



**ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT**

THE PROBLEM

**THIRTY-FIRST ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

**VIENNA, AUSTRIA
2023 / 2024**

**ORAL HEARINGS
22 – 28 MARCH 2024**

Organised by:
Association for the Organisation and Promotion of the Willem C. Vis
International Commercial Arbitration Moot

and

**TWENTY-FIRST ANNUAL WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

HONG KONG

**ORAL ARGUMENTS
10 – 17 MARCH 2024**

Organised by:
Vis East Moot Foundation Limited





NOTICE ON THE USE OF ARTIFICIAL INTELLIGENCE (AI)

The Rules for the 31st Willem C. Vis International Commercial Arbitration Moot include updated provisions on the use of Artificial Intelligence (AI) and the mandatory submission of the Academic Integrity and Artificial Intelligence Disclosure Statement.

Please refer to Rules 64 – 66.

The Rules are available at https://www.vismoot.org/31st_vis_moot/.

UNDER NO CIRCUMSTANCES MAY THIS PROBLEM OR THE MEMORANDA OF ANY TEAM BE USED TO TRAIN ANY AI-APPLICATION. THIS PROHIBITION INCLUDES COPYING TEXT FROM THIS DOCUMENT INTO A PROMPT FOR AN AI-APPLICATION

CONTENTS

Document	Page
Letter by Langweiler (9 June 2023)	4
Request for Arbitration (9 June 2023)	5
Claimant Exhibit C 1 (Framework Agreement of 7 June 2019)	9
Claimant Exhibit C 2 (Purchase Order 9601 of 17 January 2022)	13
Claimant Exhibit C 3 (Letter by Claimant of 5 September 2022)	14
Claimant Exhibit C 4 (Letter by Respondent of 8 September 2022)	15
Claimant Exhibit C 5 (Email 28 March 2022)	16
Claimant Exhibit C 6 (Witness Statement Mr. Isetta)	17
ICC Acknowledgment of a Request for Arbitration (9 June 2023)	19
ICC Notification of a Request for Arbitration (12 June 2023)	21
ICC Letter to Parties on Co-Arbitrator nominated by Claimant (26 June 2023)	26
ICC Notification of the Answer (10 July 2023)	27
Letter by Fasttrack (15 July 2023)	29
Answer to the Request for Arbitration (10 July 2023)	30
Respondent Exhibit R 1 (Email 28 August 2020 - 11:38 a.m.)	33
Respondent Exhibit R 2 (Email 28 August 2020 - 12:25 p.m.)	34
Respondent Exhibit R 3 (Automotive Weekly 20 May 2022)	35
Respondent Exhibit R 4 (Witness Statement Mr. Toyoda)	36
ICC Letter to Parties on Co-Arbitrator nominated by Respondent (25 July 2023)	37
ICC Notification of Court decision (11 August 2023)	38
ICC Letter to the Arbitral Tribunal (11 August 2023)	40
ICC Case Information	44
Request for Authorization of New Claim (11 September 2023)	46
Claimant Exhibit C 7 (Purchase Order A-15604 of 4 January 2022)	48
Claimant Exhibit C 8 (Witness Statement Ms. Durant)	49
Letter by Presiding Arbitrator (12 September 2023)	51
ICC Letter on Consolidation (12 September 2023)	52
Rejection of Request by Respondent (2 October 2023)	54
Respondents Exhibit R 5 (Notice of defect of 4 April 2022)	56
Letter by Presiding Arbitrator (6 October 2023)	57
Procedural Order No 1 (6 October 2023)	58
Procedural Order No 2 (6 November 2023)	61

Joseph Langweiler

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
Langweiler@lawyer.me

9 June 2023

By ICC Case Connect

International Chamber of Commerce (ICC)
International Court of Arbitration
Mr. Alexander G. Fessas
Secretary General
33 – 43 avenue du Président Wilson
75116 Paris
France

Dear Mr. Fessas,

On behalf of my client, *SensorX plc*, I hereby submit the enclosed Request for Arbitration pursuant to Article 4 ICC Rules. A copy of the Power of Attorney authorizing me to represent *SensorX plc* in this arbitration is also enclosed.

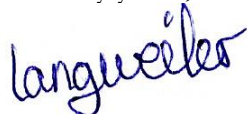
The filing fee has been paid.

The Claimant requests the performance of contractual obligations.

The contract giving rise to this arbitration provides that the seat of arbitration shall be Vindobona, Danubia, and that the arbitration shall be conducted in English. The arbitration agreement provides for three arbitrators. *SensorX plc* hereby nominates Dr. William Chevy, Geely-Street 12 Capital City, Mediterraneo as its arbitrator.

The required documents are attached.

Sincerely yours,



Joseph Langweiler

Attachments:

Request for Arbitration with Exhibits
Power of Attorney (*not reproduced*)
Confirmation of Payment of Filing Fee (*not reproduced*)

Request for Arbitration

(pursuant to Article 4 of the ICC Rules of Arbitration 2021)

in the Arbitral Proceedings

SensorX plc v. Visionic Ltd

9 June 2023

PARTIES AND REPRESENTATION

1. Claimant is:
SensorX, plc
Atwood Lane 1784
Capital City
Mediterraneo
2. Claimant is represented in this arbitration by Joseph Langweiler, 75 Court Street, Capital City, Mediterraneo.
3. Respondent is:
Visionic Ltd
Optronic Avenida 3
Oceanside
Equatoriana

STATEMENT OF FACTS

4. Claimant, SensorX plc, is one of the leading Tier 2 producers of sensors used in various applications in the automotive industry, in particular for all types of autonomous driving applications.
5. Respondent, Visionic Ltd, is a Tier 1 producer of optical systems which are used by many of the leading car manufacturers for their autonomous parking systems.
6. On 7 June 2019 the Parties entered into a Framework Agreement to regulate the future supply of Respondent with Claimant's sensors (**Claimant Exhibit C 1**).
7. According to Article 3 of the Framework Agreement Respondent was entitled to order up to 250,000 sensors per year. Individual Orders had to be placed three months in advance and could not exceed 80,000 sensors per quarter.
8. Payment was to be effected by transfer to the bank account specified in the Framework Agreement (Article 5).
9. Article 40 required that all changes to the Agreement had to be made in writing.
10. Between June 2019 and January 2022 Respondent submitted 22 different purchase orders under the Framework Agreement and Claimant delivered more than 5,000,000 sensors to Respondent

without any problems. Most of those sensors were of the S4-25899 model. There had, however, also been three orders for other models to which the Framework Agreement was then applied.

11. Notwithstanding that the Framework Agreement provided in Article 6 for a semi-annual fixing of the prices the Parties had agreed in their price fixing meeting on 1 December 2019 to shift to an annual determination for the price. Since then, the price for the coming year has always been fixed at the beginning of December of the previous year in a meeting between the lead sales and purchase managers. The Parties had agreed to such a deviation.
12. Most orders submitted since June 2019 had been in the range of 200,000 – 400,000 units. In their meeting on 2 December 2021 Claimant informed Respondent that it would prefer larger orders and was willing to give an additional discount of 1 % for any order above 1,000,000 units. Larger orders were easier to handle for Claimant and allowed for better production planning.
13. With its Purchase Order No. 9601 of 17 January 2022 Respondent ordered 1,200,000 sensors (**Claimant Exhibit C 2**) to be delivered in two instalments in April and May. The price agreed was USD 32 per unit. Claimant delivered both instalments in accordance with the contractual provisions, the first 600,000 sensors on 3 April 2022 and the second 600,000 on 30 May 2022.
14. According to Clause 6 of the Purchase Order No. 9601, payments for both deliveries were due 30 days after delivery, i.e., on 3 May 2022 and 30 June 2022 respectively. No payments were, however, received, neither on these dates nor later which was only discovered on 25 August 2022. Due to a cyberattack in the early parts of the year, Claimant's internal planning and accounting system went down and had to be thoroughly investigated and sanitized from 15 May until 30 June 2022.
15. During this period there was also an unusual number of long-term employee absences due to ill health. This included Ms. Telsa Audi, who was at the time the account manager responsible on Claimant's side for Respondent's account. She had been absent since 27 March 2022, first on holiday for 10 days and then on sick leave before leaving the company with effect of 1 July 2022. As a consequence, of Ms. Audi's sudden leave Mr. Gustaf Gabrielsson, who was her successor from 1 August onwards only discovered on 25 August 2022 that no payment had been made under Purchase Order 9601.
16. Discussions at the working level between Mr. Gabrielsson and his counterpart at Respondent revealed that Respondent had made the two instalment payments to another bank account. Respondent alleged that Claimant's Ms. Audi - or more likely someone who impersonated her - had requested payment to a different account which Respondent had then made. In light of the payments made, Respondent did not want to pay the amount a second time to the correct bank account.
17. With the letter of 5 September 2022 (**Claimant Exhibit C 3**) Claimant complained to Respondent that the payments were not received and set a deadline for payment by the following week.
18. Respondent replied on 8 September 2022 alleging that payments were made on the agreed dates to the newly communicated bank account (**Claimant Exhibit C 4**). With its letter, Respondent submitted an email which allegedly had been sent by Claimant asking for payment to a new bank account (**Claimant Exhibit C 5**). The email did not come from one of the Claimant's email addresses.

19. It seems that someone gained access to the content of the Parties' agreements and then sent an email pretending to be Ms. Audi, who was in charge on Claimant's side for the processing of Purchase Order No. 9601. In that email, "Ms. Audi" asked for a transfer of the amount due for the deliveries under Purchase Order No. 9601 to a different bank account. While at first sight, the email appears to have come from Claimant, a closer look reveals that it bore the mark of an obvious phishing attack. The top-level domain is "se~~m~~sorX.com" instead of "se~~n~~sensorX.com". Furthermore, Claimant would have never requested payment to a new bank account merely in an email. The Framework Agreement clearly stated in Article 40 that changes had to be made in writing with the signature of both Parties.
20. Despite these facts Respondent, who had obviously failed to make payment to the agreed-upon account, refused to pay for the sensors delivered. A meeting on 28 November 2022 between the CEOs of both companies, Claimant's Mr. Enzo Isetta and Respondent's Ms. Mercedes Ford, remained without any result concerning the resolution of the dispute relating to the payment (Claimant Exhibit C 6).
21. Quite to the contrary, during the meeting Respondent informed Claimant that it would terminate the Framework Agreement, as it had planned to purchase sensors from 1 July 2023 onwards from one of Claimant's competitors.

LEGAL EVALUATION

22. The Arbitral Tribunal has jurisdiction to hear the case. Respondent's Purchase Order No. 9601 contains the following arbitration clause:

"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG."
23. It is noteworthy, that a comparable arbitration clause is also contained in Article 41 of the Framework Agreement, so that there can be no doubt as to the Parties' will to submit to arbitration.
24. According to Clause 6 of the Purchase Order No. 9601 Respondent was obliged to pay the price within 30 days after delivery, i.e., USD 19,200,000 on 3 May 2022 and USD 19,200,000 on 30 June 2022.
25. No such payment was received. The payment which Respondent apparently made to the wrong bank account cannot qualify as performance of Respondent's payment obligation. It does not release Respondent from its obligation to pay Claimant.
26. Respondent was obviously not entitled to pay to the new account as Claimant never authorized such payment. In light of the clear wording of Article 40, a change of the bank account would in any way have required an agreement in writing with signature from both Parties and not only a unilateral email allegedly from Claimant.
27. Furthermore, there was no obligation for Claimant to inform Respondent about an earlier phishing attack upon Claimant on 5 January 2022 which was discovered on 23 January 2022. Such an obligation arises neither from the contract nor the applicable law. Neither the law of Danubia as chosen by the Parties nor the law of Mediterraneo, where Claimant is located,

require a Party which has been subject to a phishing attack to inform its contracting partners or other parties about a possible breach of its data systems.

28. Quite to the contrary, in Mediterraneo, the concern that legislation codifying such information duties would result in an additional burden for Mediterranean companies including mass claims for alleged or actual violations of such duties was one of the central arguments against the implementation of a law on data protection which would mirror comparable legislation in Europe, Brazil or Equatoriana. The deliberate decision by the legislator to not enact a special data protection act that would impose information duties cannot be circumvented by deducing such duties from general rules of contract law, in particular the duty to cooperate in Article 5.1.3 of the Danubian Contract Act which had been relied upon by Respondent in the negotiations in the pre-arbitration phase. Furthermore, the Contract Act is not applicable, as the Purchase Order No. 9601 is governed by the CISG which does not provide for such an information duty.
29. Contrary to the view expressed by Respondent in the discussions preceding this arbitration, this is not a case where the Claimant “caused” Respondent’s failure to pay in the sense of Article 80 CISG. The sole reason for Respondent’s failure to pay is its unwillingness to do so. And since Claimant is seeking performance of the payment obligation and not bringing a claim for damages Article 77 CISG is obviously not applicable.

REQUEST

30. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:
- 1) Respondent is ordered to pay Claimant USD 38,400,000, with simple interest at the annual rate of 4 % on the amount of 19,200,000 from 4 May 2022 onwards, and on the amount of 19,200,000 from 1 July 2022 onwards;
 - 2) Respondent is ordered to pay the cost of this arbitration and to reimburse Claimant for all costs incurred in connection with it.



Joseph Langweiler

FRAMEWORK AGREEMENT

Whereas SensorX, plc is one of the leading manufacturers of all types of sensors for various applications in the automotive industry;

Whereas Visionic Ltd manufactures optical instruments for the automotive industry relying on sensors;

Whereas the Parties want to regulate the details of their future co-operation;

The following agreement (“Framework Agreement”) is concluded:

Article 1: PARTIES and SUBJECT MATTER

Seller: **SensorX**, plc, Atwood Lane 1784, Capital City, Mediterraneo, (“**SELLER**”).

and

Buyer: **Visionic Ltd**, Optronic Avenida 3, Oceanside, Equatoriana (“**BUYER**”).

Collectively referred to as “**the Parties**”.

This Framework Agreement governs the contractual terms for all S4-25899 sensors and possible other products (Contract Products) to be supplied by the SELLER to the BUYER or the group companies of BUYER which the Parties will agree upon in the respective individual contracts (referred to as "Individual Contract"). It applies to all the Individual Contracts agreed under this Framework Agreement and to the order and call-off plans drawn up in accordance therewith and to logistics concepts agreed in deviation therefrom.

Article 2: BASIS of AGREEMENT

The Terms and Conditions of Sale of SELLER (Annex 1) apply to the supply of Contract Products, except as otherwise provided under the terms of this Framework Agreement. Project-specific provisions for delivery terms shall be agreed in the respective Individual Contracts. General business terms of the BUYER shall not be accepted. Any other general terms of contract deviating from this Framework Agreement and the Terms and Conditions of Sale of the SELLER shall only become part of the contract if both parties explicitly agree in writing that they shall prevail over this Framework Agreement.

Article 3: SELLER'S OBLIGATIONS

1. The SELLER undertakes to deliver to the BUYER upon the latter's orders
 - a. up to 2,500,000 sensors of the requested types per year;
 - b. up to 800,000 sensors of the requested types per quarter as long as the yearly quota is not exceeded.
2. [...]

Article 4: BUYERS OBLIGATION

1. The BUYER undertakes
 - a. to order from the SELLER a minimum of 1,500,000 sensors per year;
 - b. to take delivery of such sensors;
 - c. to pay the price for those sensors as determined for each order in accordance with the price fixing procedure in Article 6;
 - d. [...]

Article 5: PURCHASE ORDERS

The call-off of the sensors required under the Individual Contract indicated in Article 1 shall be effected via individual purchase orders and call-off plans, except insofar as logistics concepts deviating from this have been agreed. The purchase orders and call-off plans are deemed respectively accepted by the SELLER if the SELLER does not object to them in writing within 2 (two) working days of receipt. Objection to purchase orders shall only be allowed if the legally binding order exceeds the previous non-binding previews of the BUYER by more than 15% or deviates in other material aspects from this Framework Agreement.

Individual Orders have to be made by the BUYER at least three months before the requested delivery.

They should specify

- the exact product and the amount requested;
- any special packaging required;
- the place of delivery if deviating from the present agreement.

Article 6: PRICE

The price for the sensors shall be fixed by the Parties' Heads of Sale and Purchasing on a semiannual basis in meetings in December and June. The prices are then applicable for orders submitted within the following six months.

Article 7: PAYMENTS

1. All payments have to be made within 15 days upon confirmed delivery by bank transfer to one of the following accounts:

Automotive Bank in Mediterraneo
47 Gran Manzana Road
Capital City
BIC: AUTOBANKXXX
IBAN: ME33 6598 3241 2111 33

or

First Bank of Mediterraneo
2 Vista al Océano
Capital City
BIC: FIRSTBAN33X
IBAN: ME31 1246 8795 6478 21

Article 8: INSURANCE

SELLER shall maintain the following liability insurance with at least the insured sums set forth below for the duration of the contractual relationship with BUYER:

Public liability insurance: EUR 15 million flat for personal injury and property damage
Product liability insurance: EUR 15 million flat for personal injury and property damage
Car recall cost insurance: EUR 10 million per recall – limited to 2 recalls per annum

A written confirmation of the insurer of the aforementioned insurance cover is appended in Annex 2. SELLER undertakes to inform BUYER in writing without delay prior to relevant changes in the insurance circumstances, in particular of the lapse of insurance cover.

Even if the insurance benefits should not fully cover the damage incurred by BUYER or by third parties, the liability of SELLER vis-a-vis BUYER or the third party affected shall continue to exist in full.

....

Article 15: NOTICE OF DEFECTS

The Contract Products shall be examined within one week after delivery as to their conformity. The examination has to be documented and shall be conducted as to its scope and size according to the Rules of the Automotive Industry.

Any notice of defect shall be sent within a reasonable time on the form attached as Annex 3 to this Agreement to the SELLER'S Quality Department at the address given on the form. Non-compliance with the examination and notice obligation results in the loss of any rights for the deficiency of the goods.

...

Article 40: AMENDMENTS

No amendment or waiver of any provision of this Agreement including this Article shall be valid unless the same is in writing and signed by the Parties.

Article 41: DISPUTE RESOLUTION

1. Disputes or disagreements arising under or in connection with this Framework Agreement (Disputes) shall be settled amicably either by negotiation between the Parties or mediation.
2. Arbitration. Any Dispute not finally resolved by any of the alternative dispute resolution procedures set forth in paragraph 1 shall be exclusively and definitively resolved through final and binding arbitration, it being the intention of the Parties that this is a broad form arbitration agreement designed to encompass all possible disputes arising in connection with the present agreement and the contracts concluded thereunder.
3. Rules. The arbitration shall be conducted in English in accordance with the following arbitration rules (as then in effect): Rules of Arbitration of the International Chamber of Commerce (ICC).
4. Number of Arbitrators. The arbitration shall be conducted by three arbitrators unless all parties to the Dispute agree to a sole arbitrator within thirty (30) Days after the filing of the arbitration. For greater certainty, for the purpose of this Article, the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other parties to the Dispute.

5. Consolidation. If the Parties initiate multiple arbitration proceedings in relation to several contracts concluded under this framework agreement, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, the Arbitral Tribunal of the first arbitration proceedings has the power to consolidate all such proceedings into a single arbitral proceeding.
6. The place of arbitration is Danubia and this Framework Agreement and all Individual Contracts concluded hereunder are governed by the law of Danubia.

Article 42: MISCELLANEOUS

1. This document contains the entire agreement between the Parties.
2. If any provisions of this Agreement should be or become ineffective in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the parties shall agree upon a valid provision approximating most closely the economic purpose of the ineffective provision. This shall apply analogously to any gaps.

Date: 7 June 2019

E. Isetta

Mr. Enzo Isetta
(Chief Executive Officer)

Mercedes Ford

Ms Mercedes Ford
(Chief Executive Officer)



VISIONIC
EXCELLENCE THE EASY WAY

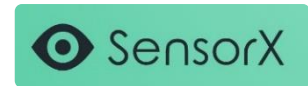
In line with the Framework Agreement concluded between the Parties, the provisions of which govern this order unless agreed otherwise, Visionic makes the following

PURCHASE ORDER
NO 9601
17 January 2022

1. Product(s): S4-25899 Radar Sensor
2. Quantity: 1,200,000 units
3. Delivery Dates:
First Installment of 600,000 units: 14th Calendar Week
Second Installment of 600,000 units: 22nd Calendar Week
4. Places of Delivery:
First Installment: DDP Optronica Avenida 3, Oceanside, Equatoriana
Second Installment: DDP Rue Laser, Mountainview, Equatoriana
5. Price: USD 32.00 per unit (on the basis of the price formula agreed between the Parties on 1 December 2021 for larger orders)
6. Payment Terms: 30 days after delivery
7. Dispute Resolution: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG.

Mr. William Toyoda
(Head of Purchasing)



SensorX, plc, Atwood Lane 1784, Capital City, Mediterraneo
Mr. William Toyoda
Visionic Ltd
Optronic Avenida 3
Oceanside
Equatoriana

5 September 2022

Outstanding Payment – Purchase Order 9601

Dear Mr. Toyoda,

In accordance with your Purchase Order No. 9601, SensorX delivered 1,200,000 units of the S4-25899 sensor in two installments of 600,000 on 3 April 2022 and 30 May 2022.

Payments for these deliveries in the amount of USD 19,200,000 had to be effected by 3 May and 30 June respectively. There were no complaints from your side concerning the quality of the sensors delivered.

Irrespective of that we have not yet received any payment from your side to the bank account agreed between us.

I have been informed by Mr. Gabrielsson who has been in charge of your account since 1 August 2022 that apparently payments have been made to another bank account which was allegedly indicated to you via email.

Following our internal investigations, I can confirm with certainty that no such email was ever sent by Ms. Audi, who had been the account manager responsible for you until she left SensorX on 1 July 2022, or by anyone else from within SensorX. It appears that you might have been subject to a phishing attack.

Thus, I kindly ask you to transfer USD 38,400,000 to the known bank account at the Automotive Bank in Mediterraneo.

In light of our long-lasting relationship, we will not charge any interest or claim any damages for the belated payment. We hope with this measure of goodwill to help solving the matter and continue our mutually beneficial cooperation.

Dr. Bertha Durant

Dr. Bertha Durant
(Head of Sales)

Visionic Ltd, Optronic Avenida 3, Oceanside, Equatoriana

SensorX, plc
Atwood Lane 1784
Capital City
Mediterraneo



8 September 2022

Dear Ms. Durant,

I have received your letter of 5 September 2022 with great surprise.

I thought the issue had been solved in the discussions between Mr. Royce and Mr. Gabriellsson. As you can see from the attached copies of the bank transfer documents, the payments were effected in line with the instructions in the email of 28 March 2022, which must be attributed to Ms. Audi, your account manager at the time.

The fact that her email account was apparently “taken over” by cybercriminals who – with the information received thereby – were able to defraud your customers falls squarely under your sphere of risk and thus cannot lead to an obligation for us to transfer the money a second time.

That is even more so as you did not inform us about the attack on your IT system in early 2022, as principles of good data governance would have required you to do. In light of our long-lasting relationship and our past behaviour in a comparable case in 2020, we would have considered notifications to be standard practice under the Framework Agreement if not even an ancillary duty arising from it.

Had you done so, we would have been aware of the increased threat which then materialized in the forged email. It is telling that the email was sent exactly one day after Ms. Audi’s out-of-office-reply was activated and she was thus not reachable.

In light of these facts, we consider that we have fulfilled our payment obligations with the transfer of the amount to the bank account given to us in the email of 28 March 2022.

Should you want to discuss that issue any further I assume it would be best to do that in a personal meeting of the relevant members of the board of directors. Should there be an interest on your side, our CEO, Ms. Ford, would be available for a meeting.

Kind regards,

William Toyoda
(Head of Purchasing)



From: <telsa.audi@sensorx.me>
Sent: 28 March 2022, 8:25 am
To: <henry.royce@visionic.eq>
Subject: **Change of payment process for Order 9601**

Dear Mr. Royce,

I hope you are doing well in these challenging times.

You are probably aware that some of the sensors we produce, in particular the LIDAR sensors ordered by you under Purchase Order No. 15605, are used in military products as well and thus require heightened attention under the existing sanction regimes in Mediterraneo. That led in the past to several problems with our existing banking partners which are located in Mediterraneo. Those problems have increased considerably over the last weeks.

I would like to inform you that in light of those problems we have switched to a new banking partner in Danubia where the government has refrained from imposing any sanctions and which is used by our Danubian subsidiary. From now on all payments by bank transfer should be made to the following account:

First Bank of Danubia
56 Hamilton Road
Vindobona
BIC: FIRSTBANKXXX
IBAN: DA33 6598 3241 2111 33

That already applies to the payments to be made under Purchase Order No. 9601 which is planned for delivery next week. Unfortunately, I can only authorize delivery of the 600,000 S4-25889 sensors after you confirm that the banking details for the transfer of the payment have been changed to the new account.

Could you thus please urgently change the banking details and then immediately confirm such change by replying to this email so that I can authorize shipment?

Should you have any questions, the best way to reach me during the next days is via reply email as I am working from home due to health problems and the mobile connection is bad.

Kind regards,

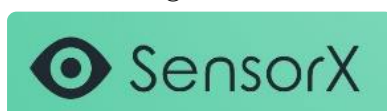
Telsa Audi

Capital City

Mediterraneo

T: (0)214 6698053

Email: telsa.audi@sensorx.me



**Witness Statement of
Mr. Enzo Isetta**

1. I was born on 15 June 1964. After receiving my degree in engineering, I started to work for SensorX in 1992 and have held different positions in the company over the years. Since 1 January 2014, I have been the CEO of SensorX.
2. In that function I signed the Framework Agreement with Visionic in 2019. Visionic was looking for a secure supply of sensors. For us the minimum purchase requirements guaranteed a constant demand for our product, facilitating planning.
3. The first two and a half years of our cooperation went very well. On two occasions Visionic made use of the opportunity offered in the Framework Agreement to place orders for quantities going even beyond our maximum supply obligation and to make use of the existing framework for additional products.
4. In 2022, like many other companies in the automotive industry, we were the target of serious cyberattacks. Most of those were unsuccessful and detected by our excellent cybersecurity defense system which had been considerably strengthened in 2021 through additional firewalls and regular training of our employees. However, even the best defense cannot exclude the risks of a successful attack in its entirety. The weak point is always the users who may despite all training act carelessly.
5. That is what happened apparently on 5 January 2022. As far as we have been able to reconstruct the circumstances, one of our account managers in the sales department must have opened an infected email in breach of all security guidelines, allowing trojan horse malware to enter our system. The successful attack was discovered on 23 January 2022.
6. At the beginning, it appeared to be of only minor relevance. Consequently, after a careful evaluation of the risks associated with the trojan horse found through CyberSec, the leading cybersecurity firm in Mediterraneo, we removed the malware found and did not inform any customers or the authorities. This cyberattack appeared to be at the time an incident of minor relevance. Moreover, there is no such obligation under the law of Mediterraneo, where we are located, nor under the law of Danubia, to which all our international contracts are submitted, if we fail to agree on the law of Mediterraneo.
7. To the contrary, the legislator in Mediterraneo rejected in 2020 the data privacy initiative of the Association for the rights of Citizens which had as its objective the creation of a law on data protection on the basis of the model existing in other states, such as the European Union or Equatoriana. The central argument against the initiative was the burden put upon Mediterranean businesses in particular through mass claims in case of breaches of data privacy.
8. Furthermore, in the absence of any legal or contractual obligation we saw no real benefit in informing our partners of what appeared to be at the time an incident of minor relevance. Even without such information, everyone in the automotive industry was aware that there had been a considerable increase in cyberattacks at all levels of the production chain, including Tier 2 producers. That applies, a fortiori, to Respondent which became a victim of a successful cyberattack itself in 2020.
9. In addition, all our contracts contained a clause that any changes to them had to be agreed in writing or – as in the present case – in writing with the signature of both Parties. Thus, we were confident that no situation like the present one could happen, where a customer, without approaching us, would pay to a wrong account.
10. It only became apparent later that the cyberattack had been much more severe than originally anticipated - either from the beginning or it had been followed by a second attack. On 15 May 2022 data on one of our four subsystems (customer relation management) became encrypted

and we got an offer to release them again in return for a payment of USD 5 million. As a consequence of that and with the support of the governmental cybersecurity unit we engaged in a major security check of all our systems which took us over a month. During that time our entire accounting, payment and ordering system was handled largely manually on the basis of an isolated accounting software and spreadsheets. This circumstance in combination with the high rate of absentees at the time and in particular the departure of Ms. Audi were the reasons why the non-payment was only discovered at the end of August.

11. Following the problems with the payments for the deliveries under Purchase Order No. 9601 I had a meeting with Ms. Mercedes Ford, the CEO of Respondent on 28 November 2022.
12. I had the impression that she was never really interested in an amicable solution. At the end of our meeting, she told me that they would terminate our Framework Agreement with effect on 1 July 2023. I later learned from an article in Automotive Weekly that from that time onwards they wanted to purchase their sensors from IQ-View, one of our competitors.

28 May 2023

E. Isetta

9 June 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

Dear Sir,

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce (“Secretariat”) acknowledges receipt of your Request for Arbitration (“Request”) dated 9 June 2023. Your Request was received on 9 June 2023. Pursuant to Article 4(2) of the ICC Rules of Arbitration in force as from 1 January 2021 (“Rules”), this arbitration commenced on that date.

The caption and reference of this arbitration are indicated above. Please ensure that the caption is accurate and include the reference **Moot-100/MM** in all future correspondence.

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: “(Article ***)”.

Filing Fee

We acknowledge receipt of the US\$ 5 000 non-refundable filing fee.

Your Case Management Team

Margaux Mimolette, Counsel..... (direct dial number 01 23 45 67 89)
 Dominique Francon, Deputy Counsel..... (direct dial number 01 23 45 67 90)
 Howard Galt, Assistant (direct dial number 01 23 45 67 91)
 Email (ica100@iccwbo.org)

.../...

Please find enclosed a Note that highlights certain key features of ICC arbitration which also includes key features of the Expedited Procedure Provisions.

Finally, we invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Alexander G. Fessas
Secretary General
ICC International Court of Arbitration

- encl. - ICC Rules of Arbitration ([click here to download them](#))
- Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ([click here to download it](#))
- Explanatory Note on VAT Applicable on ICC Administrative Expenses available on the ICC website ([click here to download it](#))

10 June 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

VISIONIC LTD
Optronic Avenida 3
Oceanside
Equatoriana

By DHL

Dear Sirs,

Further to the Secretariat's correspondence to SENSORX, PLC ("Claimant") dated 9 June 2023, we notify the Request for Arbitration ("Request") to VISIONIC LTD ("Respondent").

Notification of a Request for Arbitration

The Secretariat notifies Respondent that, on 9 June 2023, it received the Request from Claimant represented by Mr Joseph Langweiler naming it as Respondent. Pursuant to Article 4(2) of the ICC Rules of Arbitration ("Rules") in force as of 1 January 2021, this arbitration commenced on 9 June 2023.

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

The Rules include the Expedited Procedure Provisions ("Provisions") (Article 30 and Appendix VI) which apply if the amount in dispute does not exceed the amounts referred to under Article 1(2) of Appendix VI, subject to the conditions set forth in Article 30(3). The parties can also agree on the application of these Provisions in all other cases.

We enclose for Respondent a copy of the Request and the documents annexed thereto (Article 4(5)).

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org



The caption and reference of this arbitration are as follows: **Moot-100/MM SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)**. Please include the reference **Moot-100/MM** in all future correspondence.

ICC Case Connect

Your arbitration proceedings benefit from the International Court of Arbitration of the International Chamber of Commerce's Dispute Resolution Services case management digital platform. More information about ICC Case Connect is available at www.iccwbo.org/icc-case-connect.

Throughout your arbitration proceedings, you will benefit from a dedicated case space to facilitate communications and document-sharing. Parties and arbitral tribunals are encouraged to make use of this centralised case environment, although they remain free to determine the extent to which they do so. ICC Case Connect will constitute the Secretariat's principal means of communication throughout the proceedings (Article 3(2)), therefore case users should envisage that some interaction with the platform will be necessary.

Following the present notification of the Request by courier, all persons indicated by Claimant as representing Respondent will receive an ICC Case Connect platform notification inviting them to access their dedicated case space.

You are encouraged to connect to ICC Case Connect promptly. You are encouraged to submit the Answer, or any request for an extension of time to submit the Answer, directly via ICC Case Connect within the time limit provided for under the Rules.

Contact your case management team and the dedicated ICC Case Connect helpdesk (caseconnect@iccwbo.org) for assistance and technical support. Once you have received the email notification inviting you to access your case space, you will be able to explore [ICC Case Connect](#).

Answer to the Request

Respondent's Answer to the Request ("Answer") is due within **30 days** (Article 5(1)).

Pursuant to Article 5(3), where Respondent requests transmission of the Answer by delivery against receipt, registered post or courier, Respondent must submit a sufficient number of copies for each other party.

Respondent may apply for an extension of time for submitting the Answer by nominating a co-arbitrator (Article 5(2)). Such information will enable the International Court of Arbitration of the International Chamber of Commerce ("Court") to take steps towards the constitution of the arbitral tribunal.

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration will proceed notwithstanding such refusal or failure (Article 6(8)).

Joinder of Additional Parties

No additional party may be joined to this arbitration after the confirmation or appointment of any arbitrator, unless all parties including the additional party otherwise agree (Article 7(1)). Therefore, if Respondent intends to join an additional party and seek an extension of time for submitting the Answer, please inform us in your application for such extension.

.../...

Funding of Claims or Defences

In order to assist prospective arbitrators in complying with their duties, parties must promptly inform the Secretariat, the arbitral tribunal and the other parties of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration (Article 11(7)).

Constitution of the Arbitral Tribunal

When selecting arbitrators, parties are encouraged to consider diversity, broadly defined, including but not limited to racial, ethnic, cultural, generational, and gender diversity.

The arbitration agreement provides for three arbitrators. Claimant nominated Dr William Chevy as co-arbitrator.

We invite Respondent to nominate a co-arbitrator in the Answer or in any request for an extension of time for submitting the Answer (Article 12(4)). Failing nomination within 30 days, the Court will appoint a co-arbitrator on its behalf (Article 12(4)).

The Court will appoint the president, unless the parties agree upon another procedure (*e.g.* the co-arbitrators nominating the president) (Article 12(5)).

Place of Arbitration

The arbitration agreement provides for Vindobona, Danubia as place of arbitration.

Language of Arbitration

The arbitration agreement provides for English as language of the arbitration.

Provisional Advance

The Secretary General fixed a provisional advance of US\$ 140 000 to cover the costs of arbitration until the Terms of Reference are established (Article 37(1), based on an amount in dispute partially quantified at US\$ 38 400 000 and three arbitrators.

Neither the Court nor the Secretary General will take any decisions until we receive such payment.

Publication of Information on the Website

Pursuant to section “Publication of Information Regarding Arbitral Tribunals, Industry Sector and Law Firms Involved” of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (“Note”), the Court publishes on its website information regarding the names of the arbitrators, their nationality, their role within a tribunal and the method of their appointment, the parties’ representatives in the case, the industry sector involved and whether the arbitration is pending or closed. Such information is published after the Terms of Reference have been transmitted to or approved by the Court, or after the Case Management Conference in cases where the Expedited Procedure Provisions apply, and will be updated in the event of a change in the party representation (without however mentioning the reason for the change). In this respect, the Court publishes such information unless any of the parties objects.

.../...

Publication of Awards

Pursuant to section “Publication of Awards, Procedural Orders, Dissenting and/or Concurring Opinions” of the Note, any award and/or order, as well as any dissenting and/or concurring opinion (“awards and related documents”) which may be made in the case, may be published in their entirety, including the names of the parties and the arbitrators, no less than two years after the date of said notification. The parties may agree to a longer or shorter time period for publication. Considering that awards and related documents may be published, arbitral tribunals are encouraged to include in their award a list of names of relevant individuals or entities involved in the case.

Parties and/or their representatives should consider the relevant applicable laws and establish whether any legal requirements or limitations may prevent the publication of awards and related documents, and inform the arbitral tribunal and the Secretariat accordingly. Any information in this regard available to the Secretariat will be communicated to the parties and the arbitral tribunal.

At any time before publication, any party may object to publication or require that any award and related documents be in all or part anonymised (removal of names and any contextual data that may lead to identification of individuals, parties or disputes) or pseudonymised (replacement of any name by one or more artificial identifiers or pseudonyms), in which case they will not be published or will be anonymised or pseudonymised. If a party requires anonymisation or pseudonymisation, it will be upon the parties to agree on the redactions or accept the redactions proposed by the Secretariat. In case of publication, we will send the draft to the parties and/or their representatives for their information, by using the contact details indicated in the award or any contact details subsequently provided.

Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value of the dispute (Article 22(1)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 38(5)).

Parties, counsel and arbitral tribunals are encouraged to consider implementing case management techniques designed to make arbitration fair and efficient (Appendix IV to the Rules). The Note also provides guidance on the organisation of conferences or hearings, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication (see section “Conduct of the Arbitration” of the Note).

Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

.../...

Representation

All future correspondence addressed to Claimant will be sent solely to Mr Joseph Langweiler.

If Respondent is represented by counsel, we invite Respondent to provide the relevant contact details.

Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation (Article 17).

Communication with the Secretariat

We invite Respondent to ensure that its contact details, and those of its counsel, are always up to date on ICC Case Connect. The information on record can be verified in the case information section of your ICC Case Connect case space. To inform the Secretariat of any changes in your representation, please contact your case management team via the below information or directly via your ICC Case Connect case space.

Your Case Management Team

Margaux Mimolette, Counsel..... (direct dial number 01 23 45 67 89)
Dominique Francon, Deputy Counsel..... (direct dial number 01 23 45 67 90)
Howard Galt, Assistant (direct dial number 01 23 45 67 91)
Email (ica100@iccwbo.org)

While maintaining strict neutrality, we are at the parties' disposal regarding any questions they may have concerning the application of the Rules.

The Note highlights certain key features of ICC arbitration which also includes key features of the Expedited Procedure Provisions. We also enclose a Case Information.

Finally, we invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

- encl. - Request for Arbitration with documents annexed thereto (*not reproduced*)
- Case Information (*not reproduced*)
- All correspondence exchanged to date (including a copy of the present correspondence and its annexes) (*not reproduced*)
- ICC Rules of Arbitration ([click here to download them](#))
- Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ([click here to download it](#))
- Explanatory Note on VAT Applicable on ICC Administrative Expenses available on the ICC website ([click here to download it](#))

25 June 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.memailto:langweiler@lawyer.me

VISIONIC LTD
Optronic Avenida 3
Oceanside
Equatoriana

By DHL

Dear Madame and Sir,

The Secretariat encloses a copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae* of Dr William Chevy, who Claimant has nominated as co-arbitrator.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl: - *Curriculum vitae* of Dr Chevy
- Statement of Acceptance, Availability, Impartiality and Independence of Dr Chevy

c.c. - Dr Chevy (*without enclosures*)

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

10 July 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: <mailto:Langweiler@lawyer.melangweiler@lawyer.me>

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

Dear Madame and Sir,

The Secretariat of the ICC International Court of Arbitration (“Secretariat”) acknowledges receipt an electronic copy of Respondent’s Answer to the Request for Arbitration (“Answer”) dated 10 July 2023, and of the documents annexed thereto.

Answer

A copy of the Answer (Article 5(1)) is enclosed for Claimant (Article 5(4)).

Constitution of the Arbitral Tribunal

The arbitration agreement provides for three arbitrators. Respondent nominated Mr Victor Klement as co-arbitrator.

As the parties have not agreed upon another procedure, the Court will appoint the president.

.../...

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Provisional Advance

We acknowledge receipt of US\$ 135 000 from Claimant.

As the provisional advance has been fully paid, we will transmit the file to the arbitral tribunal, once constituted (Article 16).

Representation by Counsel

We understand that Respondent is represented by Julia Clara Fasttrack. Accordingly, all future correspondence addressed to Respondent will be sent solely to its counsel.

Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation (Article 17).

As provided in the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (“Note”), hard copies should not be sent to the Secretariat, even when the arbitral tribunal asks to be provided with hard copies. Any hard copies sent to the Secretariat will be destroyed upon receipt.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - Answer to the Request (*for Claimant*)
- Copy of Respondent’s correspondence (*for Claimant*)

c.c. - VISIONIC LTD

By DHL

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

By email and courier

10 July 2023

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

Dear Ms Mimolette,

I hereby indicate that I represent Respondent in the above-referenced arbitral proceedings. A power of attorney is attached.

Please find enclosed Respondent's Answer to the Request for Arbitration, a copy of which has been sent directly to Claimant.

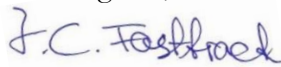
Respondent agrees to communicate by ICC Case Connect. Emails may be sent to fasttrack@host.eq.

RESPONDENT nominates as its arbitrator

Mr. Victor Klement, Rue Peugeot 3, Oceanside, Equatoriana.

Could you please take the necessary steps for his confirmation?

Kind regards,



Julia Clara Fasttrack

Attachments:

Answer to the Request for Arbitration with Exhibits

Power of Attorney (not reproduced)

CV of Mr. Klement (not reproduced)

cc. Joseph Langweiler



JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

Answer to the Request for Arbitration
(pursuant to Article 5 ICC Arbitration Rules)
in the Arbitral Proceedings

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

10 July 2023

Introduction

1. In its Request for Arbitration, Claimant summarizes the facts largely accurately with some convenient omissions. However, Claimant’s conclusions drawn from these facts and Claimant’s legal evaluation are contrary to the fundamental principles of good faith underlying the Parties’ agreements and enshrined in Articles 7, 77 and 80 CISG.

Facts

2. The trojan horse attack is not the first one affecting the Parties' relationship. In August 2020 an attacker managed to overcome Respondent’s cybercrime protections and to infest the laptop of a person in the sales department. As required by Article 34 of the Data Protection Act of Equatoriana Respondent immediately informed Claimant about that attack and the potential data breach (**Respondent Exhibit R 1**).
3. Claimant was highly appreciative of the information, and this helped to ensure that the cybercriminals could not cause any damage to the Parties' relationship. It is telling that Claimant’s Head of Sale and Purchasing at the time, Mr. Li Worry, asked to be informed “*immediately whom [their] cybersecurity officer can contact*” and wanted to be “*kept à jour about [the] investigation*” (**Respondent Exhibit R 2**).
4. That is the behavior Respondent was expecting in the present case as well, where apparently sensitive data relating to the business relationship with Respondent and to our employees were compromised. Claimant decided, however, to keep the information to itself and did not inform any of its partners about the data breach.
5. It later turned out that the cyberattack on its IT-system was much more serious than Claimant had admitted and finally resulted in a shutdown of Claimant’s IT for more than a month (**Respondent Exhibit R 3**).

6. When Mr. Royce received the faked email on 28 March 2022, he was not aware of the attack upon Claimant. At the same time, because the email contained so many precise pieces of information that only Ms. Audi or other employees of Claimant could have accessed there was no reason whatsoever to question the authenticity and correctness of the email. Irrespective of that, Mr. Royce tried to contact Ms. Audi first via her mobile. After being told by her voicemail that she was on sick leave and in urgent matters a colleague should be contacted, he then replied to her email asking for a confirmation of the order to pay to a different bank account. He received a reply to his email that this is what was requested (**Respondent Exhibit R 4**).
7. It later turned out that it was Ms. Audi who had been the entry door for the cybercriminals. It can only be assumed that this was also the reason why she left the company. As far as Respondent was able to acquire information on these matters, it appears that Ms Audi has been the victim of a social-engineering trap. Being a big admirer of sports cars, she was fooled by an advertising email that claimed to offer discounts for an upcoming race. She followed one of the links that was meant to lead to the discount code, and thereby initiated the download and installation of malware.

Legal Considerations

Jurisdiction

8. Respondent does not contest the jurisdiction of the Arbitral Tribunal. Both Parties had the intention to submit the disputes arising from their relationship to arbitration. Thus, irrespective of whether the arbitration agreement in Purchase Order No. 9601 complies with the form requirement under Danubian Law or not, Respondent accepts the jurisdiction of the Arbitral Tribunal over the claims raised.

Substance

9. Claimant has no payment claim against Respondent. Respondent has paid the amounts due for the sensors delivered under Purchase Order No. 9601. Due to the non-compliance of Claimant's employees with internal cybersecurity guidelines Claimant's IT systems were compromised and allowed cybercriminals to read all of Claimant's emails. When this was discovered on 23 January 2022, Claimant decided not to inform Respondent about the highly increased risk of unwanted interference of third parties with the performance of the contracts. That risk finally materialized in Respondent's payment to the new bank account communicated by the cybercriminal mimicking Claimant.
10. Claimant's behavior created additional avoidable risk for Respondent. Had Claimant informed Respondent about the risk, Respondent would never have paid the amount to the new bank account without getting an additional direct oral confirmation from Claimant's Director of Sales.
11. In such a situation it would be contrary to the principle of good faith to force Respondent to bear the risk created by Claimant and pay a second time. Claimant has to be treated as if the request to pay to a new bank account has been made by it so that Respondent's payment constitutes the performance of the payment obligation.

12. If one were to consider the situation as a failure to perform, despite the payments effected by Respondent, it would fall squarely under Article 80 CISG, i.e. the failure would have been caused by Claimant. Consequently, Claimant should not be able to rely on the failure to pay.
13. At least Respondent's obligation to pay should be reduced in line with the principles underlying Article 77 due to Claimant's reckless behavior. These principles must also apply to the payment obligation.

Requests for Relief

14. In light of the above Respondent requests the Arbitral Tribunal to make the following orders:
 - a. To reject Claimant's claims as unfounded;
 - b. To order Claimant to bear the costs of this arbitration.

J.C. Fasttrack

Julia Clara Fasttrack



From: <william.toyoda@visionic.eq>
Sent: 28 August 2020, 11:38 a.m.
To: <telsa.audi@sensorx.me>
Subject: Cyberattack warning!!

Dear Colleagues,

Visionic discovered yesterday that it became a victim of a successful cyberattack. The criminals managed to infiltrate accounts in the sale and purchase department and it cannot be excluded that they managed to access data relating to you as an esteemed partner of Visionic.

We are currently still investigating which data may have been obtained by the criminals, however, in light of our internal cybersecurity measures it is likely that no data with any connection to you have been affected. Irrespective of that we wanted to inform you in advance to reduce any risk for you and allow you to take the necessary measures.

In case we discover during our ongoing examination that data relating to you or your employees may have been obtained by the attackers we will contact you to discuss further steps and provide you with the information required by Article 34 of the Equatorian Data Protection Act.

Should you have any further questions please do not hesitate to contact your account manager on our side.

Sincerely,
William Toyoda
(Head of Purchasing)

Visionic Ltd

Optronic Avenida 3

Oceanside

Equatoriana

T: (0)214 6698053

Email: william.toyoda@visionic.eq





From: <li.worry@sensorx.me>
Sent: 28 August 2020, 12:25 p.m.
To: <william.toyoda@visionic.eq>
Cc: <cybersecurity@sensorx.me>
Subject: RE: Cyberattack warning!!

Dear Mr. Toyoda,

We greatly appreciate your open and forward-looking communication concerning the cyberattack on Visionic.

Notwithstanding that, you will probably understand that we are fairly concerned about the information received given the sensitive data you have about our company.

To properly evaluate the need for action from our side could you please inform us immediately whom our cybersecurity officer (in cc) can contact at your side later today to obtain detailed information about the sort of attack?

Furthermore, I would like to know whether you have any cybersecurity insurance that would also cover the potential losses of your business partners?

Naturally, we require to be kept à jour about your investigation and to be informed immediately should data relating to us and our people have been obtained by the criminals.

In light of the potential consequences, we take cybersecurity and data protection very seriously.

Kind regards,

Li Worry

Head of Sale and Purchasing

SensorX plc

Atwood Lane 1784

Capital City

Mediterraneo

T: (0)146 9346355

Email: li.worry@sensorx.me



AUTOMOTIVE WEEKLY

| Technic | Business | Politics |

20 May 2022

Cyberattacks – the new normal ?

Equatoriana · Over the last few years Equatoriana has witnessed an increasing number of cyberattacks on its automotive industry. At least one OEM and several Tier 1 and 2 suppliers had to report data breaches to the public.

It often starts with a massive phishing attack on employees with the hope of infiltrating the systems. Emails allegedly sent by customers or suppliers that appear to require immediate or urgent action remain the most relevant gateway. Recipients are asked to authorize certain actions or reply to questions. Thereby, or even by just clicking on one of many links contained in that email, the cybercriminals get access to the internal systems of their victims. With that access, they try either to withdraw sensitive information to sell it to competitors, or they install so-called Ransomware which encrypts the victims' data and prevents any operation. Decryption is then dependent on paying high amounts of ransom.

It seems that a comparable trend can also be found in other countries, so the question arises whether there are any special reasons for the focus of the attack on the automotive industry. Reliable sources, for example, have confirmed that SensorX had been the victim of a major cyberattack requiring it to close down not only its website but its entire external and internal IT-system to clean up any infiltration. There

are rumors that this operation, for which SensorX relies again on the services of CyberSec, Mediterraneo's leading cyber security firm, may take at least a month and some data may have been leaked or irretrievably lost. That is particularly embarrassing for SensorX whose new cybersecurity officer had in an article in December 2021 praised the new cybersecurity concept implemented by SensorX.

The company refused to make any comments. Unlike Equatoriana and many other countries, Mediterraneo lacks modern data protection legislation. There is no specific legal obligation to inform the authorities about such an incident, let alone customers or suppliers the data of which may have been compromised through such an attack. Their information depends on the goodwill of the company affected by the cyberattack. The spokesman of DataProtect, a Mediterranean NGO, stated that this is unacceptable and requested urgent action from the government. Notwithstanding the fact that many companies inform their customers and suppliers, informing the affected parties and authorities should not be discretionary. In his view, the need for action is evidenced by the fact that some insurances ask for higher premiums or even do not insure at all cyber risks related to Mediterraneo.

**Witness Statement of
William Toyoda**

1. I was born on 9 June 1961 and I have been the Head of the Visionic Purchasing Department since 2019.
2. We became a target of a successful cyberattack in 2020 and immediately informed all our partners about it even before positively establishing that their data were affected and that a legal information obligation existed under Article 34 of the Equatorianian Data Protection Act. I consider that to be good business practice, in particular in relation to long-term partners, and expect the same behavior also from my business partners, in particular Claimant. At the time of the attack on us, Claimant had been our most concerned partner monitoring very closely our investigation which in the end established that Claimant's data were not affected by the breach. Claimant's employee, Mr. Li Worry, even wanted to know whether we had a cybersecurity insurance which would cover losses incurred by Claimant due to a data leak on our side.
3. Furthermore, Claimant's cybersecurity officer gave a long interview in December 2021 in which he praised the new cybersecurity system which Claimant had implemented shortly before in reaction to several successful ransom attacks on competitors.
4. Consequently, there was no known reason to be in heightened state of risk awareness when I was approached at the end of March 2022 by Mr. Royce, the person responsible for the relationship with Claimant who wanted authorization to pay to a new bank account in Danubia. He showed me the email of Ms. Audi and told me that he had first unsuccessfully tried to reach her via phone. He then replied directly to her email asking for a confirmation that the requested change would be considered to be compliant with the form requirements for amendments. He showed me her answer of 30 March to his email in which she pointed out that in the past the Parties had normally treated the form requirement pragmatically and confirmed that Claimant would consider the exchange of emails to be sufficient to fulfill the writing requirement. As an alternative she offered to wait with the authorization of the shipment until she returned to work, and a written amendment could be prepared by her. That would have involved a delay of at least two weeks. As we needed the shipment urgently for our production that was not an option for us, so that I authorized the payment.
5. Ms. "Audi's" reply mail contained so much information which only Ms. Audi could have about the transaction, so that I was not even considering that the email could have been written by anyone but her. In particular, she referred to issues with our insurance which we had mentioned in our last email to here.
6. Had I been aware that there had been a major cyberattack shortly before I would have personally called my counterpart on Claimant's side, Ms. Bertha Durant, and asked for confirmation. In the course of our relationship, we had always taken a pragmatic approach towards the form required for amendments. On the two occasions where amendment had been necessary, they were agreed between the Parties directly without requiring a formal document signed by both Parties.

4 July 2023



Mr. William Toyoda (Head of Purchasing)

25 July 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: <mailto:Langweiler@lawyer.melangweiler@lawyer.me>

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

Dear Madame and Sir,

The Secretariat encloses a copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae* of Mr Victor Klement, who Respondent has nominated as co-arbitrator.

We are now in a position to invite the Court to examine whether to confirm the co-arbitrators and appoint the president of the arbitral tribunal. We remind you that no party may be joined after the confirmation or appointment of any arbitrator, unless all parties including the additional party otherwise agree (Article 7(1)). Unless we are informed otherwise by **30 July 2023**, we will proceed with the constitution of the arbitral tribunal.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl: - *Curriculum vitae* of Mr Klement
- Statement of Acceptance, Availability, Impartiality and Independence of Mr Klement
c.c. - Mr Klement (*without enclosures*)

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

11 August 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100icwbo.org)

Prof Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By ICC Case Connect

Dr William Chevy
Geely-Street 12
Capital City,
Mediterraneo

By ICC Case Connect

Mr Victor Klement
5 Rue Peugeot
Oceanside
Equatoria

By ICC Case Connect

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

.../...

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Dear Mesdames and Sirs,

On 11 August 2023, the International Court of Arbitration of the International Chamber of Commerce (“Court”):

- confirmed Dr William Chevy as co-arbitrator upon Claimant’s nomination (Article 13(1)).
- confirmed Mr Victor Klement as co-arbitrator upon Respondent’s nomination (Article 13(1)).
- appointed Prof Giovanna Agnelli as president of the arbitral tribunal (Article 13(3)).
- fixed the advance on costs at US\$ 610 000, subject to later readjustments (Article 37(2)).

A copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae*, of Prof Giovanna Agnelli is enclosed for your information.

Advance on Costs

The advance on costs is intended to cover the arbitral tribunal’s fees and expenses, as well as the ICC administrative expenses (Article 37(2) and Article 1(4) of Appendix III to the Rules).

The Court fixed an advance based on an amount in dispute partially quantified at US\$ 38 400 000, and three arbitrators. Depending on the evolution of the arbitration, the Court may readjust the advance on costs.

As the provisional advance has been fully paid, we are transmitting the file to the arbitral tribunal today (Article 16). The parties should correspond directly with the arbitral tribunal and send copies of their correspondence to the other party and to the Secretariat in electronic form only.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - Statement of Acceptance, Availability, Impartiality and Independence of Prof Agnelli
- *Curriculum vitae* of Prof Agnelli

11 August 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Prof Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By ICC Case Connect

Dr William Chevy
Geely-Street 12
Capital City,
Mediterraneo

By ICC Case Connect

Mr Victor Klement
5 Rue Peugeot
Oceanside
Equatoria

By ICC Case Connect

Dear Madame and Sirs,

Pursuant to Article 16 of the ICC Rules of Arbitration (“Rules”), the Secretariat transmits the file to the arbitral tribunal.

Terms of Reference

The Terms of Reference must be established within **30 days** from the transmission of the file to the arbitral tribunal (Article 23(2)).

We invite the arbitral tribunal to establish a list of issues to be determined or to expressly indicate in the Terms of Reference that such list is inappropriate (Article 23(1)(d)).

.../...

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Subject to any requirements of mandatory law that may be applicable, and unless the parties agree otherwise, (1) the Terms of Reference may be signed by each party and member of the arbitral tribunal in counterparts, and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 by email. The Secretariat requires no hard copy of any electronic document which constitutes the original of the Terms of Reference.

Efficient Conduct of the Arbitration

The arbitral tribunal and the parties must make every effort to conduct the arbitration in an expeditious and cost effective manner, having regard to the complexity and value of the dispute (Article 22(1)). The Note sets forth the time limits under the Rules that you must observe and relevant information concerning the conduct of the proceedings.

Appendix IV of the Rules contains suggested case management techniques. The Note also provides guidance on the organisation of conferences or hearings, including conducting such conferences and hearings by audioconference, videoconference, or other similar means of communication (see section “Conduct of the Arbitration” of the Note).

Time Spent

Pursuant to Article 2 of Appendix III, when fixing the arbitrators’ fees the Court may take into consideration, among other criteria, the time spent by arbitrators and the complexity of the dispute. To this end, the Secretariat will request from the arbitrators a periodical report on their activities, which should include a description of the tasks performed, an estimate of the amount of time spent on each of those tasks, and any other information related to those tasks that the arbitrators may deem relevant. For this purpose, we encourage arbitrators to use the Statement of Time and Travel for Work Done.

Submission of Draft Awards and Arbitral Tribunal’s Fees

The final award must be rendered within the time limit fixed by the Court based upon the procedural timetable or, if the Court does not fix such time limit, within six months from the date on which the Terms of Reference were last signed, or from the date of notification to the arbitral tribunal of their approval by the Court (Article 31(1)).

The Court expects three-member tribunals to submit draft awards within three months after the last substantive hearing on matters to be decided in the award or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).

The Court may extend the time limit for rendering the final award pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so (Article 31(2)).

While having the power to extend such time limit, the Court will consider the diligence and efficiency, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, when fixing the arbitral tribunal’s fees (Article 2(2) of Appendix III).

Wherever the arbitral tribunal has conducted the arbitration expeditiously, the Court may increase the arbitral tribunal’s fees above the amount that it would otherwise consider fixing. If the arbitral tribunal is delayed in rendering the final award, the Court may fix the fees at a figure lower than that which would result from the application of the relevant scale should this be deemed necessary (Article 38(2)), as explained in the Note.

.../...

Pursuant to section “Signature of Terms of Reference and Awards – Notification of Awards” of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (“Note”), and subject to any applicable mandatory law requirements, the arbitral tribunal is invited to clarify with the parties if they would agree to the notification of any award by email. If the parties agree to an electronic notification, this will be the only notification under the Rules and the electronic document will constitute the original of the award.

Publication of Information on the Website

Pursuant to section “Publication of Information Regarding Arbitral Tribunals, Industry Sector and Law Firms Involved” of the Note, the Court publishes on its website information regarding the names of the arbitrators, their nationality, their role within a tribunal and the method of their appointment, the parties’ representatives in the case, the industry sector involved and whether the arbitration is pending or closed. Such information is published after the Terms of Reference have been transmitted to or approved by the Court, or after the Case Management Conference in cases where the Expedited Procedure Provisions apply, and will be updated in the event of a change in the party representation (without however mentioning the reason for the change). In this respect, the Court publishes such information unless any of the parties objects.

Transportation, logistics and storage will be indicated as the industry sector involved in this arbitration, unless we are otherwise advised by the arbitral tribunal **by 18 August 2023**. Only one option may be displayed on the website.

Publication of Awards

For the information of the arbitral tribunal, we draw your attention to the following.

Pursuant to section “Publication of Awards, Procedural Orders, Dissenting and/or Concurring Opinions” of the Note, any award and/or order, as well as any dissenting and/or concurring opinion (“awards and related documents”) which may be made in the case, may be published in their entirety, including the names of the parties and the arbitrators, no less than two years after the date of said notification. Parties may agree to a longer or shorter time period for publication. Considering that awards and related documents may be published, arbitral tribunals are encouraged to include in their award a list of names of relevant individuals or entities involved in the case.

Parties and/or their representatives should consider the relevant applicable laws and establish whether any legal requirements or limitations may prevent the publication of awards and related documents, and inform the arbitral tribunal and the Secretariat accordingly. Any information in this regard available to the Secretariat will be communicated to the parties and the arbitral tribunal.

At any time before publication, any party may object to publication or require that any award and related documents be in all or part anonymised (removal of names and any contextual data that may lead to identification of individuals, parties or disputes) or pseudonymised (replacement of any name by one or more artificial identifiers or pseudonyms), in which case they will not be published or will be anonymised or pseudonymised. If a party requires anonymisation or pseudonymisation, it will be upon the parties to agree on the redactions or accept the redactions proposed by the Secretariat. In case of publication, we will send the draft to be published to the parties and/or their representatives for their information, by using the contact details indicated in the award or any contact details subsequently provided.

.../...

Financial Information

We enclose a Financial Table.

Communications

As from now, the parties should correspond directly with you and send copies of their correspondence to the other party and to us. Please provide us with copies of all your correspondence with the parties in electronic format only.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

- encl. *(enclosures available via ICC Case Connect) (not reproduced)*
- Case Information *(not reproduced)*
 - Financial Table *(not reproduced)*
 - Checklist for a Protocol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organisation of Virtual Hearings ([click here to download it](#))
 - ICC Award Checklist *(not reproduced)*
 - Statement of Time and Travel for Work Done ([click here to download it](#))
 - Case documents under folder “All documents” *(not reproduced)*
 - Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration *(not reproduced)*
 - *Curriculum vitae* of fellow arbitrators *(not reproduced)*
- c.c. *(with Case Information and List of Documents only)*
- Mr Joseph Langweiler *By ICC Case Connect: langweiler@lawyer.me*
 - Ms Julia Clara Fasttrack *By ICC Case Connect: fasttrack@host.eq*

CASE INFORMATION

Date: 11.08.2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

The information below comes from the documents submitted by the parties. Such information is intended to give the arbitral tribunal an overview of this arbitration and is not intended to affect any assessment or decision of the arbitral tribunal.

Team in charge of this Arbitration

Margaux Mimolette, Counsel	(direct dial number 01 23 45 67 89)
Dominique Francon, Deputy Counsel	(direct dial number 01 23 45 67 90)
Howard Galt, Assistant	(direct dial number 01 23 45 67 91)
Email	ica100@iccwbo.org

Parties

Claimant	Respondent
SENSORX, PLC	VISIONIC LTD
Atwood Lane 1784	Optronic Avenida 3
Capital City	Oceanside
Mediterraneo	Equatoriana

Counsel

Claimant's counsel	Respondent's counsel
Joseph Langweiler	Julia Clara Fasttrack
Advocate at the Court	Advocate at the Court
75 Court Street	14 Capital Boulevard
Capital City	Oceanside
Mediterraneo	Equatoriana
Tel: (0) 146 9845	Tel: (0) 214 77 32
Fax: (0) 146 9850	Fax: (0) 214 77 33
Email: langweiler@lawyer.me	Email: fasttrack@host.eq

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

[iccwbo.org/arbitration](https://www.iccwbo.org/arbitration)

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org

Arbitral Tribunal

President appointed by the Court	Prof Giovanna Agnelli Margaret Wilcox Drive 31 1011 Vindobona Danubia
Co-arbitrator confirmed upon nomination by Claimant	Dr William Chevy Geely-Street 12 Capital City, Mediterraneo
Co-arbitrator confirmed upon nomination by Respondent	Mr Victor Klement 5 Rue Peugeot Oceanside Equatoria

Agreement upon which the Request is based (bold) and other relevant agreement

- Framework Agreement, dated 7 June 2019; signed by	The parties
- Purchase Order 9601, 17 January 2022, signed by	Respondent

Arbitration Agreement

- Purchase Order 9601:

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG.

Applicable Law

- Purchase Order 9601	“CISG”
-----------------------	--------

Language of Arbitration

Purchase Order 9601	English
---------------------	---------

Place of Arbitration

Purchase Order 9601	Vindobona, Danubia
---------------------	--------------------

Number of Arbitrators

- Purchase Order 9601	3
-----------------------	---

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
Langweiler@lawyer.me

By ICC Case Connect and email

11 September 2023

Arbitral Tribunal

cc.
Respondent / Julia Clara Fasttrack
ICC Secretariat

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

Request for authorization of new claim / subsidiarily of consolidation of conditionally initiated separate proceedings.

Dear Colleagues,

1. With the present submission Claimant raises an additional payment claim in the amount of USD 12 million arising from the delivery under Purchase Order A-15604 and requests
 - a. its inclusion into the present arbitration in line with Article 23(4) ICC Arbitration Rules;
or
 - b. – subsidiarily and only in the unlikely event that the additional claim is not included and has to be brought in a new arbitration, the consolidation of the arbitration proceedings for the additional claim with the present proceedings.

FACTUAL BACKGROUND

2. Under Respondent's Purchase Order No. A-15604 of 4 January 2022 (**Claimant Exhibit C 7**), Claimant had delivered an additional amount of 200,000 units of its LIDAR sensor L-1. The sensor L-1 had been for the last two years Claimant's premium model before it was replaced by the new model L-2. Its primary use is level 3 autonomous driving devices. At the same time, the L-1, like many other LIDAR sensors, is also used for military application. Consequently, its sale had always been organized by a special account manager given its potential for dual use.
3. Following intensive negotiations between the Parties starting at the end of 2021, it was agreed that Respondent could submit an additional order for the sensor L-1 which would be covered by the Framework Agreement in all respects not specifically regulated differently by the Parties (**Claimant Exhibit C 8**).
4. Deviating from the normal payment process, Claimant consented to a payment in two installments. Payment under the first installment was made by Respondent to the bank account

mentioned in the contract. The second payment which was due on 20 May 2022 has never been received. That was, however, discovered only three days ago when the new account manager started to investigate older transactions (**Claimant Exhibit C 8**).

LEGAL EVALUATION

5. According to Article 23(4) ICC Rules the Arbitral Tribunal may authorize new claims and thereby shall take into consideration the “*nature of such new claims, the stage of the arbitration and other relevant circumstances*”. In the present case, all claims arise from the same commercial relationship between the Parties which is regulated by the Framework Agreement. It would be artificial and contrary to the obligation to conduct proceedings in a cost and time-efficient manner to hear these claims in separate proceedings. That applies even more, as the proceedings have not yet really started so that the addition of a new claim does not result in any delay.
6. The fact that the arbitration clauses contained in the two purchase orders are not identical is not an obstacle. The jurisdiction of the Arbitral Tribunal over both claims arises from Article 41 of the Framework Agreement which had been already invoked to justify the jurisdiction of the Arbitral Tribunal. Furthermore, Claimant is always entitled to provide a new legal justification of its claims including the Arbitral Tribunal’s jurisdiction should one not consider the Arbitral Tribunal itself to be obliged by the principle of *iura novit arbiter* to apply the law independent of the Parties’ pleadings.
7. In the unlikely alternative that the Arbitral Tribunal should not allow the extension of the claim, Claimant requests the ICC Secretariat to consider this request as a Request for Arbitration for a new set of arbitral proceedings covering the claim and asks the Arbitral Tribunal to consolidate this newly commenced second arbitration with the already pending arbitration.
8. The Parties have provided the Arbitral Tribunal with the necessary powers for consolidation in the Framework Agreement. They have therefore transferred the power granted by Article 10 ICC Rules to the ICC-Court to the Arbitral Tribunal.
9. The requirements for consolidation under Article 10(a) are clearly met as the arbitration agreements, even if one considers those in the purchase orders to be the only relevant ones, are clearly compatible and there are joint legal questions.



Joseph Langweiler



VISIONIC
EXCELLENCE THE EASY WAY

Making use of the Additional Order Facility under the Framework Agreement concluded between Parties the provisions of which govern this order unless agreed otherwise Visionic makes the following

PURCHASE ORDER
NO A-15604
4 January 2022

1. Product(s): L-1 Sensor
2. Quantity: 200,000 units
3. Delivery Dates: 7th Calendar Week (14 – 18 February 2022)
4. Place of Delivery: DDP Optronic Avenida 3, Oceanside, Equatoriana
5. Price: USD 24,000,000.00
6. Payment Terms:
 - USD 12,000,000.00: 30 Days after delivery
 - USD 12,000,000.00: 90 Days after delivery
7. Dispute Resolution: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Rules on Emergency Arbitration are explicitly excluded.

The place of arbitration is Danubia and the arbitrators shall apply the CISG.

Mr. William Toyoda
(Head of Purchasing)

**Witness Statement of
Bertha Durant**

1. I was born on 1 December 1982 and have a degree in Economics. I have worked since 2018 for SensorX and have been its Head of Sales since 1 January 2021.
2. At the end of 2021, Visionic approached its account manager Ms. Audi to enquire whether, in addition to the normal radar sensors covered by the Framework Agreement, they could order a limited amount of LIDAR sensor L-1 for a particular project of a limited size. Visionic knew that the L-1 sensor was going to be replaced by its successor the L-2 sensor in early 2022 and hoped to be able to buy the remaining quantities at a preferable price.
3. Internally, SensorX has allocated the responsibility for the sale of its LIDAR sensors to a special account manager, Ms. Peugeotroen due to the existing potential for dual use of these sensors. Unfortunately, Ms. Peugeotroen was in the hospital at the time due to a problematic pregnancy. Thus, Ms. Audi approached me, and I conducted the negotiations from our side.
4. Given that there was still a considerable demand for the L-1 sensors I was not willing to give the price reductions which Visionic apparently expected. After lengthy negotiations, we finally agreed on a considerable reduction of the normal price of 25 % plus an extended payment date.
5. As I am normally not involved in the detailed negotiation of such contracts I relied heavily on the support of our legal department. They also suggested the arbitration clause. Unfortunately, I cannot remember with any certainty why the legal department wanted to exclude the rules on the Emergency Arbitrator. According to my recollection, it had to do with the lack of enforceability of such decisions, but I am not sure.
6. The 200,000 L-1 LIDAR sensor were delivered in accordance with the order on 16 February 2022 and Visionic made the first payment as requested on 18 March 2022. When the second payment was due, Ms. Peugeotroen was again in hospital due to her pregnancy, and she gave birth to twins 6 weeks early. Thus, she was not aware of the lack of payment.
7. With the issues arising from Ms. Peugeotroen's pregnancy complications, the need to replace her first on short notice and then permanently, as she extended her maternity leave, the shutdown of our IT-system and the replacement of the L-1 sensor by the L-2 sensor, SensorX only became aware of the outstanding payment on 1 September 2023. By that time the new account manager for the LIDAR sensors, finally got around to look at the unfinished old projects and realized that the second payment had not been effected.
8. When I called Mr. Toyoda to discuss the issue with him, he informed me that this payment had never been made by Respondent. Allegedly Respondent had informed Ms. Peugeotroen via phone and email that a considerable amount of the L-1 LIDAR sensors was defective and thus no further payment would be made.
9. We have not been able to find that email in our system, which makes it highly likely that it was never received. I can, however, not exclude with certainty that such an email was sent, as some emails were obviously lost in connection with the cyberattack. Irrespective of that, neither the oral notice nor the email, should it have been sent to Ms. Peugeotroen, would have been sufficient to constitute a proper notice of defect under the Framework Agreement. According to Article 15 of the Framework Agreement, Respondent would have been required to send a Notice of Defect form to our complaints department. Contrary to what Mr. Toyoda implied

during our discussion, the Parties never dropped the requirement from the Framework Agreement as there has not been a written amendment of the Framework Agreement as required under Article 40. Consequently, the requirement was obviously not complied with and prevents any reliance on the alleged deficiency of the L-1 LIDAR sensors.

10. Furthermore, the alleged deficiency of the sensors seems implausible and not in line with our previous experiences with it.

11 September 2023

Dr. Bertha Durant

Dr. Bertha Durant (Head of Sales)

Prof. Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By email

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

cc. ICC Secretariat

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

12 September 2023

Dear Colleagues,

Respondent is given until 2 October 2023 to comment on Claimant's submission of yesterday concerning its request to authorize a new claim or in the alternative to consolidate the conditionally initiated arbitral proceedings for the new claim with the present proceedings.

The Arbitral Tribunal would then like to discuss with you in the virtual case management conference planned for 5 October 2023 the further conduct of the proceedings in light of these submissions.

Kind regards,

For the Arbitral Tribunal



Presiding Arbitrator

12 September 2023

Moot-100/MM

SENSORX, PLC (Mediterraneo) vs/ VISIONIC LTD (Equatoriana)

Counsel: Margaux Mimolette

(Tel: + 33 1 23 45 67 89)

Deputy Counsel: Dominique Francon

(Tel: + 33 1 23 45 67 90)

(Email: ica100iccwbo.org)

Prof Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By ICC Case Connect

Dr William Chevy
Geely-Street 12
Capital City,
Mediterraneo

By ICC Case Connect

Mr Victor Klement
5 Rue Peugeot
Oceanside
Equatoria

By ICC Case Connect

Mr Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

To Claimant by ICC Case Connect: langweiler@lawyer.me

Ms Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

To Respondent by ICC Case Connect: fasttrack@host.eq

.../...

International Chamber of Commerce (ICC) | Secretariat of ICC International Court of Arbitration

iccwbo.org/arbitration

Paris

33-43 avenue du Président Wilson
75116 Paris, France
+33 (0)1 49 53 28 28 arb@iccwbo.org

New York

in affiliation with Sicana, Inc.
140 East 45th Street, Suite 14C
New York, NY 10017, USA
+1 646 699 5704 ica9@iccwbo.org

Singapore

in affiliation with SICAS
28 Maxwell Road #02-01, Maxwell Chambers
Suites, Singapore 069120
+65 6983 5580 ica11@iccwbo.org

Hong Kong

Room 102, 1/F., West Wing, Justice Place,
11 Ice House Street, Central, Hong Kong
+852 3954 9504 ica8@iccwbo.org

Sao Paulo

in affiliation with SCIAB LTDA.
rua Surubim, 504, Brooklin Novo
CEP 04571-050, Sao Paulo, Brazil
+55 11 3040 8830 ica10@iccwbo.org

Abu Dhabi

ADGM Square, Level 20, Al Maqam Tower
Al Maryah Island, P.O. Box 111999
Abu Dhabi, United Arab Emirates
+971 56 333 2781 ica12@iccwbo.org



Dear Mesdames and Sirs,

We acknowledge receipt of Claimant's correspondence to the arbitral tribunal dated 11 September 2023.

We note Claimant's request that the arbitral tribunal authorizes new claims pursuant to Article 23 of the Rules.

As such, we understand that no action is required of the Secretariat at this time.

Should a party wish to commence a new arbitration, said party should submit a Request for Arbitration with the Secretariat pursuant to Article 4 of Rules.

As of October 2022, parties are encouraged to file their requests for arbitration electronically, using ICC's digital case management platform ICC Case Connect via the ICC website [here](#).

If for any reasons you could not file via ICC Case Connect, you can send your Request for Arbitration and the relevant exhibits by e-mail to rfa@iccwbo.org, the email address for the Headquarters in Paris. If you wish to send hard copies together with the electronic version, you can send them to any one of the Secretariat's offices (Article 4(4)(b)) as many copies as there are respondents.

The date of the commencement of the arbitration is the date on which the Request is received by the Secretariat.

The request to commence an arbitration must be accompanied by a filing fee of US\$5,000. Such payment is non-refundable and shall be credited to the claimant's portion of the advance on costs. If the Request for Arbitration is sent without payment of the filing fee, the acknowledged receipt of the Request for Arbitration will include a payment request.

Yours faithfully,

Margaux Mimolette
Counsel
Secretariat of the ICC International Court of Arbitration

JULIA CLARA FASTTRACK
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
fasttrack@host.eq

Via Email

Arbitral Tribunal

cc.
Claimant
ICC Secretariat

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

Request for authorization of new claim / consolidation of proceedings

2 October 2023

Dear Members of the Arbitral Tribunal,

1. Claimant's requests to either authorize its new claim into this arbitration proceedings or to consolidate a new arbitration with this arbitration are both legally and factually unjustified and should be rejected.
2. The non-payment of the second tranche of USD 12,000,000 is due to the non-compliance of the L-1 sensor with the contractual requirements. After the first tranche of USD 12,000,000 had been paid, Respondent discovered that a considerable number of the L-1 LIDAR sensors was defective. It informed Claimant about these defects by email of 4 April 2022 and announced that no further payment would be made (**Respondent Exhibit 5**). The notification is valid even if Respondent did not use the particular Notice of Defect form. In the discussion with Ms. Peugeotroen we agreed that an email would be sufficient for the notice in the case at hand. That agreement also removes the written form requirement for any amendments.
3. Until Claimant raised this claim for the first time on 11 September 2023 Respondent had been convinced that Claimant had accepted Respondent's position that no further payment would be due. That raises the question of whether the belated raising of the claim which is entirely due to internal problems of Claimant does not already preclude Claimant from raising it, as Respondent has by now resold most of the affected sensors.
4. At least the claim cannot be raised in the present arbitration. In their Terms of Reference, the Parties have exhaustively defined the issues to be determined which all relate to the Purchase Order 9601. The Terms of Reference state at the relevant part as follows:

V. Issues to be determined

[85] *The issues to be determined are not limited by the above summaries of the Parties' respective positions. Subject to any new claims (Article 23(4) of the ICC Rules), which will only be authorized if they result in noticeable savings in cost and time, and any further allegations, arguments, contentions and denials contained in submissions as will be made in the course of this arbitration, the Arbitral Tribunal may have to consider, in particular, the issues listed in this paragraph (but not necessarily all of these or only these, and not necessarily in the following order):*

- i. Is Claimant entitled to payment under Purchase Order No. 9601 or was Respondent released by its payment to the new bank account in light of email received?*
- ii. Which Party bears the costs of the arbitration?*

[86] *The questions of fact and of law to be decided by the Arbitral Tribunal in reaching a decision will be those appearing from the Parties' statements, submissions and pleadings, as well as any other questions of fact or law which the Arbitral Tribunal, in its own discretion, may deem necessary to decide upon for the purpose of rendering any arbitral award in this arbitration.*

5. By this provision, the Parties have raised the standard for the admission of new claims under Article 23(4) as well as under Article 6. As the new claims relate to an entirely different purchase order any possible saving which could result from the admission of the new claim is definitively not "noticeable". Furthermore, the new claim is based on a different arbitration agreement which deviates in several aspects from that on which the claims in the present arbitration are based.
6. As far as the requested consolidation is concerned, the Arbitral Tribunal lacks the power to do so. Article 10 ICC Arbitration Rules vests the power to consolidate two ICC arbitrations to the Court and does not authorize the Parties to deviate from those rules. Thus, the authorization in the Parties' arbitration agreement is invalid.
7. Furthermore, the above-mentioned practical considerations also apply to any consolidation. None of the requirements for a consolidation are met whether one considers the requirements contractually agreed on to be relevant or those in the ICC Arbitration Rules.

Kind regards,



Julia Clara Fasttrack



From: <william.toyoda@visionic.eq>
Sent: 4 April 2022, 10:45 a.m.
To: <armanda.peugeotroen@sensorx.me>
Subject: Notice of defect

Dear Ms. Peugeotroen,

We would like to inform you that a considerable number of the delivered L-1 sensors proved to be defective not reaching the full potential promised and thus are not suitable for our purposes.

We hope that we can find an amicable solution to that matter, and we await your proposal for a proper way to address the issue. Until that time we will withhold payment of the second installment of the payment.

Sincerely,

William Toyoda
(Head of Purchasing)

Visionic Ltd

Optronic Avenida 3

Oceanside

Equatoriana

T: (0)214 6698053

Email: william.toyoda@visionic.eq



Prof. Giovanna Agnelli
Margaret Wilcox Drive 31
1011 Vindobona
Danubia

By email

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

cc.

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

6 October 2023

Dear Colleagues,

The Arbitral Tribunal appreciates your cooperation during yesterday's TelCo.

Please find attached Procedural Order No. 1 which is based on the discussion during the TelCo.

Kind regards,

For the Arbitral Tribunal



Presiding Arbitrator



PROCEDURAL ORDER NO 1

of 6 October 2023

in the Arbitral Proceedings

SensorX plc v. Visionic Ltd.
ICC Case No. Moot-100/MM

1. After its constitution and receipt of the file from the Secretariat of the ICC Court, the Arbitral Tribunal had agreed with the Parties on 30 August 2023 on its Terms of Reference which were signed by all. On 11 September 2023, Claimant requested authorization of a new claim or subsidiarily the consolidation of the two arbitrations. Respondent rejected both requests in its submission of 2 October 2023.
2. At the Case Management Conference of 5 October 2023 the Arbitral Tribunal discussed with the Parties the consequences of Claimant's additional requests and Respondent's objections thereto, as well as the various options for structuring the arbitral proceedings in a cost and time-efficient manner, taking into account their conflicting interests. In light of this discussion, the Arbitral Tribunal has decided to limit the first part of the arbitration to the following issues:
 - Is Claimant entitled to payments for the delivery of sensors under Purchase Order No. 9601 and if so in what amount?
 - Can and should the additional payment claim raised under Purchase Order No. A-15604 be decided in this arbitration either as an extension or by way of consolidation?
3. In contrast, the merits of Claimant's additional payment claim, namely the claim of defective sensors, should not be dealt with in the Parties' submissions in the first part of the arbitration.
4. In light of these considerations the Arbitral Tribunal makes the following orders:
 - (1) In their next submissions and at the Oral Hearing in Vindobona (Hong Kong) the Parties are required to address the following issues:
 - a. Can and should the addition of the new claim to the pending arbitration be authorized?
 - b. Can and should the Arbitral Tribunal consolidate the arbitral proceedings, in case the new claim has to be raised in a separate arbitration?
 - c. Is Claimant entitled to payment of either the full amount or parts of the amount due as payment under Purchase Order No. 9601 or can Respondent invoke a violation of a contractual (information) duty or obligation or rely on a provision of the CISG to
 - i. entirely or at least
 - ii. partially defend itself against the claim for payment.

- (2) For their submissions the following Procedural Timetable applies:

- a. Claimant's Submission: no later than 7 December 2023;
 - b. Respondent's Submission: no later than 18 January 2024.
- (3) The submissions are to be made in accordance with the Rules of the Moot agreed upon at the telephone conference.
 - (4) It is undisputed between the Parties that Equatoriana, Mediterraneo and Danubia are Contracting States of the Convention on the Contracts for the International Sale of Goods (CISG) and Member States of the New York Convention. The general contract law of all three countries is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments (Article 7 – Option 1).
 - (5) Equatoriana is the only country which has adopted a data protection law imposing particular information or notification duties upon Parties which have been subject to a cyberattack involving a breach of data privacy. It is nearly a verbatim adoption of the European Union's General Data Protection Regulation (GDPR). By contrast in Mediterraneo and Danubia no explicit law exists.
 - (6) In the event, that the Parties need further information, Requests for Clarification must be made in accordance with para. 27 of the Rules of Moot no later than 27 October 2023 via their online party (team) account. No team is allowed to submit more than ten questions and all questions must contain an explanation why they are relevant.
 - (7) Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the Parties involved and their business.
- (2) Questions relating to the negotiation, drafting and conclusion of the Framework Agreement.
- (3) Questions relating to cyberattacks on Respondent (2020) and Claimant (2022).
- (4) Questions relating to Purchase Order 9601 and the goods delivered thereunder.
- (5) Questions relating to Purchase Order 15604 and the goods delivered thereunder.
- (6) Questions relating to the negotiation, drafting and conclusion of the arbitration clause in the Framework Agreement.
- (7) Questions concerning the request to pay to a new bank account, the resulting communication and the payment.
- (8) Questions concerning the applicable laws and rules including the rejection of the initiative to create a data protection law in Mediterraneo.
- (9) Other questions.

5. The Parties have voiced concerns about data privacy and data security in this arbitration. To ensure the integrity and confidentiality of this arbitration, the Parties and Arbitrators agreed not to analyze any documents from this file or any elements thereof with Artificial Intelligence (AI) applications, or to train an AI application with any documents from this file or any elements thereof for any purpose. That includes not copying or pasting any passages of the file into a prompt.
6. Both Parties are invited to attend the Oral Hearing in Vindobona, Danubia (in Hong Kong). The details concerning the timing and the venue will be provided in due course.

Vindobona, 6 October 2023

For the Arbitral Tribunal



Prof. Giovanna Agnelli
Presiding Arbitrator

PROCEDURAL ORDER NO. 2

of 6 November 2023

in the Arbitral Proceedings:

- 1. What is the size of business of Claimant and of Respondent?** Claimant is part of family owned group of companies which has an overall annual turnover of 8 billion USD. Claimant itself had an annual turnover of 4 billion USD in 2022. It has grown considerably over the last three years through acquisitions which resulted in some integration problems but raised the annual turnover by 1 billion USD since 2019, primarily in the area of dual-use-sensors. Respondent is part of one of the largest Tier 1 producers in the automotive industry with an overall turnover of 48 billion USD in 2022, out of which Respondent generates 20 billion USD. Claimant considered Respondent to be an important customer with some potential for future expanded business.
- 2. Does SensorX have a subsidiary in Danubia?** Yes. That subsidiary SensorDanube has been acquired in 2019 to produce and distribute most of the dual use LIDAR sensors given that Danubia has a fairly liberal export restriction regime. SensorDanube has its bank account with the First Bank of Danubia. The L-1 sensors delivered under Purchase Order No. 15604 were, however, directly produced and delivered by SensorX.
- 3. Are the S4-25899 sensors specifically produced by the SensorX for Visionic?** No, they are sold to other Tier 1 producers as well.
- 4. How did Mr. Royce try to contact Ms. Audi after the email of 28 March 2022?** He tried to call her on her work mobile and was told by her voicemail that she would be out of office due to illness until 11 April 2022 and in urgent matters Ms. Peugeotroen could be contacted. As Mr. Royce considered that message to confirm the information in the email of 28 March 2022 he replied to that mail by using the reply function of the email application on his phone. That was in line with their normal communication practice which relied on email chains which were started for each new order or specific issue. In this regard receiving a separate email for the “new issue” of change of banking details was in line with such practice.
- 5. What were the exact circumstances of Ms. Audi’s departure from SensorX?** When the infiltration of Claimant’s IT system was discovered on 23 January 2022, Ms. Audi was quickly identified as the person responsible for the infiltration. Her clicking on and download of the “discount code” for the car race was a clear violation not only of Claimant’s cybersecurity guidelines, but also of the prohibition to use the computer for private matters. As a consequence of the stress associated with the incident, Ms Audi had a nervous breakdown on the first day of her holiday which was originally planned to last from 25 March until 11 April. The first notice of sick leave noted her absence until 11 April. It was then prolonged twice, first until 2 May and then until 23 May. Upon her return on 23 May, Claimant terminated her employment for cause because it was discovered that she had committed further serious breaches of the internal cybersecurity guidelines. In particular, she had regularly used the computer for private matter and had not updated her password for 3 years despite the clear instructions to do so. In the end, to find a face-saving solution for everyone it was agreed that the termination would only be effective from 1 July onwards but that Ms. Audi was immediately released from her duties and cut off from Claimant’s systems.
- 6. When was Respondent informed about the departure of Ms. Audi and its background?** In the Claimant’s settlement with Ms. Audi, it was agreed that in mid of June a prepared email

would be sent from Ms. Audi's account to inform her counterparts in other companies that Ms. Audi would leave Claimant with effect from 1 July 2022 and that the new person responsible for them would contact them within due time. Due to problems with the IT system which persisted until 30 June, the message only went out on 1 July 2022. Some of the background of the termination was disclosed by Mr. Gabrielson to Mr. Royce in their discussions concerning the lack of payment. In particular, he also showed Mr. Royce an out-of-office-reply he had received to an email from 25 March to Ms. Audi to support his submission that the email was a spoofmail.

7. **Was somebody responsible for Respondent's account at Sensor X during Ms. Audi's absence until her replacement with Mr. Gabrielson on 1 August?** During the planned holiday the primary point of contact internally would have been Ms. Peugeotroen. After Ms. Audi's suspension from mid- May due to her obvious non-compliance with the internal cybersecurity rules most of her customers were provisionally assigned to either Ms. Peugeotroen or Mr. Gabrielson. Due to the problems with the software, the difficult pregnancy of Ms. Peugeotroen, and the termination of Ms. Audi's contract on short notice, Claimant's sales department was extremely short on personal. It just concentrated on ensuring delivery of the goods sold and dealing with new orders coming in. The situation only improved by the end of the summer. Mr. Gabrielson, also handled the additional order for another 1,100,000 sensors which Respondent submitted on 20 July 2022, before he then officially took over Respondent as a key account from 1 August onwards.
8. **Are there written and signed documents regarding the agreements reached during the annual price fixing meetings in December?** The price fixing meeting were fairly informal and the prices as well as all other changes were agreed orally during the meetings. Respondent then circulated minutes of the meeting via email summarizing the results of the meeting in particular the oral agreements reached. These minutes bore no signature though it was clear from the email who prepared them. It was the common understanding of the Parties that Claimant would object to the minutes if it considered them to be incorrect but that otherwise no action was necessary.
9. **Was there any template agreed between the Parties for the purchase order?** No. Originally Respondent adapted its standard template which it also used for other suppliers to the Framework Agreement. Since the beginning of 2021 the standard template included a reference to ICC arbitration which Mr. Royce also included into the templates used in connection with the Framework Agreement. The same occurred at the beginning of 2022 when the payment terms in the standard template were changed to 30 days after delivery. All orders were normally prepared by the respective account managers, i.e. Mr. Royce for Claimant's sensors who also had the power to agree and make minor amendments to the template for individual orders. Irrespective of that the orders always bore the signature of Mr. Toyoda to avoid discussions of whether they had been placed by someone with authority to bind Visionic.
10. **Was the Purchase Order No. 9601 sent via electronic means of communication or in paper?** Via email as was most of the communications between Ms. Audi and Mr. Royce. Due to the trojan horse malware the entire email communication was accessible to the attacker.
11. **Did CLAIMANT send a letter of confirmation in reaction to purchase orders deviating from the Framework Agreement?** For Purchase Order No. 15604 and the other two orders concerning other sensors than the S4-25899, confirmation letters were sent. These orders had been subject to separate negotiations at the account manager level, with Ms. Durant leading the negotiations on Claimant's side for Order No. 15604. Order No. 9601 and the other seven orders of 2021, which contained the identical arbitration agreement as in Order No. 9601, were

just performed. The remaining orders relating to the S4-25899 sensor contained no further deviations from the Framework Agreement outside those foreseen in Art. 5.

12. **Had there been previous changes to the bank account specified by the Claimant for payment of the price before the phishing attack of 2022?** Yes. In Sept. 2020, in one of the orders relating to a different sensor and made in excess of the agreed maximum delivery obligation in Art. 3, the L-X Lidar sensors were delivered directly by Claimant's subsidiary SensorDanube which produced them. The parties had agreed in a signed side letter *inter alia* that 80 % of the amount due for that order would be paid directly to the bank account of SensorDanube and only 20 % to the bank accounts of SensorX. Furthermore, they agreed that the 90,000 units would not count towards Claimant's maximum delivery obligation.
13. **Who authorized and arranged for the shipment of the sensors under Purchase Order No. 9601?** Ms. Audi had made all necessary arrangements for the shipment of both installments already in late February. She was also responsible for verifying that payments were made.
14. **Were the payments under Purchase Order No. 9601 made 30 days after delivery?** Yes.
15. **Do the sensors under Purchase Order No. 9601 also have a dual-use in the sense of having potential military use like the LIDAR sensors?** No.
16. **Was RESPONDENT aware that the Law of Mediterraneo does not include a duty to inform equivalent to the one in the Equatorian Data Protection Act?** No.
17. **Did the Respondent have access to the article on cyberattacks in Automotive Weekly of 20 May 2022 (Respondent Exhibit R 3)?** Yes. Both parties have a subscription to the journal, which is the leading industry journal. It is not clear when Mr. Toyoda read the article. Mr. Royce only read it after his holiday at the beginning of July. When he tried to call Ms. Audi on 7 July to enquire whether the reported attack had any effect on their relationship, he was told that she had left the company. As there had not yet been any complaints by Claimant indicating that payments had not been effected, he did not pursue the matter any further.
18. **How are the tasks distributed between the heads of the Sales/Purchase Departments and their respective account managers?** The annual price negotiation in December are always conducted by the heads of department. They also get involved if the relevant account manager is not available or if a decision escalates up to them due to its importance, in particular if it has the potential to result in arbitral proceedings. By contrast the discussion of the individual orders, their placement, performance and payment are decided by the relevant account managers.
19. **What is the background of the consolidation provision in the arbitration clause of the Framework Agreement?** The consolidation option was included upon the insistence of Respondent. The proposal was a reaction to three ad-hoc proceedings which Respondent had to initiate against another supplier on the basis of arbitration clauses included in three orders of the same switch placed with that supplier. In Respondent's view the goods delivered under the three contracts suffered from the same defect, but as the tribunals considered themselves without power under Danubian law to consolidate the proceedings, Respondent had to initiate three separate proceedings which led to different results.
20. **What exactly were the Parties referring to when they use the terms "call-off plans," "purchase orders," and "Individual Contracts" in the Framework Agreement? Were these taken to mean the same?** The Framework Agreement is – with very few amendments – identical to the template Claimant uses in relation to other customers. The underlying idea is that at the December Price Fixing meeting the parties should also agree on non-binding "call-off plans" reflecting the projected need of the buyer over the year within the limits of the quantities covered by the Framework Agreement to facilitate production planning for the seller.

The exact number and dates of the goods to be delivered were then determined by the purchase orders to be placed by the buyer with the seller, which could deviate up to 15 % from the original projected plan without affecting the seller's delivery obligation. In case the parties wanted to deviate to a larger extent from the provisions of the Framework Agreement or wanted to apply it for other products individual contract should be drawn up by them.

21. **Are there any further clauses in the Framework Agreement dealing with general information duties, force majeure or cybersecurity issue?** No.
22. **Did the Framework Agreement contain a termination clause?** Yes. It gave each party the right to terminate the otherwise unlimited Framework Agreement with six months-written-notice to a termination date of either 1 January or 1 July of the next year.
23. **Does any of the parties have a cybersecurity insurance which would cover the present case?** No. While both parties had such insurances neither of them covered the risk as they had both merely purchased the most basic protection against ransom ware attacks.
24. **What was Claimant's "new cybersecurity concept" mentioned by its new cybersecurity officer in its article in December 2021.** In light of the increasing number of cyberattacks on the automotive industry, Claimant had heavily invested into its information technology infrastructure and cybersecurity training. In March 2021 it appointed its newly established Chief Cybersecurity Officer (CCO). She ensured that all employees had to participate in a two-day intensive training, and were automatically enrolled in three monthly revision sessions. Randomly selected employees receive bi-weekly test emails which they need to classify and report to the CCO as a potential threat. An implementation of a two-factor authentication had been planned for June 2022.
25. **Why was the cyberattack of 5 January 2022 initially categorized as being of minor relevance?** There were three reasons for that obviously wrong categorization. First, it appeared that neither direct competitors nor foreign state entities were behind the attack. Second, the malware was – at least it seemed so – quickly detected and neutralized. Third, the malware did not appear to have had infiltrated parts of the systems that store sensitive personal data or any trade secrets. However, CyberSec failed to acknowledge that the customer relations management system had taken a hit, and the criminals managed to place sophisticated malware including a trojan horse there. That malware allowed the criminals to access all information available on Ms. Audi's email account, including the information used for the phishing email of 28 March 2022 and the ensuing correspondence. It was then also responsible for the later encryption in May. Only then was it discovered by the joint efforts of CyberSec and the governmental security unit.
26. **Did Claimant make any public announcements about its 2022 data breach?** No. After Claimant's internal planning and accounting system went down on 15 March 2022 there was an internal order that all account managers should contact their counterparts, inform them about the attack and find ways how to proceed as long as the system was down. As Ms. Audi was on sick leave and never actually returned to work Respondent was not contacted due to the general shortage of personnel and the disruption created by the cyberattack. Furthermore, Claimant informed the authorities, asked for help and discussed with them whether to pay the ransom. That is the information which had been leaked to Automotive Weekly.
27. **When was the agreement regarding the notice of defect and the removal of the written form requirement for any amendment made and in what form?** Following the discovery of the defects on 20 March 2022, the relevant person at Respondent's side first informed Mr Toyoda to decide what should happen to the first payment which had just been made. Mr. Toyoda then contacted Ms. Peugeotroen via phone to discuss the possible options. It was agreed

during their conversation that Mr. Toyoda would send an informal email following up on the discussion and Ms. Peugeotroen would then discuss that with her superiors. Since Respondent had the internal status of a potential A customer all potentially critical issues in the relationship had to be escalated to Ms. Durant.

28. **Did the email of 4 April 2022 (Exhibit R 5) reach Ms. Peugeotroen despite the wrong spelling of her name?** Yes, after being informed that the email could not be delivered, Mr. Toyoda resent it to the correct address on the same day.
29. **Is there any explanation why the missing payment was not discovered during the annual audit of the Claimant?** As a consequence of the cyberattack and the encryption, Claimant suffered of a loss of data in parts of its accounting system. The relevant information had to be provided by the account manager or to be deduced from available email communication. As Ms. Peugeotroen was not available, it was only discovered in 2023 that also one of her transactions had been affected by a loss of data.
30. **Did Ms. Peugeotroen inform the new account manager about the previous orders?** No. Due to the particular circumstance of her pregnancy and the IT-problems, the planned proper hand-over never took place. Ms. Peugeotroen had to be taken to the hospital on 15 April 2022 in an emergency with a serious threat to her life and that of the twins. She then had to stay there until she gave early birth to twins on 22 May 2022.
31. **Would the Claimant have been able to resell the sensors alleged to be defective by the Respondent to another party?** Yes. Claimant was primarily interested in their ability to operate in conditions with little or no light. The deficiency of the sensor was limited to that aspect so that they could be used other for other purposes.
32. **Has the number of arbitrators in the arbitration agreement of Purchase Order A-15604 been a particular topic during negotiations between the parties?** No. The Parties merely copied the ICC-Model Clause in this respect.
33. **Why did CLAIMANT's legal department choose to exclude the Emergency Arbitrator rules from the dispute resolution clause in Purchase Order A-15604?** The background to that decision was information which the inhouse counsel in charge had received from a good friend in the legal department of another supplier. That friend had reported about bad experience with an “expensive and entirely useless emergency arbitration” and his decision to exclude an emergency arbitrator in any of his future arbitration clauses. As the inhouse counsel lacked any own experience in arbitration and on the basis of the information about the problems in enforcing measures ordered by an emergency arbitrator, he had advised Ms. Durant to exclude the emergency arbitration option. Respondent had no problems with that proposal.
34. **Did the parties agree on a procedural timetable in connection with their Terms of Reference?** Yes. For the original claims under Purchase Order No. 9601 the procedural timetable has not been altered. Only for an eventual second phase of the arbitration a new procedural timetable would have to be agreed. The timetable did not exclude any explicit cut-off date for the submission of new claims or evidence.
35. **Which arbitration agreement was mentioned in the Terms of Reference?** The Terms of Reference reproduced the arbitration clause in Purchase Order No. 9601 and then stated that “[f]urthermore, Claimant referred to the Article 41 of the Framework Agreement”. The place of arbitration mentioned in the ToR was “Vindobona, Danubia”.
36. **Are there any specific qualification of the arbitrators which influenced their appointment?** All three arbitrators have extensive experience in the automotive industry. Dr.

Chevy has particular expertise in the area of autonomous driving, including the sensor technology. Mr. Klement has a background in data privacy and cybersecurity.

37. **Do Articles 3, 4, 33, 34, 82 and 83 of the EU GDPR exactly match the data privacy law in Equatoriana?** Yes (with the required amendments concerning the territorial scope).
38. **Is the CISG directly applicable in Danubia and is Danubia an unitary state?** Yes.
39. **Has either of the States involved declared a reservation under Arts 92 et seq.?** No.
40. **Does the full amount in issue 3 include only the USD 38,400,000 under Purchase Order NO. 9601?** Yes.
41. **Can it be assumed that Claimant will take the required steps to initiate a separate arbitration to raise the additional claim, should the conditional request of 2 October 2023 be considered insufficient for the initiation of that arbitration?** Yes.
42. **Are the Parties expected to address the exact proportion of shares in terms of their liability for the purposes of Respondent’s partial defence from Claimant’s claim of non-performance?** No.
43. **Claimant would like to make the following corrections and clarifications to its submissions:**

In the Request for Arbitration the following corrections are necessary

- a. In para. 7 it should read “2,500,000” and “800,000” (instead of 250,000 and 80,000)
 - b. In para. 8 it should read “Article 7” (instead of Article 5)
 - c. In para. 12 it should read “1 December 2021” (instead of 2 December 2021)
 - d. In para. 9 of the “Request for authorization of new claim ...” the reference should be to “Article 10 (a) - (c)”
 - e. Exhibit C 8 para. 7 the missing payment was only discovered on 8 September 2023 (instead of 1 September).
44. **Respondent would like to make the following corrections and clarifications to its submissions:**

In the Response to the Arbitration the following corrections are necessary:

- a. In Exhibit R 4 para. 5 the last word should be “**her**” (instead of here).

Vindobona, 6 November 2023

For the Arbitral Tribunal



Presiding Arbitrator