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Case No. [PI9123-22]

ARBITRAL AWARD

24 October 2022

Claimant: [Claimant]

Respondent: [Respondent]

Arbitral Tribunal: Arkhipova Anna Grigorievna as a sole arbitrator

Assistant to the Arbitral Tribunal: Bubnova Ekaterina Alekseevna

Seat of arbitration - Moscow, Russian Federation

Language of Arbitration: Russian

English Text: RAC – Ekaterina Petrenko

Proofreading: RAC – Elizaveta Mikaelyan

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CASE SUMMARY

1. The Arbitral Tribunal, comprising sole arbitrator Arkhipova Anna Grigorievna (hereinafter – **Arbitral Tribunal**, **sole arbitrator**), heard the claims of

   [Claimant], [OGRN], [INN], [address] (hereinafter – **Claimant**, **Forwarding agent**, **Counterrespondent**) and

   [Respondent], [OGRN], [INN], [address] (hereinafter – **Respondent, Client, Counterclaimant,** jointly with the Claimant – **Parties**)

   on recovery under framework contract No. [No] of 30 October 2020 for the provision of transport forwarding services of [cargo] carriage from port [A] to port [B], [Country B], by a vessel with a cargo capacity of no less than [volume] m^3, without ship cranes (hereinafter – **Contract**)

   - costs for securing the cargo on board the vessel [Vessel] at the port of loading [C], amounting to EUR 4,725.05;
   - costs for securing the cargo on board the vessel [Vessel] at the port of loading [A], amounting to RUB 3,850,000;
   - costs for payment for the [Vessel's] demurrage during the loading of cargo, amounting to USD 159,790;
   - costs for unsecuring the cargo and clearing the deck on board the vessel [Vessel] at the port of discharge [B], [Country B], amounting to USD 15,000;
   - interest for the use of the other person's means, amounting to RUB 500,179.56;
   - arbitration and representation costs,

     and on the counterclaim on recovery of a fine under the Contract of USD 130,000.

2. The hearing took place on 20 July 2022, at 12:00 (GMT+3) at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3 (RAC office). The hearing was attended by:

   Arkhipova Anna Grigorievna, the Arbitral Tribunal;

   [Name], the Claimant's representative by power of attorney of 4 April 2022, valid till 31 December 2025, identified by a passport of the Russian Federation;

   [Name], the Claimant's General Director;

   [Name], the Respondent's representative by power of attorney No. [No] of 26 April 2022, valid till 31 December 2023, identified by a passport of the Russian Federation;

   [Name], the Respondent's representative by power of attorney No. [No] of 12 October 2021, valid until 31 December 2022, identified by a passport of the Russian Federation;

   Bubnova Ekaterina Alekseevna, RAC Case Counsel, Assistant to the Arbitral Tribunal.

   In the absence of the Parties' objections, **Aramian Diana Razmikovna**, RAC Junior Case Counsel, and **Vasiliev Vadim Vladimirovich** were present at the hearing.

COMMENCEMENT OF ARBITRATION, CONSTITUTION OF THE ARBITRAL TRIBUNAL

3. On 29 March 2022, the Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter – **RAC**) received the Request for Arbitration of 22 March 2022 from [Claimant] to [Respondent] in hard copy (Ref. No. 24/*И*-22).

4. On 31 March 2022, under Paragraph 4 of Article 9 of the RAC Arbitration Rules as amended on 1 November 2021 (hereinafter – **Arbitration Rules**), the Executive Administrator notified the Parties of the suspension of the Request.[1] In this Notice:

   4.1. Pursuant to Paragraph 3 of Article 9 of the Arbitration Rules, the Executive Administrator preliminary determined that should arbitration commence, the rules of international commercial arbitration of the Arbitration Rules shall apply to the present arbitration.

   4.2. The Notice was suspended due to the Claimant's failure to pay the registration fee (Subparagraph 5 of Paragraph 1 of Article 9 of the Arbitration Rules). To commence arbitration, the Claimant was invited to pay the additional registration fee of USD 314.91 (according to the exchange rate on the date of the additional payment) within 7 days of receiving the Notice.

   4.3. The Executive Administrator invited the Claimant to comment on the inaccuracies identified in the attachments to the Request.

   4.4. Since in the Request the Claimant declared its choice of sole arbitrator, the Executive Administrator invited the Respondent to provide its position on the appointment of a sole arbitrator within 10 days of receiving the Notice.

5. On 6 April 2022, the Claimant e-mailed its Reply to the Notice of Suspension of 4 April 2022 (hereinafter – **Objections**), disagreeing with the application of the rules of international commercial arbitration. In the Objections, the Claimant stated the following.

   5.1. Based on Paragraphs 2 and 3 of Article 2 of the Federal Law No. 382-FZ "On Arbitration in the Russian Federation" of 29 December 2015 (hereinafter – **Law on Arbitration**), the Claimant contended that the Administrative Office does not have the authority to determine the subject matter of the disputed legal relations or the legal and factual grounds of the asserted claims.

   5.2. The Claimant stated that this dispute does not fall within the category of disputes subject to international commercial arbitration under Paragraph 3 of Article 1 of the Law of the Russian Federation of 7 July 1993 No. 5338-1 "On International Commercial Arbitration" (hereinafter – **Law on ICA**), as:

   - the applicable law is Russian substantive law;
   - the parties are legal entities registered under the laws of the Russian Federation and operating in the territory of the Russian Federation;
   - the dispute does not involve the realization of foreign investments within the territory of the Russian Federation or Russian investments abroad;
   - the subject matter of the dispute pertains to the fulfillment by the Respondent of its monetary obligations of payment to the Claimant;

[1] On 31 March 2022, Notice of Suspension (Ref. No. 86/22 of 31 March 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 1 April 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

– the place where "a substantial part of the obligations" under the Contract is performed by the Claimant is the territory of the Russian Federation since the Claimant itself is located in the Russian Federation, [redacted], and manages transportation from within the Russian Federation.

5.3. In the Objections, the Claimant also commented on the inaccuracies identified in the Request:

– regarding Attachment 18, the reference to "61 sheets" should be considered correct;

– the words "Attachment 19" should be considered an error and removed.

6. On 6 April 2022, the Executive Administrator sent to the Parties clarifications[2] regarding the rules applicable to this dispute (Ref. No. 95/22 of 6 April 2022). In the clarifications, the Executive Administrator outlined the following.

6.1. The Parties entered into the Contract, under which the Forwarding agent shall perform or arrange the performance of services, as specified by the instruction, related to the carriage of cargo along the route, and the Client shall accept and pay for the services properly (Article 2 of the Contract). In Section 1 "Definitions and Interpretation," the route is defined as the route of the Cargo transportation from the Dispatch Point to the Destination Point. According to Subclause 1(19) of Clause. 1.1 of the Contract, "Destination Point means port [B], [Country B]". Thus, the Executive Administrator stated that a substantial part of the obligations arising from the Parties' relations and Instruction No. [No] of 10 September 2021 is located abroad, as a result of which the rules of international commercial arbitration shall apply.

6.2. The Parties have agreed to apply the Arbitration Rules by including an arbitration clause in Section 24 of the Contract.

6.3. Pursuant to Paragraph 3 of Article 9 of the Arbitration Rules, the arbitration rules shall be preliminarily determined by the Executive Administrator. After the Arbitral Tribunal has been constituted, the sole arbitrator could, at the Party's request or on his/her own initiative, determine that arbitration rules other than those determined by the Executive Administrator shall apply to the dispute, i.e., the Arbitral Tribunal shall finally determine the application of certain arbitration rules. Regardless, full payment of the arbitration fee remains a prerequisite for referring the case to the Arbitral Tribunal under Paragraph 3 of Article 7 of the Rules on Arbitration Fees and Arbitration Costs (hereinafter – **Rules**).

6.4. Should the Arbitral Tribunal determine that different rules apply and recalculate the arbitration fee, the overpaid amount of the arbitration fee shall be refunded upon the Party's application.

7. On 7 April 2022, the Claimant e-mailed a request for an extension of the time limit for payment of the outstanding registration and arbitration fees, where it asked the Executive Administrator to extend the payment deadline until 18 April 2022, inclusive.

8. On 7 April 2022, by the Notice of Extension of Suspension[3] (Ref. No. 98/22), the time limit for suspension was extended until 18 April 2022, inclusive.

[2] On 6 April 2022, Clarifications on objections to the applicable rules (Ref. No. 95/22 of 6 April 2022) were uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 7 April 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

[3] On 7 April 2022, Notice of Extension of Suspension (Ref. No. 98/22 of 7 April 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 8 April 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

9. On 14 April 2022, the Claimant informed via e-mail that the arbitration fee was paid in full and submitted payment order No. [No] of 13 April 2022. Thus, the Claimant paid the arbitration fee of USD 19,137.42 by payment orders No. [No] of 17 March 2022 and No. [No] of 13 April 2022.

10. On 15 April 2022, under Paragraph 2 of Article 9 of the Arbitration Rules, the Executive Administrator notified[4] the Parties of the commencement of the arbitration, the date of commencement of the arbitration – 29 March 2022, and the number assigned to the arbitration – [PI9123-22].

    10.1. Under Paragraph 3 of Article 9 of the Arbitration Rules, the Parties were informed that the rules of international commercial arbitration shall apply to the present arbitration, the dispute shall be heard in the standard procedure, and the place of arbitration shall be Moscow, Russian Federation.

    10.2. Taking into account Paragraph 3 of Article 26 of the Arbitration Rules, the Executive Administrator has determined that until the Arbitral Tribunal determines the language of arbitration in agreement with the Parties according to Paragraph 3 of Article 26 of the Arbitration Rules, the administration of the present arbitration shall be carried out in Russian.

11. All documents of the present arbitration shall be uploaded to the OAS according to Paragraph 4 of Article 5 of the Arbitration Rules.

    11.1. On 4 April 2022, [Name], the Claimant's General Director, was invited to join the case file in OAS at the e-mail address [e-mail], but during the arbitration, he did not use such an opportunity.

    11.2. On 21 April 2022, the Claimant's representative, [Name], using the e-mail [email], confirmed his powers and gained access to the case file in the OAS.

    11.3. On 5 April 2022, the Respondent's representative, [Name], using the e-mail [email], confirmed his powers and gained access to the case file in the OAS.

    11.4. On 4 April 2022, the Respondent's representative, [Name], using the e-mail [email], confirmed his powers and gained access to the case file in the OAS.

    11.5. On 12 May 2022, the Respondent's representative, [Name], using the e-mail [email], confirmed his powers and gained access to the case file in the OAS.

    Therefore, the Parties were allowed to familiarize themselves with the case file and use the OAS to promptly send procedural documents under Article 5 of the Arbitration Rules.

12. Since the claims' value does not exceed USD 500,000.00, the present dispute is resolved by a sole arbitrator under Paragraph 1 of Article 15 of the Arbitration Rules. Based on the Order of the RAC Board of 25 April 2022, **Arkhipova Anna Grigorievna, Deputy Head of Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation, Associate Professor of the Department of Law of Obligations at the S.S. Alexeyev Private Law Research Center, Associate Professor of the S.N. Lebedev Department of Private International and Civil Law at MGIMO, PhD**.

13. On 29 April 2022, the Executive Administrator notified[5] the Parties of the constitution of the Arbitral Tribunal. On 4 May 2022, A.G. Arkhipova accepted the appointment as a sole arbitrator, and

[4] On 15 April 2022, Notice of Commencement of Arbitration (Ref. No. 108/22 of 15 April 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 18 April 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

[5] On 29 April 2022, Notice of Constitution of the Arbitral Tribunal (Ref. No. 121/22 of 29 April 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 4 May 2022, by the Russian Post

confirmed her independence and impartiality, and absence of conflict of interest with respect to the Parties, by signing the arbitrator's declaration.[6]

14. On 11 May 2022, under Paragraph 1 of Article 38 of the Arbitration Rules, the Executive Administrator notified[7] the Parties of the appointment of Bubnova Ekaterina Alekseevna, RAC Case Counsel, as the assistant to the Arbitral Tribunal at the request of the Arbitral Tribunal of 4 May 2022.

15. During the arbitration, no challenges to the Arbitral Tribunal and the assistant were raised.

(Tracking Nos. [No], [No]). Due to an error made by the employees of the Russian Post, the Notice was additionally sent to the Respondent on 18 May 2022 (Tracking No. [No]).

[6] On 4 April 2022, arbitrator's declaration of 4 May 2022 with attachments was uploaded to the OAS, on 13 May 2022, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 16 May 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

[7] On 11 May 2022, Notice of Appointment of Assistant to the Arbitral Tribunal (Ref. No. 127/22 of 11 May 2022) with attachments were uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and, on 16 May 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

POSITIONS OF THE PARTIES AND COURSE OF ARBITRATION

16. On 29 March 2022, the Claimant submitted a Request for Arbitration (hereinafter – **Request**) (Ref. No. 24/*И*-22 of 29 March 2022) to the RAC against the Respondent, claiming recovery of costs for securing the cargo on board the vessel, unsecuring the cargo and clearing the deck on board the vessel, payment for the vessel's demurrage, and interest for the use of the other person's means under the framework contract for the provision of transport forwarding services. To support its claims, the Claimant indicated the following.

16.1. On 30 October 2020, the Parties entered into the Contract for the provision of transport forwarding services of [cargo] carriage from port [A] to port [B], [Country B], by a vessel with a cargo capacity of no less than [volume] m^3, without ship cranes. Under Clause 2.1 of the Contract, once appointed as a Service Provider under the Instruction, the Claimant shall perform or arrange the performance of services as specified by the Instruction, related to cargo carriage per Clause 4.1 of the Contract.

16.2. On 10 September 2021, the Respondent sent to the Claimant an Instruction No. [No] of 10 September 2021 (Ref. No. [No], hereinafter – **Instruction**), containing, according to Clause 4.3 of the Contract, the list and volume of cargo to be transported along the route: [Country A], seaport [A] – [Country B], port [B], port [C] – [Country B], port [C].

16.3. Under Clause 4.5 of the Contract, the Claimant sent to the Respondent a Forwarding agent's Proposal (Ref. No. [No] of 13 September 2021), in response to which the Respondent, under Clause 4.8 of the Contract, sent to the Claimant a Notice of Appointment of the Service Provider (Ref. No. [No] of 16 September 2021).

16.4. Pursuant to Clause 4.9 of the Contract, once the Respondent sent the Notice of Appointment of the Service Provider to the Claimant, the Claimant became obliged to render all the services specified in the Instruction, and the Respondent became obliged to accept and pay for the services duly rendered.

16.5. The price for the services, as agreed upon by the Parties for the execution of the Instruction, was set at USD 1,300,000 (hereinafter – **Service Price**): USD 1,105,000 for chartering a vessel along the route from [A] to port [B] as per the terms of the Instruction and the Contract, and USD 195,000 for an additional service – a vessel call at port [C] to load an additional volume of cargo under the terms of the Instruction, to maintain service continuity.

16.6. On 21 September 2021, the Parties entered into an Additional Agreement No. [No] to the Contract (hereinafter – **Additional Agreement**), whereby the Claimant shall provide the Respondent with additional transport forwarding services, for which the Respondent shall pay USD 195,000. Annex No. 1 to the Additional Agreement further specified that the loading of the cargo on board the vessel at [C] was to be conducted by third parties engaged by the consignor and at its expense and the Instruction given to the Claimant outlined the scope of the services to be provided.

16.7. Having fulfilled its obligations, the Claimant sent to the Respondent the certificates of services rendered No. [No] of 6 October 2021 and No. [No] of 27 November 2021 (hereinafter – **Certificates**), as well as invoices No. [No] and No. [No] of 29 October 2021. On 24 November 2021, the Respondent paid the Claimant USD 195,000 (RUB 14,592,376.50 at the Central Bank's exchange rate of 74.8327) and, on 20 January 2021, USD 1,105,000 (RUB 84,941,018.50 at the Central Bank's exchange rate of 76.8697).

16.8. The Respondent failed to pay the Claimant the costs for:

1) unsecuring the cargo and clearing the deck on board the vessel [Vessel] (hereinafter – **Vessel**) at the port of discharge [B], [Country B], amounting to USD 15,000;

2) payment for the Vessel's demurrage at port [A], amounting to USD 159,790, as per invoice No. [No] of 29 October 2021 per the Shipowner's calculation;

3) securing the cargo (materials and works) on board the Vessel at the port of loading [A] to ensure safe transportation of the cargo, amounting to RUB 3,850,000 under payment order No. [No] of 1 December 2021;

4) purchase of separation materials for cargo securing and the cost for additional cargo securing works at [C], amounting to EUR 4,725.05.

16.9. The Claimant relied on Paragraph 2 of Article 5 of Federal Law No. 87-FZ of 30 June 2003 "On Freight Forwarding Activities" (hereinafter – **Law No. 87-FZ**), which stipulates that the client, following the procedure provided in the contract of transport forwarding, shall pay the forwarding agent the compensation due to the agent, and reimburse expenses incurred by the agent in the interests of the client.

16.10. In support of its claims, the Claimant also relied on Article 395 of the Civil Code of the Russian Federation (hereinafter – **Civil Code**), seeking to recover interest from the Respondent for the use of the other person's means due to the latter's delay in reimbursing the incurred expenses. The Claimant determined the amount of interest payable for the use of the other person's means as follows:

The amount of unpaid expenses in rubles at the Central Bank's exchange rate as of 10 March 2022 1 euro = 126.4395 rubles, and 1 US dollar = 116.0847 rubles	**Period of non-payment**	**Number of days**	**Discount rate**	**Calculation formula**	**Amount of interest payable for the period, rubles**
24,737,877.67	1 January 2022 – 2 February 2022	33	8.5	RUB 24,737,877.67 x 33 days / 365 days x 8.50 / 100	190,108.90
24,737,877.67	3 February 2022 – 27 February 2022	25	9.5	RUB 24,737,877.67 x 25 days / 365 days x 9.50 / 100	160,965.64
24,737,877.67	28 February 2022 – 10 March 2022	11	20	RUB 24,737,877.67 x 11 days / 365 days x 20 / 100	149,105.02
					Total: 500,179.56

16.11. Thus, the Claimant sought to recover from the Respondent:

1) costs for securing the cargo on board the Vessel at the port of loading [C], amounting to EUR 4,725.05;

2) costs for securing the cargo on board the Vessel at the port of loading [A], amounting to RUB 3,850,000;

3) costs for payment for the Vessel's demurrage during the loading of cargo, amounting to USD 159,790;

4) costs for unsecuring the cargo and clearing the deck on board the Vessel at the port of discharge [B], [Country B], amounting to USD 15,000;

5) interest for the use of the other person's means, amounting to RUB 500,179.56;

6) arbitration and representation costs.

17. On 6 April 2022, the Respondent e-mailed an Answer to the Request for Arbitration (hereinafter – **Answer**), disputing the Claimant's claims on the following grounds.

17.1. The Claimant's costs for securing the cargo on board the Vessel at the ports of loading [C] and [A], as well as costs for its unsecuring and clearing the deck on board the Vessel at the port of discharge [B], are included in the price of the Contract between the Claimant and the Respondent, and shall not be reimbursed, as follows from Clauses 5.1, 5.3, 18.3, 5.8, 5.17, 10.2, 10.4 of the Contract, Subclauses 9, 10 and 23 of Clause 2.6 and Subclause 4 of Clause 2.7 of the Special Conditions (Annex No. 2 to the Contract), Annex No. 1 to Technical Specification No. 1 (Annex No. 1 to the Contract), and Clause 2 of the Additional Agreement.

17.2. The Claimant's demurrage costs are not reimbursable because the Claimant has included in the calculation of demurrage not only the loading time but also the time spent by the Claimant fulfilling its own obligations (securing the cargo) and waiting for loading for reasons for which the Claimant is responsible (coordination of access to the berths with the port administration). Moreover, the Respondent contended that the Claimant hindered the cargo loading process by blocking access to the hatches through which the cargo was loaded.

17.3. The Respondent is not liable to pay interest for the use of the other person's means, as it has not breached its monetary obligations.

18. On 13 May 2022, by Procedural Order (hereinafter – **PO**) No. 1,[8] the Parties were invited to discuss the potential for an amicable settlement of the dispute and notify if time and/or place for further discussion is needed, as well as inform no later than 20 May 2022 about any remarks, proposals, or comments on the proposed draft Procedural Schedule. The Claimant was invited to submit the Claim no later than 23 May 2022, the Respondent – the Response no later than 6 June 2022, the Claimant – additional written submissions no later than 15 June 2022, the Respondent – additional written submissions no later than 24 June 2022. Regarding the hearing, the Parties were invited to:

18.1. to hold the hearing on 28 June 2022, at 12:00 Moscow time, at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3; or

18.2. to hold the hearing on 28 June 2022, at 12:00 Moscow time via VC.

19. On 20 May 2022, the Claimant submitted a request for the recalculation of the arbitration fee, disputing the application of the rules of international commercial arbitration to the present dispute. On 24 May 2022, by Procedural Order No. 2[9] on the applicable rules, the Arbitral Tribunal decided that the rules of international commercial arbitration apply to the present dispute, stating the following:

"The parties entered into the Contract, under which the Forwarding agent shall perform or arrange the performance of services, as specified by the instruction, related to the carriage of cargo along the route, and the Client shall accept and pay for the services properly (Clause 2 of the Contract). Under the Contract and the Additional Agreement, the services were rendered with respect to the carriage of cargo along the route [C] ([Country C]) – [A] ([Country A]) – [B] ([Country B]). The Claimant is seeking to recover the costs for the services rendered at ports [C], [A], and [B] and demurrage incurred during the vessel calls at [C] and [A]. Given the composition and scope of the claims, the Arbitral Tribunal acknowledges that the place of performance of a substantial part of the obligations arising out of the parties' relationship was abroad. Therefore, according to Paragraph 3 of Article 1 of the Law of the

[8] On 13 May 2022, PO No. 1 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 16 May 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

[9] On 24 May 2022, PO No. 2 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 25 May 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

Russian Federation of 7 July 1993 No. 5338-1 "On International Commercial Arbitration," the rules of international commercial arbitration shall apply to the present dispute."

20. On 20 May 2022, the Respondent sent its comments on the draft Procedural Schedule, reporting:

    1) its unwillingness to enter into the settlement agreement proposed by the Claimant;

    2) agreement to the draft Procedural Schedule;

    3) intention to file a Counterclaim within the time limit established by the Procedural Schedule for the submission of the Response (until 6 June 2022);

    4) participation in the hearing in person.

21. On 20 May 2022, the Claimant filed a motion of 20 May 2022, stating:

    1) the Respondent's rejection of the Claimant's proposal for an amicable settlement of the dispute;

    2) change of the time limit for the submission of the Claim from "no later than 23 May 2022" to "no later than 1 June 2022";

    3) fixing the time limit for the submission of the Counterclaim and the time limit for the submission of the Response to the Counterclaim ("no later than 29 June 2022");

    4) change the date for filing other written submissions and the hearing date, taking into account the submission of the Counterclaim;

    5) participation in the hearing via VC and holding a test call.

22. On 23 May 2022, the Arbitral Tribunal, by e-mail, invited the Respondent to submit its position on the Claimant's proposals by 26 May 2022, inclusive. Meanwhile, the time limit for submission of the Claim was extended to 26 May 2022, inclusive.

23. On 24 May 2022, the Respondent submitted its written position via e-mail, stating:

    1) disagreement with the change of the date for submission of the Claim to 1 June 2022 (while considering the time limit of 26 May 2022 as sufficient);

    2) fixing the time limit for the submission of the Response and Counterclaim no less than 14 days from the date fixed as the time limit for submission of the Claim;

    3) agreement with the time limit for the submission of the Response to the Counterclaim of no less than 14 days from the date set as the time limit of submission of the Counterclaim;

    4) agreement to a change of the time limits for the submission of other written submissions and the hearing date;

    5) on the occupied dates of the Respondent's primary representative during the summer (from 1 June 2022 to 6 June 2022, from 23 July 2022 to 8 August 2022, and 17 June 2022 and 30 June 2022).

24. On 24 May 2022, by Procedural Order No. 3[10]:

    24.1. The Procedural Schedule was confirmed:

[10] On 24 May 2022, PO No. 3 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 25 May 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

The time limit for submission of the Claim – no later than 30 May 2022;

The time limit for submission of Response – no later than 14 June 2022;

The time limit for submission of Counterclaim – no later than 14 June 2022;

The time limit for submission of Response to the Counterclaim – no later than 18 June 2022;

The time limit for the Parties to submit additional written submissions and evidence on the first Claim – for the Claimant no later than 24 June 2022, for the Respondent no later than 4 July 2022;

The time limit for the Parties to submit additional written submissions and evidence on the Counterclaim – for the Claimant no later than 8 July 2022, and for the Respondent no later than 18 July 2022.

24.2. The hearing was scheduled for 20 July 2022, at 12:00 Moscow time, at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3 (RAC office) with the Claimant's participation via VC (with a test call) or in person.

25. On 30 May 2022, the Claimant filed a Claim against the Respondent for debt recovery (hereinafter – **Claim**) with similar claims as those described in the Request via the OAS. In the Claim, the Claimant supplemented its position as outlined in the Request as follows.

25.1. The Claimant highlighted that once appointed as the Service Provider under the Instruction, its duties, as per Clause 2.1 of the Contract, included performing or arranging the performance of the services defined and specified by the Instruction per Clause 4.1 of the Contract.

25.2. In line with the Instruction, the Claimant shall render the following services:

- arrangement of carriage of a shipload of cargo (sea freight) according to Annex No. 1 to the Instruction, which specifies the dimension and weight characteristics of the cargo;
- carrying out a vessel call at port [C] for additional loading after loading the cargo at port [A];
- delivery of the cargo within 40 calendar days from the date when the loading of the last cargo package at the port of loading is completed, considering the vessel's readiness for unloading at the port of destination.

25.3. On 12 September 2021, the Respondent sent a letter to the Claimant, informing it that, in addition to Annex No. 2 to the Instruction, the loading of cargo onto the vessel at port [A] would be handled by [company name]. In the Claimant's view, the Respondent thus emphasized that the responsibility for loading the cargo onto the vessel did not rest with the Claimant.

25.4. Under the Instruction, the Claimant undertook to "arrange carriage of a shipload of cargo (sea freight) according to Annex No. 1 to this Instruction." Based on the general understanding of the term "arranging cargo carriage (sea freight)" and considering the interpretation of the term "services for arrangement and provision of cargo carriage from transit points to the destination point" as provided in Subclause (8) of Clause 2.4 of the Contract, it follows that the Claimant's obligation, as agreed upon by the Claimant and the Respondent, included selecting and arranging for a sea vessel, based on the dimension and weight characteristics and properties of the cargo, to ensure optimal and safe transportation.

25.5. On 21 September 2021, the Claimant sent an e-mail to the Respondent, informing that, in fulfillment of the Instruction, the Claimant had chartered a Vessel based on the characteristics and properties of the cargo provided by the Respondent in Annexes Nos. 1 and 2 to the Instruction. Charter No. [No] of 21 September 2021 was concluded between the Claimant (as charterer) and the Turkish company [company name] (as shipowner) (hereinafter – **[Shipowner]**).

25.6. After agreeing with the Respondent to change the order of ports of call for loading the cargo ([C] – [A]), the Claimant arranged for the vessel to call at port [C] to load the cargo and then to call at port [A]. On 24 November 2021, the cargo specified in the Instruction was delivered by the Vessel to port [B] and unloaded, thereby fulfilling the Claimant's obligations to provide services per the Instruction.

25.7. The Claimant stated that the Respondent had failed to reimburse it for the purchase of separation materials for cargo securing and the cost of the additional cargo securing works at [C], amounting to EUR 4,725.05.

25.7.1. On 5 October 2021, the Claimant informed the Respondent via e-mail about the difficulties encountered due to the refusal of the agent in port [C] to perform the cargo securing works on board the Vessel.

25.7.2. According to the Claimant, the service under the Instruction consisted of a vessel call at port [C] to load additional cargo, and no other services were specified in the Instruction.

25.7.3. On 29 October 2021, the Claimant provided the Respondent with an additional calculation of these services, along with supporting documents (Ref. No. [No] of 29 October 2021). As follows from Annex No. 1 to the Additional Agreement, Subsection 2.1 of the Technical Specification for the provision of transport forwarding services related to the call at port [C], [Country C] of a vessel with a cargo capacity of no less than 14500 m^3 for cargo operations when sailing from port [A], Russian Federation, to port [B], [Country B] (hereinafter – **Technical Specification No. 2**), loading of cargo in port [C] on board the vessel is carried out by third parties engaged by the consignor and at its expense.

25.7.4. Pursuant to Subsection 2.1 of Technical Specification No. 2, the service to be rendered by the Claimant included the arrangement and provision of vessel call at port [C] for cargo operations. Subsection 2.2. of Technical Specification No. 2 did not include cargo securing as part of the services to be provided by the Claimant, as the subject of the service was the "arrangement and provision of vessel call," not the provision of cargo securing. The Claimant had to incur the cost of additional cargo securing to ensure safe transportation by sea to the port of destination.

25.8. The Respondent failed to pay the Claimant the costs of securing the cargo on board the Vessel at the port of loading [A], amounting to RUB 3,850,000, and the costs of unsecuring the cargo and clearing the deck on board the Vessel at the port of discharge [B], amounting to USD 15,000.

25.8.1. During the loading of the cargo at port [A], to ensure its safe transportation to the destination, the Claimant had to arrange for the cargo to be secured on board the Vessel, covering the costs. The Claimant also had to arrange for securing the cargo and clearing the deck on board the Vessel at the port of discharge [B].

25.8.2. According to the Instruction, the Claimant was obliged to arrange the transportation of a shipload of cargo (sea freight); Annex No. 1 to the Instruction

specified the dimension and weight characteristics of the cargo. At the same time, when sending the Instruction to the Claimant, the Respondent listed the services "necessary to the Respondent," as defined in Subclause 17 of Clause 1.1 of the Contract. Since securing the cargo at port [A] and unsecuring it at port [B] was not part of the service to be performed by the Claimant and "necessary to the Respondent," the relevant costs shall be reimbursed above the agreed price for the service.

25.9. The Respondent did not pay the Claimant USD 159,790 of the Vessel's demurrage costs at port [A], despite invoice No. [No] of 29 October 2021 being issued to the Respondent.

25.9.1. The Claimant had to incur the demurrage costs paid to the shipowner of the Vessel as a result of the actions of the Respondent and persons engaged by it. The demurrage, as calculated by the Claimant, amounts to USD 159,790.

25.9.2. With reference to Article 132 of the Merchant Shipping Code of the Russian Federation (hereinafter – **Merchant Shipping Code**), the Claimant states that demurrage is the amount of charge due to the carrier for the vessel's demurrage beyond the lay time. As a general rule and per Article 130 of the Merchant Shipping Code, the lay time is the period during which the carrier provides the vessel for loading the cargo and keeps it under loading without payments additional to the freight. Since the time spent waiting for loading and the loading operations themselves exceeded the lay time, the shipowner issued a demurrage claim to the Claimant.

25.9.3. The loading and unloading operations at seaport [A] were carried out by a company hired by the Respondent. Therefore, the demurrage costs were not the result of the acts or omissions of the Claimant but were caused by the acts of the Respondent and the persons engaged by it. Had the Claimant failed to pay the demurrage charge to the shipowner, the latter could have exercised a lien on the cargo at the port of discharge in [Country B] and caused losses to the Respondent and its contractors. Therefore, the Claimant, acting in the Respondent's interests, had to pay the demurrage costs to the shipowner in advance.

25.10. Pursuant to Paragraph 2 of Article 5 of Law No. 87-FZ, the client, according to the procedure provided for in the freight forwarding contract, shall pay the forwarding agent the compensation, and reimburse the costs incurred by the agent in the client's interests.

25.10.1. In a letter to the Claimant No. [No] of 27 October 2021, the Respondent confirmed that the total financing under the Contract, equal to the price of the Instruction, does not include "any kind of expenses, losses, or penalties payable due to a breach of the Contract by one of the parties."

25.10.2. The scope of the freight forwarding contract, taking into account the Instruction agreed upon by the parties, involves the Claimant performing certain actions to provide the services outlined in the Instruction. Meanwhile, all costs associated with the process of rendering the services stipulated in the Instruction shall be borne by the Respondent unless such costs are related to the non-performance or improper performance by the Claimant of its obligations.

25.10.3. The Claimant argues that determination of the non-performance or improper performance of the contract by the Claimant, given the specific scope of the contract (which involves performing actions rather than achieving a specific result), is only possible in the absence of the circumstances established by Item 2 of Paragraph 1 of Article 401 of the Civil Code, which provides that a person shall be

recognized as not guilty if, with the extent of care and caution expected of him/her by the nature of the obligation and the terms of the course of events, he/she took all measures for the proper performance of the obligation. The Respondent provided no evidence to the contrary in denying the Claimant reimbursement of its costs.

25.10.4. Relying on Article 309 of the Civil Code, the Claimant noted that the Respondent had failed to fulfill its obligations to reimburse the Claimant for the costs incurred in the Respondent's interests.

26. On 14 June 2022, the Respondent addressed the Claimant with a Response via the OAS, disagreeing with the claims and requesting to dismiss them based on the following.

26.1. The Respondent stated that all instructions to the Claimant shall be executed according to the Contract, regardless of whether the Contractual terms are included in the text of the Instruction.

26.1.1. Under Clause 30.1 of the Contract, the law of the Russian Federation governs the Parties' relations. Referring to Paragraphs 1 and 2 of Article 429.1 of the Civil Code, Paragraph 9 of the Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation of 25 February 2014 No. 165 "Review of Court Practice on Disputes Related to the Recognition of Contracts as Non-Concluded," Paragraphs 30 and 31 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 49 of 25 December 2018 "On Some Issues of Application of General Provisions of the Civil Code of the Russian Federation on Conclusion and Interpretation of Contract," the Respondent asserted that the terms of the Contract are incorporated into the Instruction, provided that the Instruction as a whole aligns with the intention of the parties as expressed in the Contract unless otherwise is specified by the parties or arising from the content of the obligation.

26.1.2. The Instruction aligns with the intention of the Parties as expressed in the Contract, because, firstly, the description of the service in the Instruction (arrangement of carriage of a shipload of cargo from port [A] to port [B] with a call at port [C]) corresponds to the service description in the Contract and Section 1 of the Technical Specification to the Contract (hereinafter – **Technical Specification No. 1**), with the additions made by the Additional Agreement. Secondly, the Instruction was sent to the Claimant, and the Claimant was subsequently appointed as the Service Provider of the Instruction under Clauses. 4.2 – 4.9 of the Contract.

26.1.3. It follows from the Contract and the Instruction that the Parties expressly agreed that the Forwarding agent shall provide the services specified in the instructions under the terms of the Contract.

Firstly, according to Clause 5.1 of the Contract, the services outlined in the Instruction shall be rendered by the Forwarding agent based on (a) the Contract, including Technical Specification No. 1 and Special Conditions; (b) the Instruction; and (c) the Forwarding agent's Proposal (if any), with the terms of the Contract taking precedence over those of the Instruction.

Secondly, as stipulated in Clause 2 of the Additional Agreement, the vessel call at [C] for additional loading, being an additional service within the meaning of the Additional Agreement, shall be carried out per the terms of the Contract. Since Clause 30.3 of the Contract states that all annexes form an integral part of the Contract, the additional service of vessel call at [C] is also rendered under the

terms of Technical Specification No. 1. Moreover, according to Clause 5.1 of the Additional Agreement, Technical Specification No. 1 defines the requirements for rendering services, including for additional service. Therefore, Technical Specification No. 2 does not exclude the application of the provisions of Technical Specification No. 1 to the additional service of the vessel call at [C] but only supplements it with new requirements.

Thirdly, according to Subsection 3.2 of Technical Specification No. 2, when providing services under the Additional Agreement, the forwarding agent shall provide a full set of measures subject to the terms of the Contract, including per the terms of Technical Specification No. 1, as a part of the Contract.

Fourthly, as stated in the Instruction, the Respondent requests that "in the event, the Forwarding agent is appointed as the Service Provider of the Instruction, the Services shall be rendered under the terms of the framework Contract."

26.1.4. Thus, in the Respondent's view, based on Article 429.1 of the Civil Code, as well as the provisions of the Contract and the Instruction, the terms of the Contract are part of the Instruction. Therefore, any term stipulated in the Contract, including its annexes, shall be deemed to be a term stipulated in the Instruction, even if not explicitly stated in the Instruction.

26.2. The Respondent contends that the disposition and securing of cargo on transport, purchase, use, removal, and disposal of covering, separation, and securing materials are included in the service provided under the Instruction, as follows from Clauses 5.8, 5.17, 10.2, 10.4 of the Contract, Subclauses 9, 10, and 23 of Clause 2.6, Subclauses 4 and 14 of Clause 2.7 of the Special Conditions, Annex No. 1 to Technical Specification No. 1. Meanwhile, the Respondent emphasizes that the Special Conditions contained in Annex No. 2 to the Contract take precedence over other provisions of the Contract and instructions per Clause 30.4 of the Contract and Clauses 1.2 and 1.3 of the Special Conditions.

26.3. On 1 October 2021, via email, the Respondent addressed the Claimant's request for instructions related to the work of securing and purchasing materials. The Respondent clarified that, under the Contract, the responsibility for securing the cargo on the vessel and purchase of separation and securing materials rests with the Claimant, and all costs are included in the service price under the Instruction. This position was reaffirmed by the Respondent in an e-mail to the Claimant on 4 October 2021.

26.4. In a letter No. [No] of 27 October 2021 to the Claimant, the Respondent addressed the Claimant's request for a reconciliation report, as outlined in the Claimant's letter No. [No] of 21 October 2021. In this letter, the Respondent clarified Clause 3.3 of the Contract, which provides for the early termination of the Contract upon reaching the Total Financing Amount. According to the Respondent, this amount includes only the price for the services specified in the Instruction, which encompasses all actions included in the scope of service but does not account for losses, penalties, and other expenses payable due to a breach of the Contract by either party.

26.5. The Contract stipulates a fixed price for the services rendered by the Claimant, which includes all costs incurred by the Claimant in connection with providing the services.

26.5.1. Paragraph 2 of Article 5 of Law No. 87-FZ, to which the Claimant refers, is not a peremptory norm according to Paragraphs 2, 3, and 4 of the Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation of 14 March 2014 No. 16 "On Freedom of Contract and Its Limits."

26.5.2. Paragraph 2 of Article 5 of Law No. 87-FZ does not exhibit any characteristics of peremptoriness, which is also supported by Paragraph 26 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 26 June 2018 No. 26 "On Certain Issues of Application of the Legislation on the Contract of Carriage by Road of Goods, Passengers, and Luggage and on the Transport Forwarding Contract." A similar stance is reflected in the Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of 22 December 2020 No. 307-ЭС20-13121 in Case No. A66-5900/2019.

26.5.3. The Respondent refers to Clause 5.3 of the Contract, under which the Claimant shall duly perform all necessary actions to ensure the execution of the instruction, as well as safety, security, quantity, quality, condition, completeness, and packing of the Cargo during the chosen method of transportation and reloading, as well as Clause 18.3 of the Contract, which expressly states that the price for the Claimant's service is expressed as a fixed amount, without indicating costs.

26.5.4. According to Clause 16.1 of the Contract, the Forwarding agent is entitled to engage co-service providers to render services under the Contract, complying with the terms of engagement outlined in the Special Conditions. Meanwhile, Subclause 4 of Clause 2.7 of the Special Conditions allows to engage third parties to fulfill the Forwarding agent's obligations to ensure proper disposition and securing of the cargo. Clause 16.6 of the Contract expressly provides that the Forwarding agent shall bear, at its own expense, any costs associated with engaging co-service providers, and the Forwarding agent has no right to seek reimbursement for these costs.

26.5.5. The Respondent's reimbursement of the costs incurred by the Claimant in engaging other persons to perform operations included in the scope of services under the Contract contradicts Clause 16.6 of the Contract. Based on Clauses 5.3, 16.6, and 18.3 of the Contract, the Respondent states that the Claimant shall, in any event, at its own expense, perform all necessary actions for the delivery of the cargo to [B]. Thus, under Paragraph 2 of Article 5 of Law No. 87-FZ, the Claimant's claims for reimbursement of costs do not comply with the Contractual terms and should not be granted.

26.6. The Claimant's costs for the Vessel's demurrage were not caused by the Respondent's breach of the Contract and, therefore, are not recoverable.

26.6.1. The Claimant supported its claim for demurrage by referring to the terms of the charter contract with the [Shipowner]. According to the [Shipowner]'s letter to the Claimant of 30 November 2021, the [Shipowner] requested the Claimant to reimburse USD 159,790 based on the demurrage calculation of 27 October 2021 (hereinafter – **Calculation of 27 October 2021**). The Calculation states that the total authorized loading time at ports [C] and [A] (including weekends) amounted to 7 days (168 hours), of which 8.84 hours were used at port [C]. Therefore, 159.16 hours remained for loading at [A].

26.6.2. At port [A], the [Shipowner] calculated the loading time from [date, time] to [date, time], resulting in a total demurrage time of 201.89 hours (8.41 days). According to the Calculation of 27 October 2021, the demurrage rate was set at USD 19,000 per day, resulting in a total demurrage amount of USD 159,790.

26.6.3. The Claimant has not provided evidence that the Respondent breached the Contract, therefore, the claim for losses is unlawful. Thus, the Respondent, referring to Article 15 of the Civil Code, proceeds from the fact that the Claimant

could seek reimbursement for costs if they constitute losses – expenses incurred to restore its right that has been violated by the Respondent. Moreover, the Claimant shall prove the fact that it has borne losses and demonstrate that the Respondent's actions (inactions) caused the losses and prove the facts of a breach of obligation or infliction of harm, as well as the existence of losses (Paragraph 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 23 June 2015 No. 25 "On Application of Certain Provisions of Section I Part 1 of the Civil Code of the Russian Federation by Courts" (hereinafter – **Resolution No. 25**), Paragraph 5 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 24 March 2016 No. 7 "On Application of Certain Provisions of the Civil Code of the Russian Federation Regarding Liability for Breach of Obligations by Courts" (hereinafter – **Resolution No. 7**).

26.6.4. The Claimant not only failed to provide evidence of a breach of obligations by the Respondent but also did not refer to any breach by the Respondent that resulted in the Claimant incurring losses in the form of demurrage payment to the shipowner. Nor has the Claimant submitted evidence that the demurrage costs were actually incurred. Therefore, the Respondent argues that the Claimant has not met the requirements to recover demurrage costs from the Respondent.

26.6.5. According to the Respondent, the delayed start of loading (from 15 October 2021) was due to reasons for which the Claimant is responsible. The Respondent refers to the Claimant's claim letter to the Respondent No. [No] of 2 December 2021 (hereinafter – **Claim Letter**), which states that the start of loading on 15 October 2021, caused by the occupancy of all berths at [Stevedoring Company at Port A], was the reason for exceeding the lay time and incurring demurrage. The Claimant stated that the demurrage costs were incurred due to the actions of the Respondent and the persons engaged by it, a conclusion with which the Respondent disagrees.

26.6.6. The Claimant was obliged to ensure that the Vessel could be berthed at port [A] on time for loading, as stipulated in Subclause 8 of Clause 2.6 of the Special Conditions (the organization of bringing the vessel alongside the quay for loading/unloading in the ports is part of the Claimant's services); Subclause 7 of Clause 2.6 and Subclause 4 of Clause 2.7 of the Special Conditions (the Claimant is required to organize confirmation by the loading port administration regarding the acceptance of the Vessel for loading and unloading operations); Annex No. 1 to the Technical Specification No. 1, Clauses 5.27 and 16.3 of the Contract. The absence of available berths at the port by the time of the Vessel's arrival is the responsibility of the Claimant who was unable to organize timely bringing the Vessel alongside the quay and therefore must bear the relevant costs.

26.6.7. According to Clause 50 of the "General Rules of Navigation and Staying of the Vessels in the Seaports of the Russian Federation and Approaches to Them" (approved by the Order of the Ministry of Transport of the Russian Federation No. 463 of 26 October 2017) (hereinafter – **General Rules**), the ship captain (shipowner) or maritime agent shall enter information on the vessel call at the seaport into the information system of the state port control (hereinafter – **ISGPK**) no later than 72 hours and no earlier than 120 hours before the planned time of the vessel call at the seaport. According to Paragraph 51 of the General Rules, the ship captain (shipowner) or maritime agent shall confirm the information on the vessel call to the seaport in ISGPK between 48 and 24 hours before the expected vessel call at the seaport. Pursuant to Paragraph 83 of the General Rules, the

anchoring or bringing the vessel alongside the quay (berths), as well as changes in berthing places, are carried out under the daily schedule of ships' positioning and movement in the seaport approved by the seaport captain.

26.6.8. Based on the Calculation of 17 October 2021, the Vessel arrived at port [C] on 5 October 2021 and departed on 6 October 2021 after the completion of loading. The Vessel arrived at seaport [A] on 10 October 2021, as evidenced by the Statement of facts (hereinafter – **SoF**) and the report of the seaport [A] captain on the Vessel call at this seaport from 10 October 2021 to 26 October 2021 (hereinafter – **Report of 26 October 2021**). According to the Respondent, the time period specified in these documents was within the timeframe stipulated by Paragraph 50 of the General Rules and should have been considered by the Claimant and the carrier engaged by it (including the agent) when planning and executing the vessel call. The absence of available berths at the port's cargo terminals, referenced by the Claimant in its letter of 12 October 2021 Ref. No. [No], was not an unforeseen circumstance for the Claimant and the carrier engaged by it, and they had a real opportunity to plan and coordinate the vessel call at the port in such a way as to avoid waiting in line for an available berth.

26.6.9. The demurrage and costs incurred by the Claimant arose due to its improper performance of obligations. Therefore, the Claimant's claims and arguments in this regard are without merit. In the Respondent's opinion, this is confirmed by the Resolution of the Commercial Court of the North Caucasus District of 30 August 2019 No. Ф08-7532/2019 in Case No. A32-6234/2017.

26.7. Until 15 October 2021, the Vessel was loaded at another berth with third party's cargo under the direction of the Claimant and was not waiting for loading pursuant to the Respondent's Instruction.

26.7.1. In a letter No. [No] of 12 October 2021, the Claimant informed the Respondent that the Vessel arrived at port [A] on [date, time]. However, the Claimant first decided to bring the Vessel for loading at the berths of another [Stevedoring company in port A] on [date] (berth No. [2]) and only then at the berth of [Stevedoring company in port A] (berth No. [1]), which is confirmed by the Report of 26 October 2021. According to the Report of 26 October 2021, the Vessel [date, time] stood at the receiving buoy; [date, time] stood for loading at berth No. [2], where it stayed until [date] inclusive; from [date] to [date] it was on loading at berth No. [1]; on [date, time], it put to sea. The SoF further indicates that the Vessel proceeded to berth No. [2] on the morning of [date], where it remained until the morning of [date], after which it moved to berth No. [1].

26.7.2. The Vessel was loaded with the Respondent's cargo at berth No. [1] starting only from 15 October 2021. Before that, from 12 October 2021, the Claimant loaded the Vessel with cargo unrelated to the Respondent at berth No. [2]. The Claimant sought compensation for a time during which it made commercial use of the Vessel for the benefit of third parties, as a demurrage, which is unlawful.

26.8. The Claimant included in its calculation of demurrage the time it spent fulfilling its own obligations to secure the cargo on the Vessel, as well as the time when loading was impossible for reasons beyond the Respondent's control.

26.8.1. The Respondent referred to Paragraph 3 of Article 130 of the Merchant Shipping Code, which states that the time during which cargo loading was not carried out due to reasons depending on the carrier, or force majeure or hydrometeorological conditions threatening the safety of cargo or holding up its safe loading, shall not

be included in the lay time. The loading of the cargo at port [A] was carried out with the participation of an independent [Surveyor company], which prepared a surveyor's report of 6 November 2021 (hereinafter – **Surveyor's Report**). The Surveyor's Report indicates that loading of the Respondent's cargo onto the Vessel at berth 41 commenced on [date, time] and ended on [date, time].

26.8.2. According to the Surveyor's Report, this period includes both operations under the Claimant's responsibility and periods when loading was not possible for reasons beyond the Respondent's control. The Respondent attached to its Response a calculation of the time for operations not directly related to loading, based on the Surveyor's Report (hereinafter – **Operations Calculation**), which include closing the tween deck hatch covers (total time – 9 hours), moving cargo along the tween deck (total time – 40 minutes), interruption in loading due to waiting for cargo disposition in the hold (total time – 25 hours 13 minutes), moving cargo places in the hold (total time – 4 hours 7 minutes), and preparation for loading on the hatch covers (total time – 40 minutes).

26.8.3. The Respondent noted that time spent on disposition and securing the cargo on the Vessel, which was the Claimant's responsibility, should not be included in the demurrage caused by the Respondent.

26.8.4. Based on Paragraph 85 of the General Rules, the Respondent stated that cargo operations were suspended due to a storm alert (strong wind) for a total of 9 hours. The Respondent argued that it was unlawful to charge it with the costs incurred as a result of waiting for loading due to weather conditions, as it cannot be held liable for them.

26.9. The Claimant prevented the timely loading of the Vessel, which contributed to the demurrage costs.

26.9.1. The Respondent referred to Annex No. 1 to Technical Specification No. 1, which states that the loading of cargo on board the Vessel at port [A] is carried out by third parties engaged by the consignor and at its expense. Loading is not possible without the carrier performing certain actions, such as providing the appropriate vessel, and ensuring unimpeded access to the cargo loading areas (hatchways, etc.), as outlined in Article 124 of the Merchant Shipping Code. Since the Claimant is responsible for chartering the Vessel and managing relations with the carrier, the Respondent's obligation to ensure the loading of cargo onto board the Vessel corresponds to the Claimant's obligation to ensure conditions for unimpeded loading of cargo onto the Vessel. However, the Claimant failed to ensure that all hatches were opened to load the Vessel at maximal speed.

26.9.2. The Respondent relied on the description of the Vessel attached by the Claimant to the Request (hereinafter – **Vessel Description**). The Description indicates that the Vessel is equipped for loading and unloading with an aft ladder, a side door, hatch (hold cover) No. 1, hatch (hold cover) No. 2, and hatch (hold cover) No. 4. The Respondent also drew attention to the cargo disposition plan (cargo plan) on the Vessel (hereinafter – **Cargo Plan**), according to which (1) the Respondent's cargo loaded at port [C] (marked on the Cargo Plan in blue, labeled [C] [B]), (2) the Respondent's cargo loaded at port [A] (marked on the Cargo Plan in pink, labeled [A] [B]), and (3) a third party's cargo loaded at port [A] (marked on the Cargo Plan in green, labeled [A] [B.2]) were dispositioned on the Vessel. Respondent's cargo loaded at port [A] was primarily dispositioned on the lower deck (tween deck), with a small portion placed on the main deck.

[table]

26.9.3. The first cargo loaded onto the Vessel at port [C] was the Respondent's cargo, as evidenced by the SoF drawn up by the ship agent at port [C] of [company name]. Second, in turn, was the cargo, belonging to a third party and intended for shipment to port [B.2], which was loaded onto the Vessel at port [A] at berth No. [2] from 12 October 2021 to 15 October 2021. The Respondent's cargo was loaded last at port [A], from 15 October 2021 to 26 October 2021, after the third party's cargo was already on the Vessel.

26.9.4. Upon comparing the Vessel Description and the Cargo Plan, the Respondent noted that the third party's cargo dispositioned on the main and lower decks, blocked access to hatch No. 4 and hatch No. 1 and, consequently, to holds No. 4 and No. 1. Due to the peculiarities of the berth (railroad tracks between the berth and the berthing place), the aft cargo ladder and side door could not be used. Therefore, the Respondent's cargo could be loaded only through one hold – hold No. 2.

26.9.5. During the loading of its cargo, the Respondent contacted the Claimant twice to inform it that only one hold was being used for loading, which was causing delays, and to request that another hold be opened. The Respondent addressed the Claimant by letters No. [No] of 15 October 2021 and No. [No] of 18 October 2021. Despite these requests, the Claimant did not ensure the opening of additional holds.

26.9.6. The Respondent referred to Article 404 of the Civil Code, which stipulates that if non-performance or improper performance of an obligation is due to the fault of both parties, the court shall reduce the amount of the debtor's liability accordingly. The Respondent also relied on Paragraph 5 of Resolution No. 7.

26.9.7. The Claimant did not refer to the Respondent's breach of the Contract, other than the Respondent's refusal to reimburse the disputed costs, and requested reimbursement for costs that do not qualify as losses. However, in the Respondent's view, regardless of whether the Respondent breached the Contract and whether the demurrage costs constitute losses, the Claimant contributed to the increase in these costs by closing all but one hold for loading. Therefore, the excess loading, if any, was the fault of the Claimant and the costs associated with it should not be recoverable from the Respondent.

26.10. The Respondent requested that the claims be dismissed in full.

27. On 14 June 2022, the Respondent (Counterclaimant) submitted a Counterclaim via the OAS, seeking to recover from the Claimant (Counterrespondent) a fine of USD 130,000 under the Contract due to the late provision of security. In its submission, the Counterclaimant stated the following.

27.1. The Counterclaimant referred to Article 13 of the Arbitration Rules as the basis for filing the Counterclaim and argued that the arbitration agreement in Clause 24 of the Contract covers both the Claimant's claims and the Counterclaimant's counterclaims.

27.2. According to Clause 1.1 of Annex No. 5 to the Contract "Procedure and Conditions of Provision of Security by the Forwarding Agent" (hereinafter – **Annex No. 5 to the Contract**), the Counterrespondent shall provide security to the Counterclaimant to ensure the proper fulfillment of obligations under each instruction for which the Counterrespondent has been selected as the service provider. The security shall be provided within 15 calendar days from the date the Counterrespondent receives the Notice of Appointment of the Service Provider, as specified in Clause 1.5 of Annex No. 5. Pursuant to Subclause 4 of Clause 1.11 of Annex

No. 5 to the Contract if the delay in providing security is 30 calendar days or more, the Counterclaimant shall be entitled to demand a fine of 10% of the price for the service under the relevant instruction.

27.3. The Counterrespondent did not provide any security for the fulfillment of the obligations. As a result, the Counterclaimant sent a claim letter No. [No] of 10 February 2022 (hereinafter – **Claim Letter of 10 February 2022**), demanding the payment of a fine for the material default in providing security, to which the Counterrespondent sent a reply No. [No] of 11 February 2022 (hereinafter – **Reply to the Claim Letter**). In the reply, the Counterrespondent denied the Claim Letter and stated that the services of the Counterrespondent were accepted and paid by the Counterclaimant, who had not requested from the Counterrespondent any of the securities provided by the Contract until the moment of fulfillment of the primary obligation. This, according to the Counterrespondent, indicates that the Counterclaimant did not require security. The reply to the Claim Letter also stated that the Counterclaimant's demand for a fine for the failure to provide security contradicted Article 450.1 of the Civil Code and amounted to an abuse of right.

27.4. Referring to Articles 309 and 310 of the Civil Code, the Counterclaimant stated that the failure of the Counterrespondent to provide security is a failure to fulfill its obligations and a breach of the Contract, namely Clause 1.5 of Annex No. 5 to the Contract. Meanwhile, according to Clauses 1.2 and 1.4 of Annex No. 5 to the Contract, the security could be provided in the form of a bank guarantee, surety, or advance, and it should remain valid until the expiration of the time limit for rendering services under the instruction, extended by 60 days. Given that on 17 September 2021, the Counterrespondent received the Notice of Appointment of the Service Provider under the Instruction, it was required to submit one of the securities provided for by 2 October 2021.

27.5. In Clause 1.11 of Annex No. 5 to the Contract, the Parties agreed that a breach of the time limit for providing security for more than 30 days would constitute a material default of the obligation, one of the consequences of which would be a fine of 10% of the price for the service under the relevant instruction. According to Article 330 of the Civil Code, the Counterclaimant is entitled to demand payment of the fine, as the Counterrespondent failed to fulfill the obligation to provide security, and the delay exceeded 30 days. According to the calculation, the Counterrespondent should pay a fine of USD 130,000 (10% of the price for the service under the Instruction of USD 1,300,000), and, according to Clause 18.7 of the Contract, the payment should be made in Russian rubles at the exchange rate of the Central Bank at the payment date.

27.6. The Respondent's failure to provide security is a violation of the Federal Law of 18 July 2011 No. 223-FZ "On Procurement of Goods, Works, and Services by Certain Types of Legal Entities" (hereinafter – **Law No. 223-FZ**). The Counterclaimant asserted that it is subject to the provisions of the procurement legislation and carries out procurement per Law No. 223-FZ. The Counterclaimant referred to Paragraph 2 of Article 2 of Law No. 223-FZ, which states that the procurement regulation is a document that governs the client's procurement activities and contains the procedure for the conclusion and performance of contracts, as well as other provisions related to procurement. For the Counterclaimant, the procurement regulation is the [**Procurement Regulation**], an extract from which, in the part relevant to the Counterclaim, is attached to the Counterclaim.

27.7. Annex No. 5 to the Contract contains all necessary conditions for the provision, return, and retention of securities related to the Contract performance, as required by Paragraph 3 of Article 5.2.2 of [Procurement Regulation]. All bidders for the contract are invited to sign a contract with identical terms according to Paragraph 6 of Article 3 of Law No. 223-FZ and the principles of procurement under Paragraph 1 of Article 3 of Law No. 223-FZ. The

Counterclaimant offered all bidders to conclude a contract on terms identical to the Contract, including the conditions for the provision of securities.

27.8. The Counterclaimant highlighted the peculiarity of the Contract in that it was concluded following a procurement conducted under a category strategy, i.e., framework contracts were concluded not only with the Counterrespondent but also with other bidders for the contract. When the need arises to provide a particular service under a framework contract, an instruction is sent to all bidders who have signed such a contract, and the most favorable offer for the client is selected from the received offers, as outlined in Article 4 of the Contract.

27.9. The peculiarity of the conclusion of framework contracts necessitated the use of the security arrangement outlined in Annex No. 5 to the Contract, as the standard security arrangement would have significantly disadvantaged the forwarding agent. Thus, the forwarding agent shall provide security only after being notified that it has been selected as the service provider for a specific instruction, and only for the price of that instruction. Such a security arrangement deprives the Counterclaimant of the possibility to use such traditional consequences of failure to provide security as non-conclusion of the contract, repudiation of the contract, and withholding the instruction since too much time passes between the occurrence of the need for transport forwarding services and the time when security is provided to allow for the selection of an alternative forwarding agent.

27.10. The only mechanism capable of inducing the forwarding agent to fulfill its obligations to provide security is the fine stipulated in Subclause 4 of Clause 1.11 of Annex No. 5 to the Contract. Therefore, rendering unenforceable the contractual provision on the right of the Counterclaimant to demand payment of a fine in the event of a material breach of the obligation to provide security encourages bad faith behavior of the Counterrespondent in the form of a breach of the Contract. It also deprives the Counterclaimant of the possibility to compel the Counterrespondent to perform the Contract and gives an undue advantage to contract bidders who do not intend to comply with all the terms of the framework contract. This would discriminate against those bidders who act in good faith and factor the costs of providing security into their bids.

27.11. The Counterclaimant considered the arguments presented by the Respondent in the Reply to the Claim letter to be without merit.

27.11.1. While the Respondent's services under the Counterclaim were accepted and paid for, the acceptance of the service and its payment are not related to the Respondent's obligation to pay a fine for failing to provide the required security. Therefore, the signing of the Certificates of Services Rendered under the Contract and their payment does not indicate that the Counterclaimant, as the Client, has forfeited the right to accrue and recover penalties agreed upon in the Contract.

27.11.2. The Counterclaimant finds unsupported the argument that it did not require security due to the absence of a requirement to provide security until the moment of fulfillment of the primary obligation. Annex No. 5 to the Contract clearly and unconditionally specifies the obligation of the Counterrespondent to provide security for its obligations. Meanwhile, the Counterclaimant is under no obligation to remind the Respondent to fulfill its obligation as outlined in the Contract, although a reminder was sent to the Counterrespondent by e-mail of 6 December 2021.

27.11.3. Regarding the argument on the inconsistency of the claim for payment of the fine with Article 450.1 of the Civil Code, the Counterclaimant based on Paragraphs 6 and 7 of Article 450.1 of the Civil Code, stated that it never waived its right for a fine due to the breach of the Respondent's obligation to provide security, as

confirmed by the e-mail of 6 December 2021. Meanwhile, since neither the Contract nor the law establishes a time limit within which the Counterclaimant is entitled to demand payment of the fine, Article 450.1 of the Civil Code does not apply to these relations.

27.12. Before sending the demand for payment of the fine in the letter of 6 December 2022, the Counterclaimant had reminded the Counterrespondent of the consequences of failing to provide security to encourage compliance with its obligations. The demand for payment of the fine was submitted on 10 February 2022, approximately two months after the grounds for demanding the fine had arisen, which should not be considered an abuse of right, given that the demand was filed within the limitation period.

27.13. The failure of the Counterrespondent to fulfill its obligation to provide security in relation to the performance of the Instruction does not exclude its liability for breaching the terms of the Contract on such security, even after the performance of the Instruction was completed (Item 1 of Paragraph 1 of the Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation of 21 December 2005 No. 104 "Review of the Practice of Application by Commercial Courts of the Provisions of the Civil Code of the Russian Federation on Certain Grounds for Termination of Obligations" (hereinafter – **Information Letter No. 104**), Paragraph 68 of Resolution No. 7, Clause 3.5 of the Contract, as well as Item 2 of Paragraph 3 of Article 425 of the Civil Code and Paragraph 4 of Article 425 of the Civil Code.

27.14. Therefore, the Counterclaimant sought to recover from the Counterrespondent a fine of USD 130,000 under the Contract.

28. On 24 June 2022, the Claimant submitted its Objections to the Respondent's Response of 23 June 2022 (hereinafter – **Objections to the Response**) via the OAS. The Claimant stated the following.

28.1. In its introductory remarks, the Claimant stated that the claims encompass recovery of contractual debt from the Respondent, not recovery of losses.

28.2. Regarding the scope of services to be rendered, the Claimant highlighted the number of transport forwarding services specified in the Contract: 12 services under Clause 2.4 of the Contract, 14 services under Technical Specification No. 1, and 18 services under Annex No. 2 to the Contract. The Respondent's logic that all services specified in the framework Contract must be performed is contradicted by the fact that the Respondent signed the Certificates of Services Rendered, despite the Claimant's not performing a number of services. If requested to provide services other than those specified in the Instruction, the Respondent would have been forced to specify such services in the Instruction or to carry out a new procedure for appointing a service provider for a new instruction, as outlined in the Contract.

28.3. The Claimant contended that the Respondent had misinterpreted Paragraph 2 of Article 5 of Law No. 87-FZ, which does not have a dispositive character concerning the client's obligation to reimburse the forwarding agent for costs incurred by the forwarding agent for the client's interest, in addition to the payment of the forwarding agent's remuneration. The Claimant also quoted Item 3 of Page 9 of the Response, where the Respondent confirmed that "the price for the services under the instruction is an exhaustive payment for the forwarding agent's performance of its duties under the relevant instruction." Thus, the Claimant argued that services not included in the Instruction and rendered by the Claimant to the Respondent in its interests or in connection with the actions of the Respondent / the persons engaged by the Respondent should be reimbursed above the agreed price.

28.4. Attached to the Objections to the Response was an interview of [**Witness**] conducted by the Claimant's representative, attorney [Name] (hereinafter – **Interview Protocol**). During the

disputed period, [Witness] served as the Claimant's supercargo. According to [Witness]'s testimony, one of the main criteria for the possibility of bringing the vessel alongside the quay of [Stevedoring Company at Port A], specifically at berth No. [0] where the Vessel was loaded is the possibility of accepting the vessel for handling and cargo operations at that particular berth. Meanwhile, the stevedoring company never confirms acceptance of the vessel for handling if, firstly, the cargo is not ready for loading, secondly, if the cargo documents are not properly drawn up, and thirdly, if the special equipment required for loading oversized or heavy cargo is not ready.

28.5. On 12 October 2022, the Claimant informed the Respondent in a letter that, according to [Stevedoring Company at Port A] and the forwarding agent engaged by the Respondent or its contractor, it was not possible to bring the vessel directly from the approach due to the unpreparedness of the cargo and the lack of available berths at the terminal of the stevedoring company where the Respondent intended to load. The loading time depends on various factors related to the cargo, the stevedoring company, and the consignor and includes the disposition and movement of the cargo lifted by the port crane into the hold or tween deck of the vessel. Lay time and demurrage time are determined based on the timesheet drawn up by the ship or the ship agent and signed by the ship administration, the ship agent, and the stevedoring company, as well as on the basis of the notice of readiness.

28.6. The report of 26 October 2021, issued by the seaport captain and attached to the Response, cannot serve as a basis for calculating lay time and demurrage time, as the seaport captain's functions do not include overseeing a time of cargo operations and vessel berthing. Moreover, lay time cannot be calculated based on the Surveyor's Report submitted by the Respondent, as the surveyor conducted the loading survey at the request of the [Transport Company], which is neither a party to the Contract nor authorized by the Parties to calculate the time. The Operations Calculation submitted by the Respondent lacks a signature and was prepared based on unidentified documents by an unknown individual, yet it supports the Claimant's arguments that substantial time was taken up by "moving the cargo on the berth" and "dispositioning the cargo in the hold," for which the Claimant is not responsible.

28.7. The Claimant considers the Respondent's allegation that the Claimant prevented the timely loading of the Vessel to be without merit. The vessel is a Ro-Ro[11] type vessel, which the Respondent was aware of, having been informed by the Claimant. Therefore, the Respondent's allegations that the Claimant intentionally blocked access to the loading hatches are untrue. According to the testimony of [Witness], the tween deck of holds No. 3 and No. 4 of the Vessel cannot be opened from above. When the Vessel was loaded, the doors of the tween decks were opened for loading on a Ro-Ro basis, and loading was carried out by rolling into these tween decks and hold No. 3. Regarding the cargo disposition, the Claimant pointed out that the cargo loaded at port [C] was placed in hold No. 1 because [C] was the first port of call. This arrangement was in line with good maritime practice, ensuring the vessel's stability, even distribution of the load, and reducing the vessel's handling time by allowing for quick access.

28.8. The Claimant was not the person whose obligations included arranging and carrying out the loading at port [A], and the loading and cargo dispositioning operations were not organizationally and temporally dependent on the Claimant's actions. Therefore, the Claimant should not be held accountable for the demurrage of the Vessel during the loading of the Respondent's cargo.

28.9. Thus, the Claimant proceeds from the fact that the Respondent has not reimbursed it for all costs incurred in the performance of the Instruction, and the Respondent's refusal to

[11] [Rolker; RORO or ro-ro — a vessel for transportation of wheeled cargo and passengers. The main difference of this type of vessel is horizontal loading/unloading through a tilting bow or aft].

reimburse the relevant costs entitles the Claimant to claim payment of the debt through this arbitration.

29. On 28 June 2022, by Procedural Order No. 4,[12] in relation to the [Witness] interview protocol of 22 June 2022 attached by the Claimant, the Claimant was invited to provide a written statement by 4 July 2022, inclusive, containing information on the name of the witness that the Claimant intends to call, as well as the subject matter of the testimony, its relevance to the case, and the merits of the dispute, as outlined in Paragraph 1 of Article 43 of the Arbitration Rules.

30. On 28 June 2022, the Counterrespondent submitted a Response to the Counterclaim via the OAS, addressing the Counterclaimant (hereinafter – **Response to the Counterclaim**). In the Response, it requested to reject the counterclaims and, if the counterclaims were to be upheld, to reduce the fine under Article 333 of the Civil Code. The Counterrespondent stated the following.

30.1. The Counterclaimant misinterpreted the legal rules regarding the provision of security for the performance of the obligation and the consequences of failing to do so.

30.2. According to Clause 21.2 of the Contract and Clause 1.1. of Annex No. 5 to the Contract, the Forwarding agent shall provide security for the proper fulfillment of its obligations. Meanwhile, the security to be provided is the security for the fulfillment of the obligation agreed in the Instruction, which, according to the Counterrespondent, was confirmed by the Counterclaimant in Attachment No. 3 to the Counterclaim (Claim Letter of 10 February 2022).

30.3. The security for the performance of contractual obligations is a legal mechanism designed to protect the Client's interests against breaches by the Forwarding agent of the secured obligations specified in the Instruction. In this scenario, the Client is granted additional rights that can be exercised only if the Forwarding agent breaches the secured obligation specified in the Instruction, which has not occurred, as the Forwarding agent fulfilled its obligations.

30.4. Termination of the obligation through performance, as stated in Paragraph 4 of Article 329 of the Civil Code, also results in termination of the obligation securing performance. The Counterrespondent noted that, based on Subparagraph 2 of Paragraph 1.4 of Annex No. 5 to the Contract, the security for performance was terminated on 26 January 2022.

30.5. The Counterrespondent referred to Paragraph 7 of Article 450.1 of the Civil Code, which states that if, upon the occurrence of circumstances specified in the contract and serving, in the client's view, as the basis for the exercise of a certain right, the client does not exercise that certain right within the period provided for in the contract, the subsequent exercise of this right on the same grounds is not allowed. The Counterclaimant's actions (accepting the performance of obligations under the Instruction, paying for the Forwarding agent's services, and not repudiating the Contract) created reasonable expectations for the Counterrespondent that the Counterclaimant had no intention to demand the provision of security for performance, which became the basis for further behavior of the Counterrespondent when interacting with the Client.

30.6. Considering that the Counterrespondent received the Notice of Appointment of the Service Provider on 17 September 2021 and that the Client had the right to unilaterally withdraw from the Instruction starting from 3 October 2021, according to Clause 3.6 of the Contract and Clause 1.5 of Annex No. 5 to the Contract, the submission by the Client of an invoice for payment of the fine on 10 February 2022 constitutes an abuse of right.

30.7. The reference by the Counterclaimant to the [Procurement Regulation] is irrelevant to the dispute, as the Counterclaimant, being a legal entity engaged in business activities, acts of

[12] On 28 June 2022, PO No. 4 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 29 June 2022, by the Russian Post (Tracking Nos. [No], [No], [No]).

its own will and in its own interest. The relationship between it and [its founder] constitutes a legal relationship between other persons, in which the Counterrespondent does not participate.

30.8. The provisions of Law No. 223-FZ cannot serve as a basis for recovering a fine from the Forwarding agent for failure to provide security for performance, as Law No. 223-FZ does not exempt the Client from responsibility for its own actions, made of its own will and in its own interest. The consequences of the Client's failure to exercise its rights to repudiate the Contract and suspend payment for services as provided for by the Contract, cannot be imposed on the Forwarding agent in the form of a fine.

30.9. Although the claim letter was sent on 10 February 2022, the Client signed the Certificates of Services Rendered on 6 October 2021 and 27 November 2021 and paid for the services on 24 November 2021 and 20 January 2022. If security had been provided, it would have been terminated for the ship call at [C] on 6 December 2021 and for the transportation from [A] on 26 January 2022, which complies with Paragraph 2 of Clause 1.4 of Annex No. 5 to the Contract.

30.10. The Counterclaimant did not exercise the right to suspend its payment obligations, or repudiate the Contract, and withhold payment of the Respondent's remuneration, despite having had five opportunities to express its will should the Forwarding agent fail to provide security for performance per Clause 1.11 of Annex No. 5 to the Contract. Nevertheless, the Counterclaimant demanded payment of the fine upon expiry of 2.5 months after the termination of the services on 27 November 2021.

30.11. Referring to Paragraphs 1 and 5 of Article 10 of the Civil Code and Paragraph 11 of Resolution No. 25, the Counterrespondent asserted that, as a reasonable participant of the civil turnover who fulfilled its obligations and received the appropriate confirmation, it reasonably believed that the Client would not require the provision of security for an obligation that had already been performed, and even more so the payment of a fine for failure to provide security for performance.

30.12. Based on Paragraph 1 of Article 333 of the Civil Code and the Ruling of the Constitutional Court of the Russian Federation of 21 December 2000 No. 263-O, the Counterrespondent requested that, if the Arbitral Tribunal finds the arguments of the Counterclaimant, set forth in the Counterclaim, to be justified, the fine should be reduced, as it is clearly disproportionate to the consequences of the alleged violation of the Client's obligation to provide security for performance.

30.13. The Counterrespondent highlighted the correlation between the amounts of the fine and the services paid by the Client, noting that the Forwarding agent had no outstanding debt to the Client and that the fine represents 10% of the amount of services paid. The imposition of the fine on the entire amount of the services rendered contradicts the nature of the fine, which is to compensate the creditor for its economic losses, and also results in the Client receiving an unjustified benefit since the Client has not furnished evidence of any sanctions imposed on it or any losses incurred due to the Forwarding agent's failure to provide security, further demonstrating the disproportionality of the fine and the unjustified benefit received by the Client.

30.14. The disproportionality of the fine to the consequences of the breach is also evidenced by that, according to Subclause 1 of Clause 1.4 of Annex No. 5 to the Contract, the security amount should be no less than 5% of the price for the service under the Instruction, i.e., the minimum amount of security is twice lower than the fine amount demanded by the Client.

30.15. Therefore, the Counterrespondent requested that the Arbitral Tribunal reject the Client's counterclaims or, should the Tribunal find grounds to satisfy the counterclaims, reduce the fine in accordance with Article 333 of the Civil Code.

31. On 4 July 2022, in light of the Claimant's position set forth in the Objections to the Response, the Respondent submitted additional explanations to the Response (hereinafter – **Additional Explanations to the Response**) via the OAS. The Respondent stated the following.

31.1. The Claimant's interpretation of Technical Specification No. 2 concerning the scope of services rendered is incorrect and contradicts Clause 2 of the Additional Agreement. According to this clause, an additional service shall be performed by the Forwarding agent under Technical Specification No. 2 and the terms of the Contract, provided they do not contradict Technical Specification No. 2 and the Additional Agreement. The scope of the service is defined by the Contract, including Technical Specification No. 1, and the instructions specify the scope of the service in terms of the number of consignments and the quantity of the transported cargo.

31.2. Beyond the selection and ordering of a sea vessel, the service of arranging the carriage of a shipload of cargo includes other actions, such as the dispositioning and securing of cargo, purchase, use, removal, disposal of covering, separation, and securing materials. These actions correspond to Clauses 5.1, 5.8, 5.17, 10.2, and 10.4 of the Contract, Subclauses 9, 10, 23 of Clause 2.6, and Subclauses 4 and 14 of Clause 2.7 of the Special Conditions, Scope of Services attached to the Technical Specification No. 1.

31.3. The Respondent found no inconsistency between its acceptance of the services rendered by the Claimant and the Claimant's failure to perform the cargo packing, removal of packing defects, and other services. Clause 10.3 of the Contract specifies that the Forwarding agent shall pack the cargo only when it is transported in open containers. The elimination of packing defects, which is part of the Claimant's obligations under Clause 10.1 of the Contract, was not required due to the absence of defects, and the availability of special devices and lifting equipment.

31.4. Customs clearance of the cargo, as outlined in Subclause 5 of Clause 2.9 and Clause 2.13 of the Special Conditions, is not the responsibility of the Claimant, unlike the surveying service, which falls under the Claimant's obligations according to Clause 11.1 of the Contract and as stated by the Respondent in letter No. [No] of 15 October 2021. The Respondent clarified that it posed no requirements for the surveyor's report, given the proper delivery of the cargo and the absence of penalties in the Contract for not providing such a report.

31.5. The Respondent found unclear the Claimant's rationale for excluding the costs it incurred from the financing amount under the Contract, based on the Respondent's letter No. [No] of 27 October 2021. The letter referred to costs payable due to a breach of the Contract by one of the parties, whereas the costs insisted on by the Claimant are not related to such a breach. The letter was written as a continuation of the clarification provided in its emails of 1 October 2021 and 4 October 2021, which stated that the Claimant is not entitled to reimbursement of those costs.

31.6. The Respondent highlighted that by referring to Paragraph 2 of Article 5 of Law No. 87-FZ, the Claimant overlooks Clauses 5.3, 16.6, and 18.3 of the Contract.

31.7. Regarding the readiness of the cargo for loading, the Respondent highlighted that, contrary to the Claimant's statements, it had attached the Claimant's letter No. [No] of 12 October 2021 to the Response to confirm that the Claimant itself had informed of its decision to load the Vessel at other berths. The Respondent attached export shipment instructions bearing

[Customs] “Loading Authorized” marks, from which it appears that as of 10 October 2021, [mass] of cargo was ready for loading.

31.8. Pursuant to Subclause 21 of Clause 2.6 of the Contract, the estimated loading rate at the dispatch point is [mass] per day, therefore [mass] should be loaded on board within 5 days, and within five consecutive days after 10 October 2021, the entire cargo was ready for loading. Therefore, according to the Respondent, the Claimant’s independent change of berth to load the third party’s cargo was not due to the unreadiness of the cargo intended to avoid demurrage. Therefore, the Respondent should not be reimbursed for the time taken to load the third party’s cargo.

32. On 13 July 2022, the Counterclaimant submitted objections to the Response to the Counterclaim (hereinafter – **Objections to the Response to the Counterclaim**) via the OAS. In these objections, the Counterclaimant stated that it finds the arguments presented by the Counterrespondent in the Response to the Counterclaim to be without merit for the following reasons.

32.1. The termination of an obligation through performance does not release the debtor from liability for violations committed during the fulfillment of that obligation. Paragraph 4 of Article 329 of the Civil Code, cited by the Counterrespondent, is not relevant to this dispute, as it pertains to the termination of the securing obligation, not the termination of liability for failing to provide security.

32.2. The breach occurred while the obligation of the Counterrespondent had not yet been terminated by performance. The Counterrespondent dated the certificate of services rendered for the entire Instruction as 27 November 2021, which the Counterclaimant signed on 9 December 2021. Under the Contract, the Forwarding agent was required to provide security on 2 October 2021 (15 days from the date of sending the notice of appointment of the service provider). On 1 November 2021 (30 days from the time limit for providing security), the basis for the Client’s claim against the Forwarding agent for payment of a fine due to the failure to provide security arose.

32.3. Termination of the contract does not release the parties from liability for its breach, according to Paragraphs 3 and 4 of Article 425 of the Civil Code, Paragraph 68 of Resolution No. 7, Paragraph 1 of Information Letter No. 104, and Clause 3.5 of the Contract.

32.4. The Counterclaimant argued that the Counterrespondent’s reference to Paragraph 7 of Article 450.1 of the Civil Code is without merit, as neither the law nor the Contract stipulates a time limit for claiming a fine for failure to provide security. The applicable law and the Contract do not contain any provision establishing a time limit for demanding payment of a fine for violations committed by the Forwarding agent.

32.5. Pursuant to Paragraph 4 of Article 12 of Law No. 87-FZ, the right to file a claim against the Forwarding agent for failure to provide security arose on 2 November 2021, with the six-month period expiring on 2 May 2022. Meanwhile, the Client sent a demand for payment of the fine on 10 February 2022. Therefore, Paragraph 7 of Article 450.1 of the Civil Code does not apply, since the Client did not miss the time limit for exercising the right to recover the fine for failure to provide security.

32.6. The signing of the Certificates of Services Rendered without complaints does not release the Forwarding agent from liability for failing to provide security and does not support the assertion that the demand for payment of the fine constitutes an abuse of right by the Counterclaimant and that the Forwarding agent reasonably relied on the fact that the Counterclaimant would refrain from demanding payment of the fine.

32.7. The Counterrespondent has not justified why demanding payment of a fine for its breach constitutes an abuse of right. The Counterclaimant argues that such a demand is aimed at

restoring justice. At the time of expiry of the time limit for fulfillment of the obligation to provide security (2 October 2021), the Vessel had already been chartered by the Counterrespondent, and therefore, it did not have the right to repudiate the Contract or to demand payment of the fine. Meanwhile, at the time of the Respondent's breach of the obligation to provide security and creation of the Counterclaimant of right to repudiate the Contract or demand payment of a fine (1 November 2021), the Vessel was en route to port [B]. Therefore, it would be unreasonable for the Counterclaimant to repudiate the Contract.

32.8. The exercise of the right to withhold payment of remuneration until security is provided or to demand payment of a fine is a choice of the Counterclaimant that cannot be considered an abuse of right, and the failure to exercise one of the options for exercising the right does not give the Counterclaimant grounds to rely on the failure to exercise the other options for exercising the right. The Counterrespondent has not explained how its behavior would have changed if the Counterclaimant withheld the remuneration and what the consequences were of the Counterrespondent relying on the absence of a demand for the fine.

32.9. Referring to Article 330 of the Civil Code, Paragraphs 73 and 77 of Resolution No. 7, the Counterclaimant argued that to reduce the fine, the Counterrespondent should prove that the fine is disproportionate, the Counterclaimant is gaining an unjustified benefit, and that the disputed case is exceptional. Since the Respondent failed to do so, its request to reduce the fine based on Article 333 of the Civil Code is unfounded.

33. On 14 July 2022, the Counterrespondent submitted a request via the OAS, based on Paragraph 2 of Article 29 of the Arbitration Rules, seeking to refuse the Counterclaimant in the admission of the Objections to the Response to the Counterclaim to the case file (hereinafter – **Request**). The Counterrespondent asserted that Paragraph 18 of the Procedural Schedule, as confirmed by the Arbitral Tribunal's Procedural Order No. 3, sets a time limit for the Counterclaimant to submit written explanations on the Counterclaim no later than 8 July 2022.

34. On 14 July 2022, the Claimant uploaded a motion of 14 July 2022 to the OAS, requesting the Arbitral Tribunal to admit to the case file evidence regarding the amount and scope of the representation costs (legal services agreement No. [No] of 18 October 2021 with the [Law Firm], the certificate of work completed of 7 July 2022, invoice No. [No] of 7 July 2022, and payment order No. [No] of 7 July 2022), and to recover from the Respondent the representation costs of RUB 331,278.90 (hereinafter – **Motion for Reimbursement of Costs**).

35. On 15 July 2022, the Respondent uploaded its objections to the Request and the Motion for Reimbursement of Costs to the OAS, requesting the Arbitral Tribunal to reject the Claimant's Request and admit the Motion and the evidence attached thereto into the case file.

35.1. The Respondent pointed out that in Paragraph 18 of the Procedural Schedule, the words "Claimant" and "Respondent" are capitalized, indicating that these terms do not refer to the procedural status of the parties to the Counterclaim, but to the definitions specified in Clauses 3 and 4 of the Schedule, which refer to the [Claimant] as the Claimant and the [Respondent] as the Respondent. Thus, "Claimant" refers to the Claimant under the Claim and the Counterrespondent, while "Respondent" refers to the Respondent under the Claim and the Counterclaimant.

35.2. The Respondent submitted that the Procedural Schedule sets a time limit for the Claimant to submit written explanations and evidence on the Claim until 24 June 2022 and on the Counterclaim until 8 July 2022, and for the Respondent on the Claim until 4 July 2022 and on the Counterclaim until 18 July 2022. The Respondent submitted its Objections to the Response to the Counterclaim within the specified time limits, and the Claimant submitted its Motion outside the time limits.

36. The hearing took place on 20 July 2022, at 12:00 (GMT+3), at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3 (RAC office).

36.1. Following the discussion on whether to admit the document submitted by the Counterclaimant to the case file, the sole arbitrator decided to admit to the case file the Objections to the Response to the Counterclaim.

36.2. During the hearing, the Parties supported their arguments regarding the initial claim and counterclaim and responded to the questions posed.

36.3. At the suggestion of the Arbitral Tribunal, the Counterclaimant confirmed that, despite the independent nature of the claims in the Counterclaim, the Counterclaim could be used to offset the claims made in the initial Claim. The Counterrespondent did not object to the counterclaims' set off.

36.4. The Arbitral Tribunal invited the Parties to undertake an additional round of exchange of positions on the issue of arbitration costs within 7 days after the submission of the relevant statements.

37. On 27 July 2022, the Respondent submitted a request for reimbursement of arbitration costs via the OAS, seeking to recover RUB 450,000 in costs from the Claimant. The request was accompanied by a legal services agreement No. [No] of 17 December 2021, request No. [No], certificate of services rendered No. [No] of 17 December 2021, and invoice No. [No] of 4 July 2022.

38. On 27 July 2022, the Claimant submitted an amended motion via the OAS (Paragraph 34 of this Award), seeking to recover RUB 443,063.42 in costs from the Respondent.

39. On 3 August 2022, the Claimant submitted its objections to the Respondent's request for reimbursement of arbitration costs via the OAS.

39.1. The Claimant argued that the Respondent had not requested the recovery of representation costs from the Claimant, since in its request it sought "to recover the arbitration fees and arbitration costs incurred". According to the Rules, arbitration costs include the arbitrator's fee and procedural expenses (e.g., expert expenses, interpreter expenses, etc.). Representation costs are not included in the category of arbitration costs.

39.2. In the Claimant's view, the amount of the Respondent's legal costs was significantly overstated for the following reasons. The [Law Offices]' representatives neither participated in the hearing nor did they prepare submissions. Contrary to the Respondent's assertions, the dispute does not involve a foreign element. References to the Veta Group's study on the cost of legal services in Moscow are irrelevant, as the [Law Offices] is located in [not in Moscow]. The Claimant considered the number of hours indicated in the Status Report (Attachment to the request for reimbursement of arbitration costs) to be inflated.

REASONING OF THE AWARD

A. JURISDICTION OF THE ARBITRAL TRIBUNAL

40. In deciding the issue of its jurisdiction over the present dispute, the Arbitral Tribunal has reached the following conclusions.

41. The Parties are legal entities established under Russian law and located in the territory of the Russian Federation.

42. Based on Paragraph 1 of Article 23 of the Arbitration Rules, the parties may at their discretion agree on the seat of arbitration or the procedure for its determination. Absent such agreement, the seat of arbitration shall be determined by the Arbitral Tribunal.

43. Since the Parties have not agreed on the seat of arbitration or the procedure for its determination, the Arbitral Tribunal, according to Paragraph 1 of Article 23 of the Arbitration Rules, has determined Moscow, the Russian Federation as the seat of arbitration.

44. Under Paragraph 6 of Article 23 of the Arbitration Rules, the law applicable to the arbitration procedure is the law of the seat of arbitration, i.e., Russian law, namely Law of the Russian Federation of 7 July 1993 No. 5338-I "On International Commercial Arbitration" (hereinafter – **Law on ICA**).

45. Under Paragraph 3 of Article 1 of the Law on ICA, disputes arising out of civil law relationships in the course of carrying out foreign trade and other types of international economic relations may be referred to international commercial arbitration if the place of business of at least one party is abroad or if any place where a substantial part of the obligations out of the relationship of the parties is to be performed or the place with which the subject matter of the dispute is most closely connected are located abroad, as well as disputes arising out of the realization of foreign investments in the territory of the Russian Federation or Russian investments abroad.

46. According to Paragraphs 1 and 2 of Article 7 of the Law on ICA, an arbitration agreement is an agreement of the parties in writing to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship or a part thereof, regardless of whether or not the legal relationship is of a contractual nature. An arbitration agreement may be concluded as an arbitration clause in a contract or as a separate agreement.

47. Clause 24 of the Contract contains the following dispute resolution provision:

"24.1 Any dispute, controversy, or claim arising out of and in connection with the Contract, including those related to its breach, conclusion, amendment, termination, or invalidity, 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 provisions of its Arbitration Rules.

24.2 The Parties agree that for the purposes of sending written submissions, notifications, and other written documents, the following e-mail addresses shall be used:

Client: [e-mail]; [e-mail];

Forwarding agent: [e-mail].

24.3 In the event of a change in the specified e-mail address, the Party shall immediately notify the other Party of such a change and, if the arbitration has already commenced, also notify the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration." Otherwise, the Party shall bear all negative consequences with respect to sending written submissions, notifications, and other written documents to an incorrect e-mail address.

24.4 The Parties shall execute the arbitral award voluntarily.

24.5 The award resulting from the arbitration shall be final for the Parties and shall not be set aside.

24.6 In cases stipulated by Chapter 7 of the Arbitration Rules of the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration", the Parties may conclude an agreement to consider the dispute within the expedited procedure."

48. In the present case, the Parties did not contest the validity and conclusion of the above terms on the dispute resolution procedure. They participated in the dispute resolution process and did not raise any objections to the jurisdiction of the Arbitral Tribunal. The Tribunal finds the arbitration agreement to be valid.

49. The present dispute is of a civil law nature and may be submitted to international commercial arbitration. In the opinion of the Arbitral Tribunal, there are no legal restrictions that would prevent the present dispute from being heard in international commercial arbitration.

50. As stated in Paragraph 19 of this Award, the Arbitral Tribunal acknowledged that the place of performance of a substantial part of the obligations in respect of which the present dispute arose was abroad. Therefore, the rules of international commercial arbitration apply to the present dispute, per Paragraph 3 of Article 1 of the Law on ICA.

51. By Order of the RAC Board of 25 April 2022, Arkhipova Anna Grigorievna was appointed as the sole arbitrator in the present case. On 4 May 2022, she signed the arbitrator's declaration of independence and impartiality, accompanied by a disclosure statement.

52. The appointment of the sole arbitrator complies with Article 15 of the Arbitration Rules. During the proceedings, the Parties did not challenge the arbitrator and did not raise any objections to the Arbitral Tribunal.

53. Therefore, the Arbitral Tribunal finds jurisdiction to consider this dispute.

Б. CONCLUSIONS OF THE ARBITRAL TRIBUNAL ON THE MERITS

54. Based on the analysis of the case file and the positions of the Parties' representatives, the Arbitral Tribunal has reached the following conclusions.

55. There is no dispute between the Parties regarding the conclusion and validity of the Contract. The Parties do not dispute that the primary obligation under the Contract – arranging cargo carriage by sea – was fulfilled by the Claimant and paid for by the Respondent. The price for the Services under the Contract (USD 1,300,000) and the fact of this amount being paid by the Respondent are also not disputed by the Parties. The dispute in the initial claim is as follows: the Claimant contends that certain costs incurred by it during the performance of the Contract, namely the purchase of separation materials, securing of the cargo on board the vessel, unsecuring of the cargo and clearing the deck, and payment for the vessel's demurrage, should be reimbursed in addition to the amount paid by the Respondent. The Respondent submits that these costs were paid as part of the Service Price and that it is not obliged to reimburse any additional costs. Therefore, the issue before the Arbitral Tribunal is whether these costs were part of the Service Price already paid or whether they should be additionally reimbursed.

56. Relations between the Parties are governed by Framework contract No. [No] of 30 October 2020 for the provision of transport forwarding services of [cargo] carriage from port [A] to port [B], [Country B], by a vessel with a cargo capacity of no less than [volume] m^3, without ship cranes (hereinafter – **Framework Contract**), Technical Specifications No. 1 and No. 2, Special Conditions, Additional Agreement, and the Instruction.

57. According to Clause 2.1 of the Framework Contract, the primary obligation of the Forwarding agent (Claimant) is to perform or arrange the performance of the Services specified in the Instruction, related to the carriage of the Cargo along the Route. Clause 2.3 of the Framework Contract defines the list of the Services, which includes, in particular, performing services at the Point of Dispatch for receiving the Cargo, ensuring its loading on the means of transportation selected by the Forwarding agent, including the development of cargo disposition and securing schemes, and carrying out other operations necessary for shipment of the Cargo for export. It also includes performing services at transit points, including preparing the Cargo for carriage to the Destination Point, arranging for means of transportation to be available for loading, ensuring loading and unsecuring of the Cargo; services for organizing and arranging the Cargo carriage to the Destination Point; services to organize and arrange the carriage of the Cargo from the transit points to the Destination Point, including if necessary ensuring loading and unloading operations during the transportation; and services at the Destination Point, including unloading the cargo.

    Pursuant to Clause 10.2 of the Framework Contract, the Forwarding agent shall ensure the purchase and use of separation/securing materials necessary for the proper carriage, which shall be included in the price of the Instruction and the relevant Service, at no additional cost.

    Clause 10.4 of the Framework Contract stipulates that the Forwarding agent shall ensure the proper dispositioning and securing of the Cargo within the means of transportation. According to Clause 10.6 of the Framework Contract, the Forwarding agent shall develop cargo dispositioning and securing schemes, if necessary, which shall be included in the price of the Instruction and the relevant Service.

    Clause 18.3 of the Framework Contract states that the Service Price under the Instruction is a comprehensive payment for the Forwarding agent's fulfillment of all obligations under the relevant Instruction. The Service Price includes all costs incurred by the Forwarding agent during the execution of the Instruction.

58. According to Section 2 of the Technical Specification, the scope (list) of services to be rendered is stated in Annex No. 1 of the Technical Specification.

Annex No. 1 to the Technical Specification states, in particular, that the loading of the Cargo on board the Vessel at the Port of Loading is to be carried out by third parties engaged by the consignor at its expense. The unloading at the Port of Transit shall be performed by the consignee.

The estimated rates of loading/unloading of the Cargo at the Port of Loading/Port of Transit are 460 metric tons/day.

The "Description of Services" section in Annex No. 1 to the Technical Specification outlines that the set of transport forwarding services includes, in particular, the following services/works: arranging for bringing the vessel alongside the quay for loading/unloading in ports; providing, if necessary, the purchase and delivery of separation and securing materials to the Port of Loading and loading on board the vessel for the dispositioning and securing of the Cargo on board the vessel; arranging the securing of the Cargo on board the vessel; and arranging the preparation for operations of Cargo unloading from the vessel (removal of securing material).

59. The Special Conditions, which include Section 2.6 "Clarification of the Scope of the Services," shall also apply to the Parties' relationship, according to which, in addition to the services listed in the Contract, the Forwarding agent's Services include, in particular, arranging for bringing the vessel alongside the quay for loading/unloading in ports; providing, if necessary, the purchase and delivery of separation and securing materials to the Port of Loading and on board the vessel; and dispositioning and securing of the Cargo on board. According to Subclauses 20 and 22 of Section 2.6, the loading of the Cargo on board the vessel at the Dispatch Point is carried out by third parties engaged by the consignor and at its expense, while unloading at the Port of Transit is carried out by the consignee.

    Paragraphs 4 and 14 of Section 2.7 of the Special Conditions stipulate that the Forwarding agent shall perform by itself and/or arrange the performance of the following services in particular: organizing the confirmation of the vessel's arrival at the Port of Loading by the port administration; organizing control of the vessel's loading at the Port of Loading; providing the proper dispositioning and securing of the Cargo on the means of transportation; preparing the Cargo for unloading at the Port of Transit, including the removal of securing materials. The Forwarding agent shall also ensure the purchase and disposal of separation/securing materials required for the transportation of the Cargo.

60. The services under the Contract were rendered based on Instruction No. [No] of 10 September 2021. In this Instruction, the Client requested the Forwarding agent to provide the Services on the terms of the Framework Contract: to arrange the carriage of a shipload of cargo along the route [A] – [B] with a vessel call at [C]. The Forwarding agent's proposal of 13 September 2021, which the Claimant sent to the Respondent, did not contain any clarifications concerning the scope of services. In the Forwarding agent's proposal, the Claimant confirmed that it agreed to provide the services listed in the Instruction per the terms of the Instruction and the Framework Contract.

    In the Notice of Appointment of the Service Provider of 16 September 2021, the scope of services is described in general terms: the chartering of the vessel on the route from port [A] to port [B] and the vessel call at port [C]. The Notice refers to the Contract and the Instruction.

61. The Parties' relations regarding the vessel call at [C] are also governed by the Additional Agreement No. [No] of 21 September 2021. Technical Specification No. 2 is attached to the Additional Agreement, outlining the terms for fulfilling the Instruction concerning the vessel call at [C], similar to the terms specified in Technical Specification No. 1.

62. The Arbitral Tribunal notes that several terms of the Contract mentioned above require the Claimant to perform cargo securing, including the purchase of the necessary materials for this purpose, as part of executing the Instruction and within the Service Price. Securing the cargo and disposing of the

securing material is also specified in the Contract as part of the services to be provided under the Instruction.

63. At the hearing, the Claimant explained that the scope of services is specified in the Instruction. The Framework Contract outlines a very broad list of services. In the Claimant's view, all of these services cannot and should not be provided on a case-by-case basis. Therefore, the scope of services is primarily determined by the Instruction that should take precedence in interpreting the Contract's terms that define the services to be provided by the Claimant.

64. The Arbitral Tribunal cannot accept this understanding of the relationship between the various parts of the Contract. Certain sections of the Contract outline the correlation between its different parts. For example, according to Clause 1.3 of the Special Conditions, the Special Conditions take precedence over any provisions of the Contract and its annexes unless the other document expressly states that any provisions of the Special Conditions do not apply. However, there are no such special priority provisions in relation to the Instruction. Neither the Instruction itself nor the text of the Framework Contract includes provisions suggesting that the scope of services should be defined solely by the Instruction. On the contrary, the Instruction refers to the Framework Contract, indicating that it should be executed based on the terms set forth in the Framework Contract.

The description of services given in the Instruction is very brief and general in nature ("arrange carriage of a shipload of cargo"). A comparison of the Framework Contract, the attached Technical Specifications No. 1 and No. 2, and the Special Conditions, on the one hand, with the Instruction, on the other, makes it clear that the Instruction cannot supersede all the terms contained in the Framework Contract and its annexes. On the contrary, the Instruction merely specifies the route of carriage, its duration, and the characteristics of the cargo. The parameters of this transportation, including the obligations of the Parties, are not defined in the Instruction and are set out in the Framework Contract and its annexes. Moreover, the Instruction does not contain provisions that directly contradict the text of the Framework Contract regarding the scope of services.

Therefore, the Arbitral Tribunal considers that the cargo securing and unsecuring, including purchasing necessary materials for this purpose and clearing the deck after unsecuring, were duties assumed by the Claimant and paid for by the Respondent as part of the Service Price.

65. At the hearing, the Claimant stated that the cargo securing, the costs of which it seeks to recover from the Respondent, was carried out on behalf of the captain of the chartered vessel based on requirements of the vessel's stability and safety. Thus, the Claimant incurred the costs of securing to enable the vessel to commence the voyage, while the costs of unsecuring were incurred to avoid further demurrage of the vessel.

66. In the Arbitral Tribunal's view, this argument does not alter the earlier conclusion regarding the division of responsibilities between the Parties. The Tribunal takes note of the explanations given during the hearing by the Claimant's General Director, [Name], concerning the loading process and notes that the Respondent does not dispute that securing the cargo was necessary for its safe transportation. Meanwhile, there is no evidence in the case file indicating that the need for additional securing and/or incurring additional costs for securing was due to the Respondent's actions. Since the responsibility for securing the cargo lay with the Claimant, these costs are not recoverable from the Respondent, even if the instructions to secure the cargo were received by the Respondent from the shipowner's representatives and the securing itself was carried out to ensure the vessel's stability and safety.

67. During the hearing, the Claimant's representative noted that securing was necessary for the provision of loading services. Meanwhile, according to the Contract, loading was not the responsibility of the Claimant (Clauses 20 and 22 of Section 2.6 of the Special Conditions) and was performed by third parties instructed by the Respondent. Based on this, the Claimant argued that the securing as part of

loading should also have been carried out by the Respondent. Since the Claimant had, in fact, incurred the costs for securing, it insisted on their reimbursement.

The Arbitral Tribunal finds that this argument is contradicted by the Contract, which expressly states that it is the Claimant's responsibility to secure and unsecure the cargo and to purchase the relevant materials.

68. The Claimant relied on Paragraph 2 of Article 5 of the Federal Law "On Freight Forwarding Activities," which requires the client to reimburse costs incurred by the forwarding agent in the client's interests. The Arbitral Tribunal proceeds from the fact that this legal provision is not mandatory in the sense of the Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation of 14 March 2014 No. 16 "On Freedom of Contract and Its Limits" and does not prevent the contract to contain an agreement on a price that includes both remuneration and costs of the forwarding agent. Such a provision is outlined in Clause 16.6 of the Contract. The Arbitral Tribunal finds no grounds to consider it invalid.

69. The Claimant also referred to the Respondent's letter No. [No] of 27 October 2021, which states that the Service Price does not include "any costs, losses, penalties payable due to a breach of the Contract by either party." The Arbitral Tribunal notes that the letter refers to a breach of the Contract by either party that caused losses. However, the Claimant has not proved that the costs for securing and unsecuring the cargo were incurred by it due to any breach by the Respondent. On the contrary, these costs were incurred during the Claimant's performance of its obligations under the Contract.

70. For the above reasons, the Arbitral Tribunal finds it necessary to reject the Claimant's claims for reimbursement of the costs for the purchase of separation materials, securing the cargo on board the vessel, unsecuring the cargo, and clearing the deck.

71. The Claimant also sought reimbursement from the Respondent for demurrage costs at port [A].

72. Sections 2.6 and 2.7 of the Special Conditions and the "Description of Services" section of Annex No. 1 to the Technical Specification outline the Claimant's obligation to arrange for bringing the vessel alongside the quay for loading/unloading. Meanwhile, according to Section 2.6 of the Special Conditions, the responsibility for organizing the loading fell to the Respondent. Therefore, in the Arbitral Tribunal's view, to examine the Claimant's claim for demurrage costs, it is necessary to determine the reasons for the vessel's demurrage.

73. At the hearing, the Claimant noted that the demurrage at [A] arose for several reasons, namely the unreadiness of the cargo for loading and the lack of an available berth.

The Arbitral Tribunal proceeds from the fact that, under Section 2.6 of the Special Conditions, the Claimant bears the risk of costs associated with demurrage while waiting for the vessel to berth, as the Claimant assumed the obligation to arrange to bring the vessel alongside the quay.

The Arbitral Tribunal rejects the Claimant's argument that the demurrage was caused by the unpreparedness of the cargo since the case file contains instructions submitted by the Respondent for the shipment of export goods with [Customs] loading authorization marks. These instructions confirm that the cargo was ready for loading, considering the estimated loading rates stipulated in the Contract.

74. To more precisely determine the causes of the demurrage, the Arbitral Tribunal deems it appropriate to refer to the SoF drawn up at port [A], which was signed by the ship captain and the Claimant's representative.

The case file also contains a surveyor's report of [Surveyor's Company] containing details about the loading schedule. The Arbitral Tribunal notes that some circumstances are reflected in the SoF and

the surveyor's report in the same way (for example, both documents mention demurrage on 18 October 2021 due to waiting for stevedores). Meanwhile, there are also discrepancies between the documents. The Arbitral Tribunal, when assessing the circumstances of the loading and demurrage of the vessel at port [A], primarily relies on the SoF as a document signed by two participants involved in the loading process (the ship captain and the Claimant). Moreover, the Arbitral Tribunal considers that, during the hearing, the Respondent agreed with the SoF.

75. According to the SoF, the vessel was waiting for berthing from [date, time] to [date, time] and loading from [date, time] to [date, time] (no reason for the demurrage was given). During the period from [date, time] to [date, time], from [date, time] to [date, time], from [date, time] to [date, time], loading was not performed due to the absence of stevedores. Loading was interrupted due to strong wind from [time] to [date, time] and was not carried out "due to port reasons" from [time] to [date, time].

76. The charter concluded between the Claimant and the shipowner provided a total of 7 days for lay time at ports [C] and [A]. According to the shipowner's calculation, which was not contested by the Parties, the lay time at [A] commenced at [date, time], from [date, time] to [date, time], the vessel was on demurrage. The duration of the demurrage was 8.41 days, with a demurrage rate of USD 19,000 per day.

    The Claimant's payment to the shipowner of USD 159,790 for the demurrage for this period is confirmed by a letter from the shipowner of the chartered vessel.

77. The Arbitral Tribunal considers that the lay time on 10-12 October 2021, 22 October 2021, and 25 October 2021 was due to reasons for which the Claimant itself is responsible under the Contract (waiting for the vessel to be brought alongside the quay, waiting for weather conditions). Moreover, the Arbitral Tribunal finds it necessary to attribute to the Claimant the demurrage, the reasons for which are not specified in the SoF (12-15 October 2021), as the Claimant had undertaken to arrange the bringing of the vessel alongside the quay and confirmation of the vessel's acceptance by the port administration.

    Meanwhile, the demurrage during the period from [date, time] to [date, time] and from [date, time] to [date, time] was caused by the absence of stevedores. This is confirmed by the SoF and Respondent's letter of 18 October 2021 No. [No].

78. The Arbitral Tribunal finds that Clauses 20 and 22 of Section 2.6 of the Special Conditions of the Contract stipulate the Respondent's obligation to carry out the loading. The Respondent's fulfillment of this obligation is also confirmed by the Parties' correspondence (in particular, the Respondent's letter of 12 September 2021). According to the Arbitral Tribunal, this duty includes, inter alia, the duty to provide stevedoring services promptly. Thus, in the part of the period referred to in the preceding paragraph, the duration of the demurrage increased due to the Respondent's improper performance of its obligations to arrange the loading. As outlined in the above provisions of the Contract, these costs are not included in the Service Price, which is also confirmed by the Respondent's letter of 27 October 2021 No. [No].

79. For these reasons, the Claimant's claim for reimbursement of demurrage for the period from [date, time] to [date, time] and from [date, time] to [date, time] (totaling 65 hours and 7 minutes) shall be granted.

    Given the demurrage rate of USD 19,000 per day (with an hourly rate of USD 791.67 and a minute rate of USD 13.19), USD 51,550.88 shall be granted.

80. The Arbitral Tribunal acknowledges the Parties' positions regarding the presence of third party's cargo already on board the vessel during loading. However, the Tribunal considers that these positions do not affect the above conclusions regarding the claim for demurrage, as there is no evidence in the case file to clearly determine the impact of this circumstance on the loading speed.

81. Thus, the Claimant's claims for reimbursement of demurrage costs shall be granted in part, amounting to USD 51,550.88. The remaining part of these claims is rejected.

82. In the Claim, the Claimant sought recovery of interest according to Article 395 of the Civil Code. As stated in Paragraph 81 of this Award, the Arbitral Tribunal partially upheld the Claimant's claims. During the proceedings, the Respondent disagreed with the claims for recovery of interest, as it considered the Claimant's claims to be dismissed in full. The Respondent did not contest the calculation of interest. Having reviewed the calculation, the Arbitral Tribunal deems it necessary to adjust the calculation to reflect, firstly, the partial satisfaction of the claims and, secondly, the application of a different Central Bank exchange rate to convert the Claimant's claim, which was initially denominated in US dollars, into roubles.

83. The Arbitral Tribunal notes that the SoF was sent by the Claimant to the Respondent as an attachment to the Claim Letter of 2 December 2021. According to Paragraph 5 of Article 12 of the Federal Law "On Freight Forwarding Activities," the forwarding agent shall consider the claim and notify the claimant about either the satisfaction or rejection of the claim within thirty days from the date of its receipt.

84. The case file includes a receipt of Pony Express courier service No. [No] for dispatch of the claim letter of 2 December 2021, dated 8 December 2021. The document tracking system shows that the Respondent received the claim letter on 9 December 2021. The 30-day period from this date expired on 9 January 2021, the period for considering the claim letter should have expired on 10 January 2021, the first working day after 9 January 2021. According to the Bank of Russia's website, cbr.ru, the official USD exchange rate on that date was 74.2926 RUB.

85. Thus, the calculation of interest should be adjusted as follows:

Amount of costs on payment of demurrage in rubles at the exchange rate of the Central Bank of the Russian Federation as of 10 January 2022 USD 1 = 74.[No]6 RUB.	**Period of non-payment**	**Number of days**	**Discount rate**	**Calculation formula**	**Amount of interest payable for the period, rubles.**
3,829,848.91	10 January 2022 – 13 February 2022	35	8.5	RUB 3,829,848.91 x 35 days / 365 days x 8.50 / 100	31,215.89
3,829,848.91	14 February 2022 – 27 February 2022	14	9.5	RUB 3,829,848.91 x 14 days / 365 days x 9.50 / 100	13,955.34
3,829,848.91	28 February 2022 – 10 March 2022	11	20	RUB 3,829,848.91 x 11 days / 365 days x 20 / 100	23,084.02
					Total: 68,255.25

86. Therefore, the Arbitral Tribunal concludes that the Claimant's claims against the Respondent should be partially upheld. The Respondent shall recover from the Claimant USD 51,550.88 as demurrage costs and RUB 68,255.25 as interest for the use of the other person's means. The remainder of the Claimant's claims against the Respondent are dismissed.

87. The present case also involves a counterclaim by the [Respondent] (Counterclaimant) against the [Claimant] (Counterrespondent) for the recovery of a fine.

88. In its counterclaim, the Counterclaimant referred to Clause 29 of Section 2.7 of the Special Conditions and Clause 1.1 of Annex No. 5 to the Contract, which stipulates that the Counterrespondent shall provide the Counterclaimant with security for the proper fulfillment of its obligations under the Instruction. The security shall be provided within 15 calendar days from the date the Counterrespondent receives the Notice of Appointment of the Service Provider. Under Clause 1.11 (4) of Annex No. 5, if the delay in providing security is 30 calendar days or more, the Counterclaimant is entitled to demand a fine amounting to 10% of the Service Price under the respective instruction.

    The Counterclaimant stated that the Counterrespondent received the Notice on 17 September 2021 and hence should have provided security no later than 2 October 2021 but failed to do so. The 30 days from 2 October 2021 expired on 1 November 2021. In light of this, the Counterclaimant sought a fine of USD 130,000 from the Counterrespondent.

    The Parties did not dispute the Notice's receipt date and how the time limit for the provision of security was calculated.

89. The Counterrespondent did not agree with the claim for payment of the fine, pointing out that this claim was made after the performance of services under the Contract, the signing of certificates of services rendered, and the payment for the services rendered. In the Respondent's view, since the primary obligation under the Contract was terminated by performance, the obligation securing it should have been terminated as well. The Respondent also referred to Article 450.1 of the Civil Code, emphasizing that the Counterclaimant did not exercise the right to demand security within the time limit provided by the Contract. Moreover, the Counterrespondent argued that the Counterclaimant's submission of a claim for the fine on 10 February 2022 constitutes an abuse of right.

90. The Arbitral Tribunal rejects the Counterrespondent's argument that the obligation to provide security was terminated due to the termination of the obligation to arrange transportation. In the Tribunal's view, these are distinct obligations with different scope and duration. Indeed, had the security been provided, it would have been terminated in accordance with Clause 1.14 of Annex No. 5 to the Contract 60 days after the fulfillment of the primary obligation to arrange transportation. Meanwhile, both Parties acknowledge that the security was not provided. Therefore, the obligation to provide security was not fulfilled. The consequences of non-fulfillment of this obligation may arise and exist independently from the termination by fulfillment of the obligation to arrange transportation.

91. The Arbitral Tribunal also finds it necessary to reject the Respondent's arguments regarding the application of Article 450.1 of the Civil Code to the Counterclaimant's claim. There is no indication in the case file that the Counterclaimant expressly waived its rights under the contract concerning the fine for failure to provide security (Paragraphs 1 and 6 of Article 450.1 of the Civil Code).

92. The Counterrespondent also referred to Paragraph 7 of Article 450.1 of the Civil Code, which stipulates that the failure to exercise a right within the time limit provided by the Civil Code, other laws, legal rights, or the contract may, in certain cases, be equated to a waiver of the right. The Counterrespondent supports its position by the fact that the Counterclaimant did not argue the need to provide security during the performance of the primary obligation under the Contract. The Counterclaimant sent a claim letter on non-fulfillment of the obligation to provide security only on 10 February 2022, after the completion of the primary obligation under the Contract and the signing of the certificates of services rendered (6 October 2021 and 27 November 2021, respectively).

93. The Arbitral Tribunal observes that neither the Contract nor the applicable legislation governing the disputed relationship establishes a time limit within which the Counterclaimant was required to exercise its right to grant security. Subclause 1.11 (4) of Annex No. 5 to the Contract grants the

Counterclaimant the right to demand payment of a fine if the delay in providing security amounts to 30 calendar days or more. The Contract indicates that this right is conferred upon the Counterclaimant regardless of the stage of performance of the primary obligation under the Contract at that moment.

94. The Arbitral Tribunal also finds no grounds for applying the provisions regarding a reasonable time limit to the exercise of the Counterclaimant's right (Paragraph 2 of Article 314 of the Civil Code). The reasonable time limit established by this Article pertains to the fulfillment of an obligation, not to the exercise of a right. The Contract explicitly sets the deadline for the obligation to provide security. The time limit for the Counterclaimant to exercise its right arising from the Counterrespondent's failure to meet its obligation is determined not by the rules on a reasonable time limit but by the provisions on the time limits for complying with the mandatory claim procedure and limitation periods.

95. Therefore, the Arbitral Tribunal finds that the Counterclaimant is entitled to claim a fine for the breach of the obligation to provide security starting from 1 November 2021.

96. The Counterrespondent considers that the Counterclaimant's actions of recovery of the fine constitutes an abuse of right (Article 10 of the Civil Code). The Counterrespondent supports its position by that the Counterclaimant filed a claim letter for recovery of the fine only 2.5 months after the termination of the primary obligation under the Contract. The claim letter was sent after the Counterclaimant had signed the certificates of services rendered without complaint, and these services had been paid for. The Counterrespondent asserted that after these circumstances occurred, it reasonably believed that no claim related to the provision of security would be raised. Moreover, the Counterrespondent noted that the Counterclaimant did not file a claim letter for a fine until after the commencement of the present proceedings, at which point the Counterclaimant was facing the Counterrespondent's claims for additional costs associated with the performance of the Contract.

97. The Arbitral Tribunal notes that the Counterrespondent's argument of abuse of right by the Counterclaimant is substantiated by the Counterrespondent referring, firstly, to the timing of the relevant claim (filed after the termination of the performance of the primary obligation under the Contract, after the signing of the certificates of services rendered, after payment for the services, after the commencement of the present arbitration) and, secondly, to the fact that, given the above circumstances, the Counterrespondent could not and should not have been able to calculate the fine. In the opinion of the Arbitral Tribunal, the matter of the time limit for the Counterclaimant to exercise its right to recover a fine is related to the application of Paragraph 7 of Article 450.1 of the Civil Code to the disputed relations. As stated above, the Arbitral Tribunal considers that no specific time limits have been set for exercising this right. The Arbitral Tribunal finds no abuse of right by the Counterclaimant in that it sent a claim letter for the fine recovery after the primary obligation under the Contract had been performed, accepted, and paid. The Arbitral Tribunal considers that the Counterclaimant's submission of the claim letter to the Counterrespondent after the commencement of the present arbitration reflects the principle of the dispositive nature of the dispute resolution process and does not constitute an abuse of right.

98. The Arbitral Tribunal notes that, under the Contract, the Counterclaimant was provided with several options to protect its right should the Counterrespondent fail to provide security. According to Clause 1.10 of Annex No. 5 of the Contract, if the Respondent fails to fulfill its obligation to provide security, the Claimant has the right to suspend the fulfillment of its payment obligations under the Contract. Pursuant to Clause 1.11 of Appendix No. 5 to the Contract, in the case of a material breach, the Counterclaimant is entitled to refuse to perform the Contract, refrain from sending any further Instructions to the Forwarding agent, withhold payment of the remuneration, and demand payment of a fine.

Considering the facts of the case, the Arbitral Tribunal finds that the Counterrespondent's failure to provide security may be qualified as a material breach of its obligation to do so. Therefore, it entitles

the Counterclaimant to exercise one of the remedies outlined in Clause 1.11 of Annex No. 5 to the Contract.

99. The Arbitral Tribunal considers that the issue of potential abuse of right by the Counterclaimant should also be assessed in the context of choice by the Counterclaimant of an option to protect its rights, which corresponds to the principles of good faith, namely, takes into account the rights and legitimate interests of the Parties, aims at mutual assistance to achieve the objective of obligations, and is based on the provision by the parties to each other with the necessary information (Paragraph 3 of Article 307 of the Civil Code).

During the hearing, the representative of the Counterclaimant clarified that it could not take the opportunity to refuse to perform the Contract because, firstly, it was interested in the cargo delivery, and secondly, the time required to establish a material breach of the obligation to provide security expired during the carriage.

The representative of the Counterclaimant also noted that the Instruction, which formed the basis for organizing the cargo carriage, was the only instruction issued to the Counterrespondent. As a result, the option to refuse to issue further instructions to the Respondent also could not be used by the Counterclaimant to protect its rights.

Thus, in fact, the Counterclaimant could either withhold payment of the Counterrespondent's remuneration or demand the payment of a fine to protect its rights related to the failure to provide security.

The Arbitral Tribunal considers it possible to agree with these arguments and finds that the choice by the Counterclaimant to protect its rights by seeking recovery of a fine, rather than withholding payment of remuneration to the Counterrespondent, cannot be considered an abuse of right.

100. Thus, the Arbitral Tribunal concludes that there is no abuse of right in the actions of the Counterclaimant. Consequently, there are no grounds under Article 10 of the Civil Code to deny the protection of the right belonging to the Counterclaimant.

101. During the hearing, the representative of the Counterrespondent stated the need to reduce the fine specified in Subclause 4 of Clause 1.11 of Annex No. 5 to the Contract. The Respondent argued that the amount of the fine, which represents 10% of the total Service Price, is clearly disproportionate to the consequences of the breach.

102. The Arbitral Tribunal finds that in the present situation, there are grounds to reduce the fine, as the fine in the amount stipulated in the Contract would result in an unjustified benefit to the Counterclaimant (Clause 2 of Article 333 of the Civil Code).

103. The Arbitral Tribunal highlights that under Subclause 1 of Clause 1.4 of Annex No. 5 to the Contract, the security amount shall be no less than 5% of the Service Price. Meanwhile, the fine amount constitutes 10% of the Service Price. Thus, the fine for failing to provide security is double the value of the security itself.

104. The Arbitral Tribunal acknowledges the relatively short duration for which the security should have been in effect and the provisions of Clauses 1.5-1.8 of Annex No. 5 to the Contract. It follows that even if the Forwarding agent had duly fulfilled its obligation to provide security, it could have been provided already after the commencement of the performance of the Contractual obligations. This, in turn, places the Parties in a position where some of the remedies specified in Clause 1.11 of Annex No. 5 to the Contract are pointless or impracticable for the Client.

105. In the opinion of the Arbitral Tribunal, the relatively low amount of the security stipulated in the Contract and the possibility of partial performance of the Contract before the provision of the security meant

that the economic value of the security to the Counterclaimant was relatively low. In the event of non-performance by the Counterrespondent, the Counterclaimant could recover only a small part of its losses from the security. There might also have been situations where, if the Forwarding agent had properly acted, the Client would not have been able to benefit from the security.

106. At the same time, the Respondent's failure to fulfill its obligation to provide security meant that during the period when the security was to be in effect, the Counterclaimant had no possibility to use it to mitigate its risks, despite this possibility being stipulated in the Contract. Moreover, under Clause 1.3 of Annex No. 5 of the Contract, the costs for obtaining the security shall be borne by the Forwarding agent. The Respondent's failure to fulfill its obligation to provide the security enabled it to unjustly save monies that should have been allocated to securing the obligation.

107. In determining the amount to which the Contractual fine shall be reduced, the Arbitral Tribunal applies by analogy the provisions on the determination of losses with a reasonable degree of certainty (Paragraph 5 of Article 393 of the Civil Code). The Arbitral Tribunal also notes that under Clause 1.2 of Annex No. 5 of the Contract, the Counterrespondent shall provide security in one of the following forms: bank guarantee, surety, and advance. The Counterrespondent had the right to choose the form of security by itself. The Arbitral Tribunal finds that, from an economic standpoint, the most appropriate form of security for the Counterrespondent would have been a bank guarantee, the value of which averages 2% of the amount covered per annum. Considering the amount for which the Counterrespondent was obliged to provide security (USD 65,000) and the duration of the security (approximately four months), the cost of obtaining such a guarantee would be approximately USD 450.

108. The Arbitral Tribunal finds that the Counterrespondent has unduly saved the above amount by failing to provide security. Moreover, this amount reflects the cost of covering the additional risks incurred by the Counterclaimant due to the failure to provide security. However, the fine amount need not necessarily coincide with the monies unjustly saved by the infringer. Otherwise, the fine would lose its purpose of inducing the debtor to properly perform the underlying obligation.

    Therefore, the Arbitral Tribunal considers it necessary to reduce the fine to USD 6,500.

109. Thus, in partial satisfaction of the Counterclaim, a fine of USD 6,500 should be charged from the Counterrespondent in favor of the Counterclaimant. The remaining part of the Counterclaim should be dismissed.

110. During the hearing, the Counterclaimant's representative submitted that the amounts sought in the Counterclaim should be set off against the amounts sought in the initial Claim. The representative of the Counterrespondent did not object to the set off.

111. Considering the above and based on the principle of procedural economy, the Arbitral Tribunal deems it appropriate to set off the amounts of the counterclaims to be awarded from the Respondent in favor of the Claimant, on the one hand, and from the Counterrespondent in favor of the Claimant under the initial Claim, on the other.

112. Following the set off, the Respondent shall pay USD 45,050.88 (51,550.88 – 6,500) in demurrage costs and RUB 68,255.25 in interest. The remaining claims raised by the Parties are dismissed.

ALLOCATION OF ARBITRATION COSTS AND FEES

113. Pursuant to Articles 4 and 13 of the Rules on Arbitration Fees and Arbitration Costs (hereinafter – **Rules**), the Claimant paid an arbitration fee of USD 19,137.42 (payment orders No. [No] of 17 March 2022 and No. [No] of 13 April 2022) with the claims valued at USD 226,387.23 under the Rules. The Counterclaimant, with a claim value of USD 130,000, paid an arbitration fee of USD 13,050 (payment order No. [No] of 22 March 2022).

114. When paying the fee for the counterclaim, the Counterclaimant paid RUB 849,217.62. As of the filing date of the Counterclaim (14 June 2022), the arbitration fee amounted to RUB 754,002.71 (USD 1 = RUB 57.778). **Therefore, RUB 95,214.91 shall be refunded to the Counterclaimant.**

115. The Parties also filed motions for the reimbursement of costs: the Respondent requested the recovery of RUB 450,000 in costs, and the Claimant requested the recovery of 443,063.42 RUB in costs.

116. In its motion for reimbursement of costs, the Respondent pointed out a legal services agreement with the [Law Offices]. The fee for services rendered in preparation for the present proceedings amounted to RUB 450,000. The motion was accompanied by the agreement, a request for legal services, a certificate of services rendered of 4 July 2022, and an invoice of 4 July 2022 for RUB 450,000. The certificate of services rendered of 4 July 2022 states that the following consulting services were provided: assessment of the Respondent's position in the case, proposals to amend the response to the claim and counterclaim, recommendations on case strategy, and one-time 40-minute oral consultation.

117. The Claimant filed objections to the Respondent's motion for reimbursement of costs. It argued that the Respondent's costs were significantly overstated because the representatives of the law offices contracted by the Respondent had neither attended the hearing nor signed or submitted any documents to arbitration. All documents were prepared by the Respondent itself. The Claimant requested that the Respondent's motion for reimbursement of costs be denied.

118. The Claimant, in its motions for reimbursement of costs of 14 July 2022 and 27 July 2022, referred to the fact that it had entered into a legal services agreement with the [Law Firm] for the handling of the case. The legal services agreement, certificates of services rendered dated 7 July 2022 for RUB 331,278.90 and 26 July 2022 for RUB 111,784.52, invoices, payment order for RUB 331,278.90, and confirmation of railway ticket expenses are attached to the motion.

119. The Respondent did not submit any statements in response to the Claimant's motions for reimbursement of costs.

120. The Arbitral Tribunal, after considering the Respondent's motion for reimbursement of costs and the Claimant's Objections to the granting of this motion, finds it necessary to reduce the amount of the Respondent's costs. The vast majority of the procedural documents submitted by the Respondent were signed by [Name], [Head of Legal Department]. As follows from the hearing, it was [Name] who was responsible for preparing the Respondent's position. The Arbitral Tribunal has no reason to question the documents attached to the motion, which confirm that the services of the [Law Offices] were rendered. Meanwhile, there is no specific evidence that these services influenced the Respondent's position or were reflected in the procedural documents.

121. Therefore, the Arbitral Tribunal finds the Respondent's costs of RUB 100,000 reasonable and reimbursable.

122. The Arbitral Tribunal finds that the Claimant's motion for reimbursement of costs is well-founded. The Tribunal takes into account that the procedural documents were signed by [Name] on behalf of the Claimant, the representative of the [Law Firm], and [Name] primarily defended the Claimant's legal positions during the hearing.

123. Pursuant to Paragraphs 1, 2, and 6 of Article 15 of the Rules, the arbitration fee and arbitration costs shall be paid by the party against which the arbitral award is rendered. If the claims subject to monetary evaluation are partially satisfied, the Respondent shall pay the arbitration fee, and the arbitration costs calculated proportionately to the satisfied claims or the value of the awarded property. The remaining costs shall be borne by the Claimant.

124. Since the Claimant's initial claim against the Respondent has been partially satisfied, the Respondent shall pay the Claimant a portion of the arbitration fee and costs proportionate to the amount of the satisfied claims.

    In the present dispute, the Claimant's claims have been satisfied to the extent of 23.09% of the asserted claims. The Respondent shall pay the Claimant an arbitration fee of USD 4,418.83 (USD 19,137.42 / 100 x 23.09) and case handling costs of RUB 102,303.34 (RUB 443,063.42 / 100 x 23.09).

    The remaining costs shall be borne by the Claimant.

125. The counterclaim of the Counterclaimant against the Counterrespondent has also been partially satisfied. The granted portion of the claim is 5% of the total asserted amount. Consequently, the Counterrespondent shall pay the Counterclaimant an arbitration fee of USD 652.50 (USD 13,050 /100 x 5) and case handling costs of RUB 5,000 (RUB 100,000 / 100 x 5).

    The remaining costs shall be borne by the Counterclaimant.

126. Taking into account the statement made by the Counterclaimant during the hearing that the Counterclaim was brought to set off possible claims under the initial claim, and given the absence of objections to the set off by the Counterrespondent, the Arbitral Tribunal finds it possible to set off the Parties' counterclaims of the same nature in respect of the arbitration fee and case handling costs. Therefore, the arbitration fee of USD 3,766.33 (USD 4,418.83 – 652.50) and case handling costs of RUB 97,303.34 (RUB 102,303.34 – 5,000) should be recovered from the Respondent in favor of the Claimant.

OPERATIVE PART OF THE AWARD

Based on the above and guided by Articles 50 and 51 of the Arbitration Rules, the Arbitral Tribunal

AWARDS:

1. To recover from [Respondent] ([OGRN], [INN], [address]) in favor of [Claimant] ([OGRN], [INN], [address]) USD 45,050.88 (forty-five thousand fifty 88/100) of demurrage costs and RUB 68,255.25 (sixty-eight thousand two hundred and fifty-five 25/100) of interest for the use of the other person's means.

To dismiss the rest of the claims under the initial Claim and Counterclaim.

2. To recover from [Respondent] ([OGRN], [INN], [address]) in favor of [Claimant] ([OGRN], [INN], [address]) an arbitration fee of USD 3,766.33 (three thousand seven hundred sixty-six 33/100) and case handling costs of RUB 97,303.34 (ninety-seven thousand three hundred three 34/100).

The arbitral award shall be binding upon the Parties from the date of its adoption and immediately enforceable.

Under Article 40 of the Law on Arbitration and the express agreement of the Parties, this arbitral award shall be final for the Parties and shall not be set aside.

The present 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 RAC files.

Sole arbitrator
Arkhipova Anna Grigorievna