance regarding the OAS, in view of the Respondent's difficulties. On the same day, the Claimant requested to comment further on the Respondent's Response by 10 April 2023.
31 March 2023	The RAC provided further guidance on how to access and use the OAS.
3 April 2023	The Tribunal invited the Claimant to provide its additional comments by 10 April 2023.
10 April 2023	The Claimant submitted its additional comments ("**Claimant's Additional Comments**"). The Tribunal invited the Respondent to provide any further comments it might have by 21 April 2023.
22 April 2023	The Tribunal noted that no further comments had been provided by the Respondent within the time limit granted.
15 May 2023	The Tribunal closed the proceedings.

VII. RELIEF SOUGHT BY THE PARTIES

23. The Claimant seeks:

    a. To recover from the Respondent in favour of the Claimant the outstanding amount for provision of freight forwarding services under the Contract of USD 19 337,50.

    b. To recover from the Respondent in favour of the Claimant USD 2 630,27 as the expenses for payment of the arbitration fee.[15]

24. The Respondent seeks to offset the Claimant's claims.[16]

VIII. THE PARTIES' POSITIONS

A. THE CLAIMANT'S POSITION

25. The Claimant refers to the following provisions of the Contract to support its position:

    a. Clause 3.9, which stipulates that the Respondent shall pay invoices issued by the Claimant based on the Respondent's approved Requests.[17]

    b. Clause 3.10, which stipulates that the Respondent shall pay the Claimant's invoices for additional expenses properly incurred and documented but not included in the Claimant's tariffs, and related to contractual performance, that, though not specified and agreed upon by the Parties, turned out to be necessary during forwarding, including due to requirements of customs or other state authorities.[18]

    c. Clause 3.11, which stipulates that the Respondent shall fully compensate the Claimant for actually incurred and documented expenses related to demurrage, penalties, sanctions, cargo arrest by customs authorities, and other Claimant's expenses resulting from failure to fulfil or improper fulfilment of obligations under the Contract by the Respondent.[19]

    d. Clause 5.1, which stipulates that the cost of reimbursable expenses and additional services not included in the Claimant's tariffs shall be paid by the Respondent additionally on the terms provided for by the Contract or specified in the corresponding tariff or conditions thereto.[20]

i. Invoice No. [No]

26. According to the Claimant, the Parties agreed by way of the Annex on the cost of services concerning the organisation of international carriage of the Respondent's cargo,[21] as the costs at [Terminal 1] could not be calculated prior to the actual provision of these services and the corresponding invoice from the terminal to the Claimant.[22]

27. Referring to paragraph 1 of the Annex, the Claimant submits that the indicated price includes freight forwarding service for the organisation of rail transport from the place of departure to the destination station as part of the container train, but does not include:

    - container supplying;

[15] Claim submitted on 27 January 2023, p. 5.
[16] Respondent's email dated 27 March 2023.
[17] Claim submitted on 27 January 2023, p. 1.
[18] Claim submitted on 27 January 2023, p. 2.
[19] Claim submitted on 27 January 2023, p. 2.
[20] Claim submitted on 27 January 2023, p. 2.
[21] Claim submitted on 27 January 2023, p. 3.
[22] Claimant's Additional Comments submitted on 10 April 2023, p. 1.

- acceptance of cargo at [Terminal 1] and stuffing (which shall be paid by the Respondent additionally);
- customs clearance costs and formalities;
- storage costs for laden containers at the departure station over four days;
- additional THC, weighting, movement upon request of the customs authorities; and
- everything that is not directly included in the rate by direct indication.[23]

28. The Claimant refers to paragraph 2.5 of the Annex, which provides that container stuffing and all services related thereto shall be paid by the Respondent separately against any invoice/s from the Claimant. It submits that in the present instance, it was to provide the Respondent with the invoice attaching an invoice from [Terminal 1] as confirmation of the amount.[24]

29. The Claimant also cites Clause 5.14 of the Contract, which provides that documents confirming the occurrence of circumstances resulting in expenses (if the amount of such expenses is agreed in the Contract and/or annexes thereto) and documents confirming the amount of such expenses (in case of extraordinary expenses or when they are not agreed in the Contract and/or annexes hereto) shall be recognised as documents confirming expenses incurred by the Claimant.[25]

30. The Claimant highlights that the above conditions were "*discussed repeatedly with the Respondent and agreed*", pointing to emails sent on 8 November 2021 and predating the transportation of cargo, which show that the "*Respondent's representative*" Ms [Name] was informed of the costs of [Terminal 1]'s services.[26]

31. In this regard, the Claimant argues that it issued invoice no. [No] dated 16 February 2022 of USD 18 149 in accordance with the above provisions, based on invoice no. [No] dated 31 December 2021 of EUR 16 017 from [Terminal 1] and the completion certificate dated 1 February 2022, but invoice no. [No] remains unpaid. It confirms that it has nonetheless fully paid invoice no. [No] by payment order no. 101 dated 15 March 2022.[27]

32. In response to the Respondent's reference to its agreement with [Terminal 1] (see paragraph 40 below), the Claimant contends that such a contract is irrelevant to the present dispute.[28]

ii. Invoice No. [No]

33. The Claimant refers to Clause 2.7 of the Contract, which provides that the Claimant shall have the right to engage third parties, to conclude contracts with them on its behalf within the project frame, for the purpose of provision of services.[29]

34. In this regard, the Claimant argues that it issued invoice no. [No] dated 8 April 2022 of USD 1 188,50 based on invoice no. [No] dated 5 March 2022 of RUB 90 617,80 from [Freight Transport Company] (for its assistance in issuing certificates relating to the phytosanitary quarantine control procedure for products for the transit and free movement of goods in the territories of the Eurasian Economic Union),

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[23] Claim submitted on 27 January 2023, p. 3.
[24] Claim submitted on 27 January 2023, p. 3.
[25] Claimant's Additional Comments submitted on 10 April 2023, p. 2.
[26] Claimant's Additional Comments submitted on 10 April 2023, p. 2. For clarity, Ms [Name] in the relevant factual exhibit is indicated as "*[Name]*" (emphasis added), but this is simply a different transliteration of her surname. There is no doubt that Ms [Name] and [Name] are one and the same person, given that they share the exact same email address and signature block.
[27] Claim submitted on 27 January 2023, pp. 3-4.
[28] Claimant's Additional Comments submitted on 10 April 2023, p. 2.
[29] Claimant's Additional Comments submitted on 10 April 2023, p. 2.

but invoice no. [No] remains unpaid. It confirms that it has nonetheless fully paid invoice no. [No] by payment order no. [No] dated 25 March 2022.[30]

iii. Replies to the Respondent's Grievances

35. In respect of the cargo damage, the Claimant argues that "*it is impossible to establish from the photo the actual ratio of the depicted cargo to the containers transported by* [it]".[31] It points out that the Respondent made no claim in this regard either for more than six months when the Parties were in correspondence, and that it is not accountable for the state the cargo arrived in at the final destination, given that it transported the cargo only up to [Railway Station 2].[32]

36. The Claimant moreover notes that Clause 7.2 of the Contract stipulates that the Claimant shall not be liable for damage of cargo inside the container/carriage due to properties of the cargo itself, deficient packing materials, and also failure to comply with conditions for loading/securing of cargo in the container/carriage specified by the Rules of Cargo Transportation (including transportation in general purpose containers) by different types of transport used for specific transportation (if the Respondent, its consignors, consignees, or contracting parties engaged by it performed loading/securing of the cargo); and that the Claimant shall not be liable for the integrity of cargo which was delivered to the Respondent in fit vehicles/containers under unbroken seals.[33]

37. As regards the delivery time, the Claimant refers to Clause 2.5 of the Contract, which provides that the Claimant shall deliver cargo within reasonable time, in accordance with performance standards of actual carriers, border stations/ports and customs authorities, and also taking into account specific circumstances and using the agreed route unless otherwise agreed.[34]

38. The Claimant contends that the cargo was delivered within reasonable time and that no delivery date was otherwise agreed between the Parties. In addition, it draws attention to Clause 5.8 of the Contract, which provides that work and services are deemed to have been performed well and in a timely manner, and subject to full payment, if there is no signed objection with reasons forthcoming from the Respondent within the stipulated time limit.[35]

B. The Respondent's Position

39. The Respondent's position is that it is "*ready to pay the debt*" once it understands the Two Invoices (i.e. invoice nos. [No] and [No]) and knows how much it has to pay.[36] It understands that "*the total cost of each container is 3050 USD*" (consisting of the freight cost and yard fee per container, which are respectively USD 2930 and USD 120),[37] and argues that it has paid the full amount due (being 50 containers × 3050 = USD 152 500). It adds that it has overpaid the customs declaration fee of USD 5 080,77.[38]

40. Specifically, the Respondent maintains that it has already paid USD 120 as [Terminal 1] yard fees to the Claimant and refers moreover to another agreement with [Terminal 1], where "*the price presented* […] *is 96,1 USD*". In its view, it has therefore in fact overpaid the [Terminal 1] yard fees.[39]

41. Moreover, the Respondent emphasises that its cargo (bottles of red wine) was "*seriously damaged,* […] *up to 75%,*" when its cargo "*arrived at the train station*", but that it received no solution or answer

[30] Claim submitted on 27 January 2023, p. 4.
[31] Claimant's Additional Comments submitted on 10 April 2023, p. 3.
[32] Claimant's Additional Comments submitted on 10 April 2023, p. 4.
[33] Claimant's Additional Comments submitted on 10 April 2023, p. 4.
[34] Claimant's Additional Comments submitted on 10 April 2023, p. 4.
[35] Claimant's Additional Comments submitted on 10 April 2023, p. 4.
[36] Respondent's email dated 28 February 2023.
[37] Respondent's email dated 8 March 2023.
[38] Response dated 20 March, para. 1.
[39] Response dated 20 March, para. 2.

from the Claimant even though "*it provided photos and other information to the* [Claimant's] *contact person – [Name]*".[40]

42. Further, the Respondent contends that there was a delay in the delivery of its cargo, resulting in losses "*including freight, customs, cargo value*" as well as those as regards certain domestic subsidies relating to the shipping back of empty containers.[41]

43. In view of the above, the Respondent is of the view that it does not owe the Claimant "*financially or morally*", and that the Claimant's claims should be offset by the above points.[42]

[40] Response dated 20 March, para. 3.
[41] Response dated 20 March, para. 4.
[42] Respondent's email dated 27 March 2023.

IX. REASONS FOR THE AWARD

A. THE TRIBUNAL'S JURISDICTION

44. As a preliminary matter, the Tribunal observes that there is no impediment or other outstanding issue to address regarding its jurisdiction.

45. The Arbitration Clause conforms with the requirements of the ICA Law, notably as to form, as set out under Article 7 of that law, which provides that arbitration agreements (which encompass those in the form of an arbitration clause in a contract,[43] which is the case here) shall be in writing,[44] i.e. concluded in a form that allows the recording of information contained in it or the access to such information for subsequent use.[45]

46. Moreover, neither Party has raised any objection relating to the Tribunal's jurisdiction.

47. Specifically, as mentioned in the procedural history set out above at paragraph 22,[46] Clause 9.2 of the Contract[47] has been complied with by way of correspondence including emails sent during the period 22 May 2022 – 14 December 2022 and the Claimant's Letter of Claim despatched to the Respondent on 26 May 2022, and the Parties are in agreement about this.

48. In any event, pursuant to Article 7 of the Rules, any right to invoke non-compliance with the Arbitration Clause has been deemed waived, given that both Parties have taken part in this arbitration without raising any such objection.

B. THE TRIBUNAL'S CONCLUSIONS ON THE MERITS

49. Since the dispute arises out of a contract, the starting point of any analysis of the merits should be the contract itself, unless any mandatory provision of the governing law is engaged. Here, no such mandatory law is engaged, which is unsurprising given that the Contract is a standard freight forwarding contract entered into in the context of an ordinary commercial relationship. Hence, there is no specific need to refer to or apply any governing law provisions.

50. Clause 3.9 of the Contract provides that the Respondent "*shall pay invoices issued by the [Claimant] on the basis of agreed [Respondent's] Requests, and also additional invoices issued within the frame hereof […]", while Clause 3.10 specifies what this entails by providing that the Respondent "shall pay invoices of the [Claimant] for its properly incurred and documented additional costs, not included in the [Claimant's] tariff and related to the execution hereof, which, though, neither specified, nor agreed by the Parties, turned out to be necessary within the process of freight forwarding, including, but not limited by requirements of customs or other state authorities*".

51. Under Clause 3.9, it is clear that the Respondent is legally bound to pay invoices issued by the Claimant, so long as invoices are issued on the basis of the Respondent's Requests, and additional invoices issued within the framework of the Contract. In the present case, there is no dispute that the Respondent has paid for the Claimant's services rendered on the basis of the Respondent's Requests, in the sum of USD 3 050 in respect of each of the 50 containers, making USD 152 500 in total.

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[43] ICA Law, Art. 7(1).
[44] ICA Law, Art. 7(2).
[45] ICA Law, Art. 7(3).
[46] See the events of 9 March 2023.
[47] Clause 9.2: "*The Parties shall resolve all disputes arising in the process of the execution hereof through negotiations. The Party, which received a claim, shall review it and reply in written form on the merits of the claim (either confirm its consent for full or partial satisfaction of the claim, or inform on full refusal to satisfy) not later than one month after the date of receipt of the claim.*"

The question, therefore, is whether the Two Invoices constitute additional invoices within the meaning of Clause 3.9 and whether the Claimant's claims thereunder are thus valid.

52. To start with, it is evident that the Two Invoices were issued within the framework of the Contract. Invoice no. [No] dated 16 February 2022 of USD 18 149 was issued based on [Terminal 1]'s invoice no. [No] dated 31 December 2021 of EUR 16 017 and the completion certificate dated 1 February 2022, while invoice no. [No] dated 8 April 2022 of USD 1 188,50 was issued based on [Freight Transport Company]'s invoice no. [No] dated 5 March 2022 of RUB 90 617,80 and certificate no. [No] dated 31 March 2022. The documents' dates within each set are compatible, their figures match, and most importantly, the number of containers (50) as well as the containers' serial numbers as reflected in the attachments to invoice no. [No] and certificate no. [No] are consistent across both sets of documents. There is therefore no difficulty in considering the Two Invoices as additional invoices as far as Clause 3.9 is concerned.

53. Indeed, the Respondent has never raised any objection in this regard. It does not object to the relevance of these documents or the procedures relating thereto, but rather to the claim that it has to bear these costs in addition to the payment of USD 152 500 it has already made to the Claimant for the services rendered by the latter.[48]

54. Paragraph 1 of the Annex provides as follows:

> *The price includes:*
> *Freight forwarding service for the organization of rail transport from the place of departure to the destination station as part of a container train and includes (including VAT 0%):*
> - *wagon supplying;*
> - *two THC operation* [sic] *at the departure station;*
> - *payment of the railway tariff on [the territory];*
> - *payment and financial services: registration and payment of freight charges, fees and fines, settlement operations for transportation and transshipment of goods with individual stations;*
> - *information services: tracking the progress of cargo on the route of transportation;*
> - *convoy fee.*
>
> *The price does not include:*
> - *container supplying;*
> - *acceptance of cargo at the terminal and stuffing (should be paid by the client additionally);*
> - *customs clearance costs and formalities;*
> - *additional THC, weighing;*
> - *storage costs over 4 days of storage;*
> - ***everything that is not directly included in the rate by direct indication in the paragraph above.***
>
> [emphasis added]

55. Paragraph 1 is instructive because it specifies what exactly the price (i.e. USD 3 050 for each container, or USD 152 500 in total) covers: namely, everything that is included in its first paragraph. Failing such express mention in the first paragraph, a service will not be covered in the price and therefore its cost will be 'additional' and ultimately borne by the Respondent, beyond the sum of USD 152 500 the Respondent has already paid.

56. In the present case, Invoice no. [No] concerns goods securing, loading, container transfer, the release of containers to loading, sealing, storage, unloading and weighting, whereas invoice no. [No] concerns

[48] Response dated 20 March, paras. 1-2.

the issuance of certificates relating to the phytosanitary quarantine control procedure for products. None of these services or activities are indicated, directly or otherwise, in the first paragraph.

57. It follows from the foregoing that the Two Invoices arise from services that incur 'additional' costs and therefore constitute additional invoices within the meaning of Clause 3.9.

58. Indeed, with regard to invoice no. [No], as the Claimant rightly points out,[49] Ms [Name] in her email dated 26 October 2021 already told the Respondent that "*if the container is in the [Terminal 1] yard,* [the Respondent will] *have to solve the yard fee by* [itself]".

59. In this regard, since Clause 3.10 mentions certain requirements relating to such additional invoices, it is necessary to consider what these requirements are as well, and whether they have been met in this instance. Clause 3.10 essentially stipulates that the costs resulting in the additional invoices must be "*properly incurred and documented*", "*not included in the* [Claimant's] *tariff and related to the execution* [of the Contract]" and "*necessary*". As can be seen from the explanations in paragraphs 52 and 56 above, the relevant documentary evidence clearly indicates dates, figures (as to the sums payable, number of containers and container serial numbers) and additional services rendered, all of which are coherent. The Tribunal is accordingly satisfied that the costs have been properly incurred and documented. Similarly, the Tribunal is persuaded that the costs are necessary, either by the Claimant's explanations (which is the case for invoice no. [No])[50] or because the necessity is indeed self-evident (which is the case for the activities indicated on invoice no. [No]). The fact that such costs are necessary also means that they must *a priori* be related to the performance of the Contract. As for whether the costs are included in the Claimant's tariff, it is clear from the analysis in paragraphs 54-58 above that the costs are excluded from the Claimant's tariff price. The requirements under Clause 3.10 for additional invoices may therefore be considered satisfied. Here, the Tribunal again notes that in any event, the Respondent has never raised any objections in this respect anyway.

60. In view of all of the above, the Tribunal finds that the Two Invoices validly constitute additional invoices under Clause 3.9, that the Claimant's claims thereunder are valid, and that the corresponding sum of USD 19 337,50 is therefore due to the Claimant from the Respondent.

61. As regards the Respondent's submission that the Claimant's claims should be offset, the Tribunal finds as follows. First, the fact that the Respondent seeks to offset the Claimant's claims necessarily means that the Respondent acknowledges that it owes the Claimant the sums claimed – otherwise, there would be nothing to offset. This is consistent with the fact that, as the Claimant points out,[51] the Respondent raised no objections in principle to the Claimant's claims in the Parties' correspondence from 22 May 2022 to 14 December 2022.

62. Second, although the Tribunal is sympathetic to the Respondent's plight regarding its damaged cargo, it agrees with the Claimant that the Claimant cannot be held liable for the damage since (1) the Claimant can only be accountable for the state of the cargo up to [Railway Station 2], pursuant to the terms of the Contract; (2) Clause 7.2 places certain limits on the boundaries of the Claimant's potential liability; and (3) perhaps most importantly, given the foregoing, the Respondent itself failed to prove that the damage was incurred in circumstances where the Claimant could even potentially be held liable. For example, the Respondent did not specify or otherwise show which "*train station*" exactly it was referring to in its Response, a piece of information without which the Tribunal cannot even begin to determine whether the Claimant might be found liable. It has to be said at this point that the Respondent was afforded ample opportunity to rebut or otherwise address points (1) and (2) (and indeed, the other arguments marshalled by the Claimant concerning the damaged cargo), but it chose not to and kept altogether silent.[52]

[49] Claimant's email dated 9 March 2023.

[50] Claim submitted on 27 January 2023, p. 4; Claimant's Additional Comments submitted on 10 April 2023, pp. 2-3.

[51] Claim submitted on 27 January 2023, p. 5.

[52] See Tribunal's emails dated 10 and 22 April 2023.

63. Third, as for the delivery time, the Tribunal also agrees with the Claimant that under Clause 2.5 of the Contract, there is no deadline by which the cargo had to be transported to the point of destination. Instead, this had to be achieved "*within reasonable delay*"[53] (i.e. within reasonable time). Therefore, the Respondent cannot prevail on this issue unless it proves that, within the circumstances, the cargo was delivered with unreasonable delay. This it failed to do, and so it cannot obtain satisfaction.

64. It follows from paragraphs 61-63 above that the Claimant's claims cannot be offset.

65. The Tribunal has a few final observations to make. First, both Parties have at one point or another referred to Ms [Name], directly or indirectly, as being an agent of the other Party.[54] From the documents available, it is not clear who Ms [Name] is or what her role is exactly, but she appears to be an intermediary between the Parties who works at a third company, [Company], since this company name is displayed in her signature block in emails.[55] In light of this, it is not clear to the Tribunal why both Parties seem to think that she works for the other side, and consequently, arguments involving her have rarely been helpful.

66. Second, in respect of the allegedly overpaid customs declaration fee of USD 5 080,77[56] and alleged representation by [Terminal 1] that the yard fees would be USD 96,10,[57] the Tribunal notes that they are irrelevant to the present arbitration and would be more appropriately raised in another forum, should the Respondent wish to pursue these matters. The Tribunal's jurisdiction extends only to matters arising out of the Contract and it cannot therefore rule on these other issues.

67. Third, the Tribunal recalls that the Respondent expressed that it is willing to pay any debt it owes the Claimant and that it is indeed ready to pay the Claimant the amount requested (i.e. USD 19 337,50), but for the fact that it does not understand why the Two Invoices are due and payable.[58] The Tribunal hopes that, in view of all of the above, it is now clear to the Respondent why it is legally obliged, under the Contract, to pay the amounts due under the Two Invoices.

68. In conclusion, for the reasons stated above, the Claimant's claims are granted in full.

[53] Clause 2.5 of the Contract.

[54] Respondent's email dated 8 March 2023; Response dated 20 March, para. 3; Claimant's Additional Comments submitted on 10 April 2023, p. 2.

[55] Respondent's email dated 8 March 2023; Email correspondence dated 8 November 2021 between the Claimant and Ms [Name], attached to the Claimant's Additional Comments submitted on 10 April 2023.

[56] See Response dated 20 March, para. 1.

[57] See Response dated 20 March, para. 2.

[58] Respondent's email dated 28 February 2023.

X. ALLOCATION OF ARBITRATION COSTS

69. The arbitration costs totalling USD 2 630,27 have been paid entirely by the Claimant, as evidenced by payment order no. [No] dated 19 January 2023. In the present case, Claimant paid the arbitration fee in the amount of RUB 181 204,34, which is equivalent to USD 2 631 at the official exchange rate of the Central Bank of the Russian Federation as of the date of payment order no. [No] dated 19 January 2023. Thus, the overpaid sum of the arbitration fee paid by the Claimant amounts to USD 0,73 that shall be refunded to the Claimant upon its application signed by the authorised person pursuant to Article 13(4) of the Rules on Arbitration Fees and Arbitration Costs (Annex I to the Rules).

70. The Claimant seeks recovery of the arbitration costs by having the Respondent bear them.

71. The ICA Law does not provide guidance on the allocation of arbitration costs, save that an arbitral award must state the amount of such costs as well as their allocation. On the other hand, pursuant to Article 15(1) of the Rules on Arbitration Fees and Arbitration Costs, the arbitration fee and arbitration costs shall be paid by the party against which the arbitral award is rendered. In the present case, the award is rendered against the Respondent. Therefore, it is the Respondent that shall bear the arbitration costs in the amount of USD 2 630,27.

72. For completeness, Article 15(6) Rules on Arbitration Fees and Arbitration Costs permits an arbitral tribunal to decide on a different allocation of the arbitration fee and arbitration costs between disputing parties, taking into account the circumstances of the specific dispute as well as procedural behaviour of the parties. The Tribunal sees no reason to depart from the default rule under Article 15(1) and decides not to avail itself of the provision under Article 15(6).

XI. RESOLUTIONS

For the foregoing reasons and based on Articles 50-51 of the Rules, the Tribunal

AWARDS:

1. In favour of the Claimant, in this case [Claimant], [OGRN]; [INN], with its registered address at [address], the outstanding amount for the provision of freight forwarding services under the Contract of USD 19 337,50 (nineteen thousand three hundred and thirty-seven US dollars and fifty cents only), to be paid by the Respondent, in this case [Respondent], ([Unified Social Credit Code]) with its registered address at [address].

2. In favour of the Claimant USD 2 630,27 (two thousand six hundred and thirty US dollars and twenty-seven cents only) as the expenses for payment of the arbitration fee, to be paid by the Respondent.

3. All other claims, counterclaims and requests are dismissed.

The arbitral award shall be binding on the Parties from the date of its issuance.

This Arbitral Award is made in three copies, one of which is intended for the Claimant, one for the Respondent, and one for keeping in the files of the RAC.

Seat of arbitration: Moscow, Russian Federation

Date: 27 May 2023

The Arbitral Tribunal
Eugene Thong