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THE ARBITRAL AWARD

Case No. [PI7947-22]

05 September 2022

The Claimant: [Claimant]

The Respondent: [Respondent]

The Arbitral Tribunal: Tony Budidjaja as a sole arbitrator

Seat of arbitration – Moscow, the Russian Federation

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I. CASE SUMMARY

Moscow, the Russian Federation

Case No. [PI7947-22]

05 September 2022

1. The Arbitral Tribunal, represented by the Sole Arbitrator Tony Budidjaja (“Arbitral Tribunal”) considered the case initiated under the claim of

[Claimant], Juristic Person Registration Number [No], registered office: Thailand, [address]¹; postal address: [Claimant’s Counsels], [address] (“Claimant”) represented by [Claimant’s Counsels] (“Representative of the Claimant”) against

[Respondent], OGRN² [No], INN³ [No], Russian Federation, [address]⁴ (“Respondent”) (collectively referred to as the “Parties”),

for the non-payment for [Goods] (the “Goods”) supplied from Thailand to the Russian Federation under contract No. [No] dated 11 February 2021 (“Contract”) amounting to USD 92 966,41 (ninety two thousand nine hundred sixty six point four one US Dollars) and additional claims in the form of Late Payment Interest amounting to USD 4 293,73 (four thousand two hundred ninety three point seven three US Dollars) for the period from 26 May 2021 until 14 February 2022 and USD 4 202,59 (four thousand two hundred two point five nine US Dollars) for the period from 15 February 2022 to 22 September 2022 as set out in the Notice on Commencement of Arbitration No. [No] (“Notice on Commencement”)⁵ and Late Payment Interest from 23 September 2022 to the date of the actual payment of the above sums.

2. The case was considered by the Arbitral Tribunal and administered by the Russian Arbitration Center at the Russian Institute of Modern Arbitration (“RAC”) in accordance with the Arbitration Rules of the RAC (as amended on 1 November 2021).

3. Under the Contract, the Claimant delivered the Goods to the Respondent from April to August 2021.

4. Until 22 May 2021, the Respondent was paying for the Goods in accordance with the Contract.

5. From 12 to 17 July 2021, Dr. [Name] (“Director of the Claimant”) contacted Mr. [Name] and Mr. [Name] (collectively referred to as the “Representatives of the Respondent”) via WhatsApp messenger, repeatedly requesting them to pay outstanding invoices for the supply of the Goods.

6. From 8 to 13 September 2021, the Director of the Claimant informed the Representatives of the Respondent several times that the payment orders have not been executed. The Claimant stated that Representatives of the Respondent assured the Director of the Claimant that they would pay the debt. Based on screenshots provided by the Claimant during this period of time (Appendix No. 5 of the Claimant’s Request for Arbitration) the Director of the Claimant reached out to the Respondent on 8 September 2021 regarding the payment to which the Respondent stated that they are addressing it and will resolve it in the near future.

7. On 9 November 2021, the Director of the Claimant reached out again requesting an update however he was not met with a reply. On 11 September 2021, the Director of the Claimant sent a Payment Order to

¹ [confidential].

² Primary State Registration Number

³ Taxpayer Identification Number

⁴ [confidential].

⁵ This amount of the Late Payment Interest was re-calculated by the Arbitral Tribunal and this re-calculation is reflected in Section IV of the Arbitral Award.

the Respondent to which the Respondent replied that on Monday (13 September 2021) the Claimant will receive a SWIFT from the Respondent and assured the Claimant that the Respondent will pay everything that they owe. On 13 September 2021, the Director of the Claimant stated that the money did not come and asked why the Respondent did not pay. The submitted screenshot does not show the rest of the conversation on 13 September 2021.

8. In a letter dated 16 September 2021, the Claimant stated that the Respondent did not pay to the Claimant the 14 invoices for the supply of the goods, with the total amounting to USD 87 754,89 (eighty seven thousand seven hundred and fifty four point eight nine US Dollars).

9. On 19 November 2021, as indicated by the Claimant, the Respondent stated that the Respondent could not make the payment due to the seizure of their accounts by the Federal Tax Service of the Russian Federation and promised to make the payment as soon as they settle this issue.

10. On 13 December 2021, the Representative of the Claimant sent the Respondent a Dunning Letter demanding immediate payment of the debt in the amount of USD 87 754,89 (eighty seven thousand seven hundred fifty four point eight nine US Dollars) within 5 (five) working days from the date of receipt. The Dunning Letter also stated that in case of non-payment, the Claimant will apply to the competent court with a claim to recover the principal amount as well as late payment interest, forfeit and other penalties, court expenses, including legal services.

11. On 24 December 2021, the Representative of the Claimant met with the Representatives of the Respondent. In this meeting, the Representatives of the Respondent informed the Claimant that, in their opinion, a substantial part of the Goods received by the Respondent were of poor quality; [confidential]. The Respondent stated that they notified the Director of the Claimant about the quality of the goods.

12. In this meeting the Respondent also noted that they will prepare an overall calculation of its claims within a reasonable time and that after the Claimant receives the Respondent's counterclaims, the Parties will hold further negotiations to determine how they can resolve this dispute. Lastly, the Parties agreed that should the negotiations turn out to be unsuccessful, the Claimant would file a claim with the RAC to recover the debt under the Contract.

13. In an email dated 10 January 2022, the Respondent promised to send the calculations of their claims within 1-2 days. During the oral hearing, the Respondent stated that they did not present those calculations, stating that it would not be possible to collect all the materials within that period of time.

II. COMMENCEMENT OF ARBITRATION, CONSTITUTION OF THE ARBITRAL TRIBUNAL

14. On 14 February 2022, the Claimant filed a Request for Arbitration to the RAC.

15. The Request for Arbitration was uploaded to the Online Arbitration System of the RAC (“OAS”) by the Representative of the Claimant.

16. On 18 February 2022, the Parties were notified about suspension of arbitration through the issuance of Notice of Suspension of the Request for Arbitration No. [No] (“Notice of Suspension”)⁶. Based on the Notice of Suspension, the Executive Administrator was satisfied that the Parties have agreed to have their dispute administered by the RAC based on Article 8 of the Contract and paragraph 4 of the Minutes of Meeting.

17. Furthermore, the RAC suspended the Request for Arbitration under Article 9(1)(6) of the Arbitration Rules since the RAC was not able to confirm with certainty that all exhibits named in the Request for Arbitration were submitted to Respondent, due to the description written by the Claimant in postal receipt No. [No], “Statement of claim to the RAC [Respondent] dated 14.02.2022 by [Claimant] on recovery of monies with exhibits” (as translated from Russian), which did not specify exhibits that were sent to the Respondent. Moreover, the Executive Administrator notified that one of the attachments listed in the Request for Arbitration, namely: “7) Chat between Dr. [Name] and Respondent’s Representatives (para. 10 of the Request)” was not uploaded to the OAS at the time.

18. On 21 February 2022, the Claimant uploaded to the OAS the aforementioned attachment No. 7, namely “7) Chat between Dr. [Name] and Respondent’s Representatives (para. 10 of the Request)”. The day after, on 22 February 2022, the Claimant rectified defects of the Request for arbitration by providing the RAC with postal receipt No. [No] and list of attachments confirming dispatch of Request for Arbitration and all its exhibits to the Respondent.

19. On 24 February 2022, the RAC issued Notice on Commencement and informed the Parties about the commencement of arbitration under the Request for Arbitration⁷. The Notice on Commencement determines that the date of commencement of arbitration is 14 February 2022.

20. According to the Notice on Commencement, the arbitration shall be administered according to the RAC Rules on International Commercial Arbitration. The RAC further noted that the Arbitral Tribunal may, at the request of a Party or on its own initiative, determine that other rules on arbitration than the ones determined by the Executive Administrator shall apply to the dispute under its own consideration under Article 9(3) of the Arbitration Rules.

21. The Notice on Commencement also noted that the Claimant has invited the Respondent to enter into an agreement to waive oral hearings in the case and to hear this arbitration under an expedited procedure of the RAC. As of the date of the Notice on Commencement, the RAC has not received such an agreement, where it then invited the Parties to reach an agreement and to present said agreement within 7 days of the date of the Notice on Commencement (i.e. 03 March 2022). In the absence of the aforementioned agreement, the arbitration shall be conducted by standard procedure.

22. The Notice on Commencement also noted that the value of the claim shall constitute USD 101 462,73 based on the Principal Debt Amount, as well as the Late Payment Interest from the period from 26 May 2021 to 14 February 2022 and from the period from 15 February 2022 to 22 September 2022.

23. Lastly, the RAC stated that the Respondent may submit an answer to the Request for Arbitration no later than 20 days from the date of the notice on commencement of arbitration (i.e. 16 March 2022).

⁶ The Notice of Suspension of the Request for Arbitration (No. 32/22 dated 18 February 2022) was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

⁷ The Notice on Commencement of Arbitration (No. [No] dated 24 February 2022) was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

24. On 4 March 2022, the RAC issued Notice of Executive Administrator No. 44/22 (“Notice of the Executive Administrator”)⁸. The Executive Administrator informed the Parties of the following:

- 24.1. the arbitration shall be conducted under standard procedure due to the fact that there is no agreement of the Parties on the use of expedited procedure.
- 24.2. the Claimant has paid the arbitration fee in full amounting to USD 12 530,44.
- 24.3. the RAC has not received an objection from the Respondent regarding the use of the email address [e-mail] for the exchange of documents in the arbitration.

25. All documents in this arbitration shall be uploaded to the OAS according to Article 5(4) of the Arbitration Rules. Representatives of both Parties connected to the OAS and, therefore, had access to the electronic case file and were able to familiarize themselves with the documents in this arbitration⁹.

26. On 22 March 2022, the RAC issued Notice on Constitution of the Arbitral Tribunal No. 68 informing the Parties of the constitution of the Arbitral Tribunal and the appointment of Tony Budidjaja as a Sole Arbitrator¹⁰.

27. On 25 March 2022, Tony Budidjaja accepted the appointment as the Sole Arbitrator, confirmed his independence and impartiality, as well as the absence of conflicts of interest in relation to the Parties by signing the Declaration of the Arbitrator¹¹.

28. On 25 March 2022, Kevin Bonaparte accepted the appointment as the Assistant to the Arbitral Tribunal (external assistant), confirmed his independence and impartiality, as well as the absence of conflicts of interest in relation to the Parties by signing the Declaration of the Assistant to the Arbitral Tribunal¹².

29. On 11 April 2022, in accordance with Article 38(1) of the Arbitration Rules, the RAC notified the Parties of the appointment of an Arbitral Tribunal’s assistant – Ekaterina Baliuk, Legal Counsel of the RAC. Ekaterina Baliuk has accepted the appointment as the Assistant to the Arbitral Tribunal, confirmed her independence and impartiality, as well as the absence of conflicts of interest in relation to the Parties by signing the Declaration of the Assistant to the Arbitral Tribunal¹³.

30. During the course of the arbitration, no challenge was made to the Arbitral Tribunal and the assistants to the Arbitral Tribunal.

⁸ The Notice of the Executive Administrator (No. 44/22 dated 04 March 2022) was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

⁹ Representatives of the Claimant:

On 14 February 2022, [Name] gained access to the OAS by uploading the Request for Arbitration to the OAS. On 9 March 2022, Dr. [Name] was invited to the OAS, on 22 March 2022, he confirmed his powers as the Claimant’s representative and gained access to the OAS. On 20 May 2022, [Name] was invited to the OAS, on 23 May 2022, he confirmed his powers as the Claimant’s representative and gained access to the OAS.

Representatives of the Respondent:

On 4 March 2022, [Name] (General Director) was invited to the OAS, however, did not join the OAS during the arbitration. On 13 April 2022, [Name] was invited to the OAS, on the same day confirmed his powers as the Respondent’s representative and gained access to the OAS.

¹⁰ The Notice on Constitution of the Arbitral Tribunal (No. 68/22 dated 22 March 2022) was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

¹¹ The Declaration of the Arbitrator with attachments was sent to the Parties 01.04.2022 via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

¹² The Declaration of the Assistant to the Arbitral Tribunal (Kevin Bonaparte) with attachment was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post and by post (Tracking Nos. [No], [No]).

¹³ The Notice on Appointment of Assistant to the Arbitral Tribunal (Ekaterina Baliuk) No. 99/22 dated 11 April 2022 with attachments was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

III. POSITIONS OF THE PARTIES, COURSE OF THE PROCEEDINGS

31. The Claimant's position as contained in their Request for Arbitration is as follows: 15 deliveries of fruits from Thailand to Russia remain unpaid. The Request for Arbitration details that the outstanding payments are as follows:

No.	Invoice No. / Date	Amount (USD)	Date of Supply
1	[No]	8 312,92	22-05-2021
2	[No]	6 538,85	22-05-2021
3	[No]	8 067,39	29-05-2021
4	[No]	6 571,61	05-06-2021
5	[No]	10 049,76	19-06-2021
6	[No]	8 065,18	26-06-2021
7	[No]	5 706,00	03-06-2021
8	[No]	4 519,17	10-07-2021
9	[No]	5 875,59	17-07-2021
10	[No]	5 814,30	24-07-2021
11	[No]	3 655,45	31-07-2021
12	[No]	4 345,63	07-08-2021
13	[No]	6 836,27	23-08-2021
14	[No]	3 396,77	31-08-2021
15	[No]	5 211,52	05-09-2021
Total		92 966,41	

32. In the Request for Arbitration, the Claimant explains that in accordance with Section 453 of the Thailand Civil and Commercial Code ("Thai Civil Code") a sale is a contract whereby the seller, in this case the Claimant, transfers to another person, the buyer or in this case the Respondent, the ownership of property and the buyer agrees to pay to the seller a price for it. The Claimant concludes that Article 486 of the Thai Civil Code requires the buyer to take delivery of the property sold and to pay the price in accordance with the terms of the contract of sale, those terms being Article 4 of the Contract which states that the full cost of the consignment of the goods delivered is paid 3 days after the delivery of the goods.

33. Claimant also notes in their Request for Arbitration that a late payment interest shall apply. The Claimant posits that the late payment interest rate is seven and half percent per annum in accordance with Section 224 of the Thai Civil Code. The amount of the Late Payment Interest as of the filing of the aforementioned Request for Arbitration is equal to USD 4 293,73 (four thousand two hundred and ninety three point seven three US Dollars).

34. On 8 April 2022, the Arbitral Tribunal issued the Procedural Order No. 1 by which the Parties were invited to discuss the possibility of an amicable settlement of the dispute, comment on draft procedural schedule, seat of arbitration and addresses of the Parties for purposes of documents' delivery¹⁴.

35. Throughout 11 April – 12 May 2022, the Parties discussed issues raised in the Procedural Order No. 1. On 13 May 2022, the Arbitral Tribunal acknowledged receipt of the Parties' submissions and pointed out that the Parties agreed that the seat of arbitration is Moscow and English is a language of the arbitration. Moreover, the Tribunal encouraged the Parties' settlement discussions and specified that they may be done in parallel with the present arbitration.

¹⁴ The Procedural Order No. 1 dated 8 April 2022 was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

36. On 20 May 2022, the Arbitral Tribunal adopted the Procedural Order No. 2 by which the Parties were invited to discuss the updated draft procedural schedule since the Parties did not agree on the procedural schedule ¹⁵.

37. Prior to the oral hearing, the Parties attempted to conclude a settlement agreement. On 24 May 2022, the Claimant requested from the Respondent to send its draft settlement agreement and expressed its readiness to discuss the Respondent's proposal.

38. On 27 May 2022, the Respondent proposed the following terms and conditions with regards to the settlement agreement:

- 38.1. the Claimant shall accept the amount of USD 42 252,08 (forty two thousand two hundred fifty two point zero eight US Dollars) which the Respondent calculated as the total cost of the defective products supplied to the Respondent for the defective products supplied within the period of February – September 2021. The Respondent argues that they have suffered indirect losses such as cost of utilization.
- 38.2. the Principal Debt Amount shall be agreed and accepted on the figure of USD 50 000 (fifty thousand US Dollars) only.
- 38.3. the Late Payment Interest shall not be applied at all.
- 38.4. the Respondent continues purchasing products from the Claimant with the following conditions:
 - 38.4.1. The Claimant undertakes to ship products to the Respondent in strict accordance with the agreed and accepted Purchase Order;
 - 38.4.2. The quality of the products must be of "TOP" or "PREMIUM" grade only;
 - 38.4.3. The shipping documents must be prepared by the Claimant in strict accordance with the terms and conditions of the Contract and a Supplementary Agreement to the Contract shall be concluded between the Claimant and the Respondent immediately after signing the settlement agreement;
 - 38.4.4. The Respondent undertakes to purchase from the Claimant at least two shipments each week, provided that the Claimant has the required items for sale of good quality and on acceptable prices;
 - 38.4.5. The Respondent undertakes to pay for each delivered shipment within a period not exceeding 5 (five) business days after the date of delivery. The Respondent undertakes to pay to the Claimant an additional amount 50% (fifty percent) of the estimated net profit of each shipment received by the Respondent together with the basic payment, but in any case, the amount shall be no less than USD 500,00 (five hundred US Dollars). In any case the debt in the amount of USD 50 000,00 (fifty thousand US Dollars) shall be paid fully by the Respondent to the Claimant by 1 June 2023.
 - 38.4.6. The Respondent reserves the right to make additional payments to the Claimant to cover the debt, provided that the Claimant fulfills the obligations on supply of good quality products subject to the conditions of the Contract and the Supplementary Agreement to be signed to the above Contract.

39. On 4 June 2022, the Arbitral Tribunal issued the Procedural Order No. 3 to confirm the procedural schedule taking into account positions of the Parties and set up date and venue of the oral hearing as 8 July 2022, 10:00 Moscow Time (GMT+3) at the RAC office at 119017, Russian Federation, Moscow, Kadashevskaya embankment 14, bldg 3 with videoconferencing. Moreover, the Arbitral Tribunal ordered the Claimant to issue a letter confirming the powers of their representatives on the official letterhead of the

¹⁵ The Procedural Order No. 2 dated 20 May 2022 was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

Claimant's company as well as providing its legal address and bank details in response to the Respondent's recent submission¹⁶.

40. On 6 June 2022, the Claimant refused the Respondent's proposed terms and conditions. The Claimant notes that the Respondent has stated no legal grounds for its counterclaims and has not provided any evidence that the Claimant had delivered defective goods. The Claimant further states that should the goods delivered prove to be defective due to suspected faulty workmanship or material, under Article 5.2 of the Contract, the Respondent has to notify the Claimant in writing. The Respondent did not notify the Claimant about any defective Goods in writing, nor has it not sent any such report. Moreover, in view of the Claimant, the Respondent cannot provide any guarantees that payment delays will not be repeated if the Claimant resumes the delivery of the Goods.

41. The Claimant's proposed terms are to retain its claim in full and provided that they would agree to the settlement agreement if the Respondent pays both the Principal Debt Amount and the Late Payment Interest. Moreover, if the above is paid before 31 August 2022, the Claimant agrees not to collect from the Respondent the Late Payment Interest for the period of 1 June – 31 August 2022. The Claimant further offers to discuss their proposal with the Respondent.

42. On 9 June 2022, the Respondent agreed with the Claimant that there are no legal grounds for them to make a counterclaim, the Respondent states that they had tried to convince the Claimant to send only good quality products and had hoped that the Claimant would change. The Respondent goes on to state that the only way out of their situation is for the Claimant to accept their offer that the Respondent shall pay USD 50 000 (fifty thousand US Dollars) with the conditions as set out in their submission on 27 May 2022. The Respondent goes on to state that should the Claimant agree, then the Parties will be able to proceed with drafting the settlement agreement and they invite the Director of the Claimant or the Representative of the Claimant to meet in Moscow to discuss the terms of the settlement.

43. On 17 June 2022, the Claimant submitted their response to the above. In their submission, the Claimant confirms that if the Respondent is interested in holding a meeting, the Representatives of the Claimant are ready to hold a meeting any day before 24 June 2022, the deadline agreed by the Parties to conclude the settlement agreement.

44. On 20 June 2022, the Respondent requested to meet with the Representatives of the Claimant on 23 June 2022 from 11:30 – 16:00 Moscow Time to discuss the possibility of amicable dispute settlement. On the same day, the Arbitral Tribunal encouraged the Parties to continue their discussions on the terms and conditions of their settlement agreement and try to conclude a settlement agreement before the deadline set by the Parties, which corresponds with the deadline of the filing of the Respondent's additional written submissions and evidence pursuant to the procedural schedule on 24 June 2022.

45. On 24 June 2022, the Claimant informed that there is no reason for the meeting between the Representatives of the Parties since the Respondent neither suggested new terms and conditions nor accepted those of the Claimant.

46. On 24 June 2022, the Respondent stated that the Representative of the Claimant did not reply to the Respondent's initial request to conduct a meeting on 23 June 2022. The Respondent states that their representative had called the offices of the Representative of the Claimant and had a conversation where the Representative of the Claimant was "quite offensive" and informed them that there was nothing to discuss due to Respondent's offer for settlement being "insulting". The Respondent states that there is no reason for them to make any further attempts for amicable settlement and confirms that they will meet the Claimant at the oral hearing on 8 July 2022.

¹⁶ The Procedural Order No. 3 dated 4 June 2022 was sent to the Parties via email ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and by post (Tracking Nos. [No], [No]).

47. On 5 July 2022, the Claimant confirmed that the following representatives of the Claimant will attend the oral hearing:

- 47.1. Dr. [Name];
- 47.2. Dr. [Name];
- 47.3. [Name];
- 47.4. [Name].

48. In addition to the above individuals, the Representative of the Claimant was also accompanied at the oral hearing by a trainee from the Representative of the Claimant's law firm, [Name].

49. On 6 July 2022, the Respondent confirmed that the following representatives of the Respondent will attend the oral hearing:

- 49.1. [Name];
- 49.2. [Name];
- 49.3. [Name].

50. At the oral hearing the Arbitral Tribunal was accompanied by two of its assistants, Ekaterina Baliuk, who is one of the employees of the RAC Administrative Office, and Kevin Bonaparte, who joined the oral hearing from [city] alongside the Sole Arbitrator.

51. On 8 July 2022, the Claimant submitted a request for reimbursement of the Claimant's costs by the Respondent in accordance with Article 16 of the RAC Rules on Arbitration Fees and Arbitration Costs which regulates that the Parties may request that the costs incurred by them be borne by the Party against which the award will be made. The relief sought by the Claimant against the Respondent is as follows:

- 51.1. USD 92 966,41 (ninety two thousand nine hundred sixty six point four one US Dollars) as the Principal Debt Amount;
- 51.2. USD 4 293,73 (four thousand two hundred ninety three point seven three US Dollars) as the Late Payment Interest as of 14 February 2022;
- 51.3. USD 4 202,59 (four thousand two hundred two point five nine US Dollars) as the Late Payment Interest from 15 February through to 22 September 2022 (which is the projected date for the rendering of the arbitral award);
- 51.4. Late Payment Interest from 23 September 2022 through to the date of the actual payment of the above sums;
- 51.5. USD 16 530,44 (sixteen thousand five hundred thirty point four four US Dollars) as the arbitration costs incurred by the Claimant by 7 July 2022;
- 51.6. Any other costs of this arbitration, as well as the Claimant's legal fees and other expenses.

52. In the oral hearing on 8 July 2022, the Claimant reiterated their previous position and stated that they may expect the Respondent to not to follow the Arbitral Award voluntarily and thus further request a Late Payment Interest from 23 September 2022 through to the date of the actual payment of the outstanding sum. Furthermore, the Claimant also requests that the Arbitral Tribunal should impose the arbitration costs incurred by the Claimant as of the date of the oral hearing which amounted to USD 16 530,44 (sixteen thousand five hundred thirty point four four US Dollars). The Claimant also states that they reserve their right based on Article 16 of the RAC Rules on Arbitration Fees and Arbitration Costs to provide the Arbitral Tribunal with the precise calculation of the arbitration costs incurred by the Claimant.

53. On 18 July 2022, the Claimant submitted an updated request for reimbursement of the Claimant's costs by the Respondent which increases the arbitration costs requested to USD 16 651,42 (sixteen thousand

six hundred fifty one point four two US Dollars) as the costs incurred by the Claimant by 18 July 2022 along with any other costs of this arbitration.

54. With regards for the basis for the submission of their Request for Arbitration, the Claimant stated during the oral hearing that the civil law of the Kingdom of Thailand applies exclusively. The Claimant noted that the Vienna Convention on the International Sale of Goods does not apply as the Convention applies to contracts of sale of goods between Parties whose places of business are in different states provided that the states are contracting states. In the present case before the Arbitral Tribunal, only Russia is a contracting state to the Convention, Thailand is not.

55. The Claimant further argued during the oral hearing that in accordance with Russian rules of private international law, in the context of supply contracts, the law of the supplier should govern the contract, unless the parties agreed otherwise in their contract. Because the Parties did not agree otherwise in their Contract and because the Supplier who, in this case is the Claimant, is domiciled in Thailand, then the law of the Kingdom of Thailand shall apply.

56. In the oral hearing, the Respondent submitted several points. Firstly, the Respondent confirmed that they agree that in accordance with their meeting with the Representatives of the Claimant on 24 December 2021 that should the dispute between the Parties not be settled amicably, then it shall be considered by the RAC and that the law of the Kingdom of Thailand shall apply.

57. Secondly, the Respondent inquired why the Claimant continued to ship goods when the invoices that went unpaid continued to increase. The Respondent adds that the Goods sold by the Claimant cannot be sold to any consumer and were “100% waste”.

58. On the matter of the obligation to inform the Claimant in writing in the event of defective goods, the Respondent confirmed that they did not make such a notification. The Respondent stated that this is due to the fact that the Claimant had repeatedly promised that the goods they send will be of better quality in their correspondence in the Respondent.

59. On the matter of the offer for settlement, the Respondent stated that they offered terms and conditions for settlement due to the fact that they have invested a lot of money in the Goods in the form of payments to Russian customs and other expenses such as transportation, loading, unloading and sorting. They note that they have tried to arrange a meeting with the Representative of the Claimant to speak in person as speaking in Russian would be more convenient, however, the Representative of the Claimant refused to meet with them.

60. In the Claimant’s closing statement, the Claimant argued that they supplied Goods of due quality, and that the Respondent was incorrect in stating that the Goods provided were “100% waste” due to the fact that they stated they were willing to accept USD 50 000 (fifty thousand US Dollars) which would not be the case if 100% of the Goods supplied were “waste”. Furthermore, they emphasize that the Respondent was not acting in compliance with the Contract and did not raise any objections towards the Goods that were supplied, they have now lost their right to raise any objections.

61. In the Respondent’s closing statement, the Respondent reiterated that they made a mistake and should have notified the Claimant in writing regarding the defective Goods they received.

IV. REASONING FOR THE AWARD

IV.A. Jurisdiction of the Arbitral Tribunal

62. The basis for the jurisdiction of the Arbitral Tribunal is the arbitration agreement as set out in Article 4 of the Parties' Minutes of Meeting of 24 December 2021 wherein the Parties agree that should their attempts at negotiation turn out to be unsuccessful, the Claimant will need to file a claim with the RAC in accordance with its Arbitration Rules. This Minutes of Meeting has been signed by both the Claimant and the Respondent.

63. The Respondent raised two concerns prior to the oral hearing, firstly, regarding the Parties' Minutes of Meeting of 24 December 2021 and, secondly, regarding the Claimant's Power of Attorney dated 9 December 2021. On 15 April 2022, the Respondent submitted their suggestions and comments on Procedural Order No. 1 in which the Respondent states that they do not recognize the legitimacy of the Minutes of Meeting of 24 December 2021 as a legally binding document due to the fact that the relevant Minutes did not make reference to the Power of Attorney dated 9 December 2021. The Respondent also notes that there are significant discrepancies in the business names and address details of the Claimant's company in different documents in the arbitration. The Respondent further invites the Claimant to sign a new minutes of meeting where in the Parties will write up an arbitration agreement based on the documents in this case.

64. On the other hand, with regards to the Power of Attorney dated 9 December 2021, the Respondent stated that in their opinion the texts in Russian and English have serious discrepancies, including a partial discrepancy in the details and passport data of the lawyers of the Representative of the Claimant's law firm. The Respondent further notes that the Power of Attorney dated 9 December 2021 was not issued on the corporate letterhead of the Claimant's company which according to the Respondent, does not contribute towards the correct identification of the official name and address of the Claimant. The Respondent also states that the lack of a corporate letterhead, combined with the fact that the signature of the Director of the Claimant on Power of Attorney dated 9 December 2021 was only certified by the seal of the company which in combination of the discrepancies may raise doubts of the validity of the document.

65. The Respondent further states in their submission that because the law of the seat of arbitration, in this case Russian law, applies, then the procedural norms of the Russian Federation must be applied. Specifically, the Respondent explains that Article 225 of the Arbitration Procedural Code of the Russian Federation dated 24 July 2002 as amended on 30 December 2021 No. 95-FZ which requires that documents drawn up or certified by competent authorities of foreign states outside of the Russian Federation are accepted by arbitration courts in the Russian Federation in the presence of legalization of the documents of apostille fixing, unless otherwise established by an international treaty of the Russian Federation and that if documents are drawn up in a foreign language they must be accompanied by their duly certified translation into Russian. The Respondent concludes that their suggestion is the Power of Attorney to be issued by the Claimant must be legalized in accordance with the procedure set out under Russian law.

66. On 5 May 2022, the Claimant responded to the Respondent's statement on the legitimacy of the Minutes of Meeting of 24 December 2021 and on the Power of Attorney dated 9 December 2021. The Claimant is of the opinion that the Respondent's suggestions are aimed at delaying the arbitration proceedings and that their concern regarding the Power of Attorney dated 9 December 2021 is minor. The Claimant notes that the Minutes of Meeting of 24 December 2021 was not disputed between 24 December 2021 and April 2022, and goes further to state that if the Respondent had doubts in the authority of the Representative of the Claimant, then it would not have signed the minutes of Meeting of 24 December 2021 or would have withdrawn its signature immediately after signing it which the Respondent did not do.

67. On 11 May 2022, the Respondent stated that they insist on additional confirmation of the powers of the Representative of the Claimant. The Tribunal notes that the Respondent did not rebut the Claimant's argument regarding the legitimacy of the Minutes of Meeting of 24 December 2021.

68. On 12 May 2022, the Claimant stated that they will not provide any additional confirmation unless the Arbitral Tribunal decides otherwise and states that any demands of the Respondent request additional

confirmation would be taken by the Claimant to be hostile and targeted to frustrate and to undermine this arbitration.

69. On 16 May 2022, the Claimant submitted a letter confirming that the Representative of the Claimant represents the interests of the Claimant in this arbitration and that the Director of the Claimant has provided the Representative of the Claimant with the necessary documents and information to conduct arbitration proceedings at the RAC and has further stated his readiness to provide the Arbitral Tribunal with evidence that he is the Director of the Claimant and that he has authorized the Representative of the Claimant to represent the Claimant's interests, should the Sole Arbitrator order the Claimant to do so. On 30 May 2022, the Tribunal stated that they are of the opinion that the Claimant has provided sufficient evidence and notes that the Director of the Claimant has confirmed that the Representative of the Claimant indeed represents the Claimant. However, the Arbitral Tribunal also invites the Respondent to comment on the letter from the Director of the Claimant and to comment on whether they think that it is sufficient.

70. On 30 May 2022, the Respondent commented that they assume that the Representative of the Claimant really represents the Claimant and further requests the Claimant to issue an official letter stating the correct legal address and the bank details of the Claimant to ensure that the Claimant can be legally defined correctly.

71. On 6 June 2022, in a letter with the corporate letterhead of the Claimant's company, which states the address of the Claimant's company, the Director of the Claimant provides the Claimant's bank details and once again confirms that the Representative of the Claimant represents the interests of the Claimant. The Claimant in clarifying the registered address stated the discrepancies are due to the difficulty of transliterating names from Thai to English and further states that this does not give the Respondent a reason to refer to the lack of confirmation of the Claimant's identity.

72. On 9 June 2022, the Respondent states that they agree to accept the details for the Claimant's company identity.

73. On 17 June 2022, the Claimant submitted a Power of Attorney dated 8 June 2022 that has been notarized on 13 June 2022 by [Name], a [confidential] ("Ms. [Name]"). The Claimant urges the Respondent to stop speculating about the powers of the Representative of the Claimant. The notarized Power of Attorney dated 8 June 2022 also includes Ms. [Name] certifying the Director of the Claimant's passport as a true copy of the original as well as Ms. [Name]'s certificate as an Attorney at Law registered as a [confidential] of Thailand. On 28 June 2022, the Claimant re-submitted the notarized Power of Attorney where the Claimant confirmed and approved all actions of the Representative of the Claimant in this arbitration since 9 December 2021.

74. While Article 8 of the Contract contains an arbitration clause, it does not mention the name of a specific arbitral body nor the place of arbitration. In an arbitration agreement as set out in Article 4 of the Parties' Minutes of Meeting of 24 December 2021 the Parties agree that should their attempts at negotiation turn out to be unsuccessful, the Claimant will need to file a claim with the RAC in accordance with its Arbitration Rules.

75. As per the Claimant's Request for Arbitration and the Claimant's submission on 11 April 2022, as well as the Respondent's submission on 15 April 2022 the Parties agreed that the place of arbitration is Moscow, Russia and that the RAC Arbitration Rules applies to their arbitration. Furthermore, the law applicable to the arbitral procedure shall be the law of the of the seat of arbitration that is the Law of the Russian Federation No. 5338-1 "On International Commercial Arbitration" ("Law on International Commercial Arbitration").

76. The Tribunal is of the opinion that the Minutes of Meeting dated 24 December 2021 complies with the requirements of arbitration agreement. The Law on International Commercial Arbitration sets out that an arbitration agreement must be in writing and must refer to a specific legal relationship. In this case, the arbitration agreement is in the form of the written Contract between the Parties and refers to the relationship of the Parties as Buyer, in the case of the Respondent, and as Supplier, in the case of the Claimant. Furthermore, the form of the arbitration agreement is recognized under the Law on International Commercial Arbitration as it states that the arbitration agreement may be in the form of an arbitration clause in a contract.

77. Therefore, the Arbitral Tribunal finds its jurisdiction to decide the present dispute.

IV.5. Conclusions of the Arbitral Tribunal on Merits

78. Based on the information provided by the Claimant in the Request for Arbitration, the Respondent has 15 invoices unpaid for shipments from 22 May 2021 to 5 September 2021. The Claimant confirms that prior to 22 May 2021, the Respondent was paying for the goods in accordance with the Contract. The Respondent provided that their payments were for the most part on time. However, the Respondent noted that the goods being supplied had declined in quality.

79. The Arbitral Tribunal notes that if the goods received by the Respondent were deficient, then in accordance with Article 5.2 of the Contract, the Respondent should have notified the Claimant about such defective goods in writing whether by fax or mail. The Arbitral Tribunal further notes that the Respondent confirmed during the oral hearing that they did not make such a notification and that they were at fault for not making such a notification.

80. The Arbitral Tribunal has reviewed the Contract and is of the opinion that the Respondent is in violation of Article 4 of the Contract which clearly sets out the terms of payment for the goods being supplied. The Arbitral Tribunal upon a review of the invoices submitted in Attachment 12 of the Request for Arbitration that totaled USD 92 966,41 (ninety two thousand nine hundred sixty six point four one US Dollars) as the Principal Debt Amount finds that the Respondent has failed to abide by the terms set out in the Contract which are as follows:

“Payments for the Goods delivered under this Contract will be made in US dollars, in accordance with the terms of this Contract, and made by the Buyer by wire bank transfer to the Seller’s account, in accordance with clause 12 of this Contract in the following order:

- 70% (seventy percent) of the cost of the consignment of the Goods is paid within 5 (five) banking days from the date of signing the Proforma;
- 30% (thirty percent) of the cost of the consignment of the Goods is paid 3 (three) days after the delivery of the Goods to the customs territory of the Russian Federation.”

81. On the issue of the applicable substantive law, the Arbitral Tribunal notes that while the Contract does not explicitly set out what the applicable substantive law is, both Parties agreed that the law of the Kingdom of Thailand shall apply.

82. Having received no evidence to the contrary and on the basis of the evidences submitted to it, the Arbitral Tribunal finds that the amount of USD 92 966,41 (ninety two thousand nine hundred sixty six point four one US Dollars) remains outstanding under the invoices. Therefore the Respondent is in violation of Section 486 of the Thai Civil Code which requires the buyer to take the delivery of the property sold and to pay the price in accordance with the terms of the contract of sale; which in this case refers to Article 4 of the Contract Article 4 of the Contract to pay the full cost of the consignment of the goods 3 (three) days after the delivery of the goods to the territory of the Russian Federation.

83. In accordance with Section 224 of the Thai Civil Code, a money debt bears interest of 7,5% (seven point five percent) per annum. The Respondent confirmed during the oral hearing that they have no objections towards this Late Payment Interest rate being applicable.

84. The Arbitral Tribunal confirms that the Claimant’s calculations for the Late Payment Interest rate are correct. Therefore, the Arbitral Tribunal finds that the Late Payment Interest rate of 7,5% (seven point five percent) per annum as regulated under Section 224 of the Thai Civil Law shall apply.

85. Accordingly, the Arbitral Tribunal is of the view that it is appropriate to order the Respondent to pay the Claimant USD 4 293,73 (four thousand two hundred ninety three point seven three US Dollars) being payable as interest on the amount due to the Claimant as of 14 February 2022 and to continue to impose

Late Payment Interest at the rate of 7,5% (seven point five percent) per annum from 15 February 2022 to the date of this Award (i.e. 5 September 2022) which amounts to USD 3 877,85 (three thousand eight hundred seventy seven point eight five US Dollars) and to the date of the actual payment of the Principal Debt Amount.

86. Since this Award is rendered prior to the deadline for adoption of the arbitral award, the Arbitral Tribunal re-calculates the value of the claim and, therefore, the amount of the arbitration fee (Section V of the Award). With this, the **value of the claim constitutes USD 101 137,99** according to the calculations below.

Debt	Overdue period			Days in year	Formula	Late payment interest continuing accruing until the date of the actual payment as calculated until the date of adoption of this Award, USD
	from	To (date of adoption of this Award)	days			
92 966,41	15 February 2022	5 September 2022	203	365	$92\,966,41 \times 7,5\% \times 203 / 365$	3 877,85
№	Claims					Value of claims, USD
1.	Principal debt amount					92 966,41
2.	Late payment interest			From 26 May 2021 till 14 February 2022		4 293,73
3.				From 15 February 2022 till 5 September 2022		3 877,85
Total amount of claims (i.e. value of claim):						101 137,99

87. Therefore the Late Payment Interest for the periods from 26 May 2021 until 14 February 2022 amounting to USD 4 293,73 (four thousand two hundred ninety three point seven three US Dollars) and from 15 February 2022 until 5 September 2022 amounting to USD 3 877,85 (three thousand eight hundred seventy seven point eight five US Dollars) must also be paid by the Respondent to the Claimant. The Arbitral Tribunal also awards the Claimant the Late Payment Interest accruing until the date of actual payment of the Principal Debt Amount to be calculated as: USD 92 966,41 as a Principal Debt Amount x 7,5% x overdue period (from 6 September till date of actual payment of the Principal Debt Amount) / days in year.

V. ALLOCATION OF THE ARBITRATION COSTS AND FEES

88. In the Notice of Commencement, the RAC informed the Parties that according to Article 17 of the Rules on Arbitration Fees and Arbitration Costs (Annex I to the Arbitration Rules), arbitration fee constitutes USD 12 530,44 (twelve thousand five hundred thirty point four US Dollars) with value of claim being USD 101 462,73 (one hundred one thousand four hundred sixty two point seven three US Dollars). The arbitration fee was paid in full pursuant to the payment orders No. [No] dated 14 February 2022 and No. [No] dated 02 March 2022.

89. The Arbitral Tribunal re-calculates the arbitration fee since this Award is rendered prior to the deadline for adoption of the arbitral award. Therefore, the **arbitration fee constitutes USD 11 029,64** (eleven thousand twenty nine point six four US Dollars) with value of the claim being USD 101 137,99. Taking this into account, USD 1 500,80 (USD 12 530,44 – USD 11 029,64) shall be refunded to the Claimant by the RAC pursuant to Article 13 of the Rules on Arbitration Fees and Arbitration Costs¹⁷.

90. Moreover, the Arbitration Tribunal notes that only the Claimant has expressed their position on the allocation of arbitration costs and fees.

91. In accordance with Article 16 of the RAC Rules on Arbitration Fees and Arbitration Costs, the Claimant submitted a request on reimbursement of the arbitration costs and fees on 8 July 2022 and later submitted an updated request on 18 July 2022. The Arbitral Tribunal notes that Article 16 of the RAC Rules on Arbitration Fees and Arbitration Costs states that the request must be made within 7 (seven) days following the completion of the oral hearing. Due to the fact that the oral hearings were completed on 8 July 2022 and taking into account Article 6(2) of the Arbitration Rules, the deadline for submission by the Parties of the request for reimbursement of the arbitration costs falls on 18 July 2022. With this in mind, the Arbitral Tribunal recognizes the updated request submitted by the Claimant on 18 July 2022.

92. On 18 July 2022, the Claimant submitted that they have incurred arbitration costs amounting to USD 16 651,42 (sixteen thousand six hundred fifty one point four two US Dollars) as of 18 July 2022 which consists of the following expenses:

- 92.1. USD 2 000 (two thousand) which is the Representative of the Claimant's remuneration for the pre-trial stage;
- 92.2. USD 2 000 (two thousand) which is the Representative of the Claimant's remuneration for representation of the Claimant's interest during the arbitration;
- 92.3. USD 12 530,44 (twelve thousand five hundred thirty point four four) which is the arbitration and registration fee; and
- 92.4. USD 120,98 (one hundred twenty point ninety eight US Dollars) which is the related expenses.

93. The Arbitral Tribunal notes that because the arbitration fee will be partially refunded to the Claimant as explained in paragraph 89 of the Award, the total arbitration costs incurred by the Claimant is USD 15 150,62 (fifteen thousand one hundred fifty point six two US Dollars).

94. According to Article 15(1) of the 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.

95. The Arbitral Tribunal has reviewed the amount of arbitration costs and attorneys' fees sought by the Claimant and finds it to be reasonable given that the Claimant has had to prepare written submissions, organize evidence and witness statements, and to attend a hearing via video conference. The Arbitral Tribunal

¹⁷ Calculations of the refund sum also rectify the automatic technical error that was made during calculation of the arbitration fee (as provided in the Notice of Commencement) using RAC Calculator of the arbitration fee (published on the website).

also finds the legal costs of USD 4 000 (four thousand US Dollars) to be reasonably incurred and reasonable in amount, since the Representative of the Claimant has provided legal assistance for the Claimant in both the pre-trial stage as well as in representing the Claimant during the present arbitration proceedings. The Arbitral Tribunal also finds the related expenses of USD 120,98 (one hundred twenty point ninety eight US Dollars) was also reasonably incurred and reasonable in amount, since the Representative of the Claimant has had to prepare written submissions and incurred travel expenses as part of the arbitration process.

96. Given that the Claimant has prevailed on its principal claims and because the Claimant had incurred costs, charges, expenses, and attorneys' fees in collection of sums that were due and owing under the Framework Agreement between the Claimant and the Representative of the Claimant No. [No] on legal assistance and Assignment No. 1 to the Framework Agreement, the Arbitral Tribunal awards the Claimant its arbitration costs and fees amounting to USD 15 150,62 (fifteen thousand one hundred fifty point six two US Dollars) which constitutes the Claimant's legal fees, related expenses as well as the arbitration and registration fee as re-calculated by the Arbitral Tribunal taking into account the partial refund of the arbitration fee as set out in paragraph 89 of the Award.

VI. RESOLUTIONS

For the foregoing reasons and based on Articles 50-52 of the Arbitration Rules, the Arbitral Tribunal

AWARDS:

1. That the Respondent, in this case [Respondent] (OGRN [No], INN [No], Russian Federation, [address]), is in violation of the contract No. [No] dated 11 February 2021 for the non-payment of 15 invoices from 22 May 2021 to 5 September 2021.
2. That the Respondent shall pay the following amounts to the Claimant, in this case [Claimant] (Juristic Person Registration Number [No], Thailand, [address]):
 - a. USD 92 966,41 (ninety two thousand nine hundred sixty six point four one US Dollars) as the Principal Debt Amount;
 - b. USD 4 293,73 (four thousand two hundred ninety three point seven three US Dollars) as the Late Payment Interest as of 14 February 2022;
 - c. USD 3 877,85 (three thousand eight hundred seventy seven point eight five US Dollars) as the Late Payment Interest from 15 February to 5 September 2022;
 - d. Late Payment Interest from 6 September 2022 to the actual date of payment of the Principal Debt Amount to be calculated as (USD 92 966,41 as a Principal Debt Amount x 7,5% x overdue period (from 6 September till date of actual payment of the Principal Debt Amount) / days in year).
 - e. USD 11 029,64 (eleven thousand twenty nine point six four US Dollars) as the arbitration fee; and
 - f. USD 4 120,98 (four thousand one hundred twenty point nine eight US Dollars) as the arbitration costs incurred by the Claimant as of 18 July 2022.
3. That the Respondent shall comply with its obligations under the Contract.
4. All other claims not otherwise dealt with 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.

The Arbitral Tribunal
Tony Budidjaja