Summary of Lucky Bag case

In October 2015, an Agreement was concluded between Red Corp. (hereinafter "Red") and Blue Inc. (hereinafter "Blue") regarding New Year Lucky Bags of 2016. Red prepared 10,000 Lucky Bags and delivered these Lucky Bags to Blue for selling them in Arbitira. In January 2016, 10,000 Lucky Bags were sold through Blue's website, Blue Village. However, many customers who purchased the Lucky Bags, complained that a dragon embroidered t-shirt was contained in the Lucky Bags as the dragon is considered a taboo in Arbitria. 4,000 customers decided to return these t-shirts and asked for a refund. Considering that customers were upset by receiving this bad-luck symbol t-shirt in New Year, Blue accepted these returns and refunded US$100 including compensation to each customer.

Claim 1: Red shall reimburse US$420,000 to Blue.

1. There is Red's non-performance of its obligation. (issue 1)

(1) Red was obliged to deliver 10,000 Lucky Bags not containing taboos in Arbitria to Blue.

Article 1 of Agreement (Ex. 6) stipulates that *"Red shall sell and deliver to Blue 10,000 sets of the Goods"*. In this case, the "Goods" were Lucky Bags. Since it was not clear what Lucky Bags specifically are, it should be interpreted based on UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2010 Article 4.1(hereinafter "U4.1") *(Intention of the parties)*.
U4.1 stipulates *"A contract shall be interpreted according to the common intention of the parties."*
In this case, according to U4.1*)* together with U4.3*(Relevant circumstance*), the meaning of Lucky Bag should be interpreted based upon ***(a)*** *"preliminary negotiations between the parties;"* and ***(d)*** *"the nature and purpose of the contract."*

(a) Under U4.3(a), negotiations between Red and Blue should be considered.
In the conversation between Red and Blue, Red asked Blue *that "Please tell me any taboos that should be avoided for selling Lucky Bags in Arbitria"* and raised an example that *"For instance, our lucky bags for Negoland market never contain inauspicious things"*. Therefore, Red has intention that taboos, such as inauspicious things, should not be put into the Lucky Bags. Also Blue answered that *"I'll let you know if I think of anything*." Therefore, both Red and Blue confirmed that any inauspicious things, like taboos should not be put in Lucky Bags. (¶15).

(d) Under U4.3(d), the purpose of Agreement (Ex.6) should be considered.
According to the Agreement(Ex.6), the purpose of this agreement is to sell these New Year Lucky Bag in Arbitria.

The purpose and nature of Agreement(Ex.6) was to sell New Year Lucky Bags. New Year Lucky Bag is for celebrating New Year. Also as the name of Lucky Bag suggests, the nature of the Lucky Bags should be that which makes the customers feel lucky. Therefore, any taboos which make the customers feel unhappy or inauspicious should be avoided. Also, according to the Agreement (Ex.6), these Lucky Bags would be sold in Arbitria. Therefore, any taboos in Arbitria should be avoided in the Lucky Bags.

Therefore, there was a common intention that any taboos in Arbitira should be avoided in the Lucky Bags.

(2) Red did not perform its obligation stated in (1) above.

In this case, Red delivered 5,000 Lucky Bags with t-shirts having dragon on them, although dragons are considered taboo in Arbitria (¶21).

Hence, Red did not perform its obligation to deliver 10,000 Lucky Bags not containing taboos in Arbitria.

2. Blue has right to full compensation of US$420,000 to Red. (issue 2)

Blue has right to damages caused by Red's non-performance of its obligation. Under the requirements of right to damages of U7.4.1, three elements (U7.4.2 to U7.4.4), **(i) a causal link; (ii) certainty of harm;** and **(iii) foreseeability of harm** should be considered and proven.

In this case, **(i)(ii)** If Red had delivered to Blue 10,000 Lucky Bags which did not contain taboos in Arbitria, complaints and requests for refunds from customers would not have happened. If customers had not required refunds, the cost US$420,000 to Blue for refunds and the process fee would not have occurred. Therefore, there is a direct causal link between Red's non-performance and damages. **(iii)** Also, Red could foresee that Blue would accept the return of goods which strongly hurt customers' feelings under Return Policy (Ex.7). Therefore, it is obviously foreseeable that Red's non-performance would lead to the damages in this case.

As (i)~(iii) above, Blue has the right to damages of full US$420,000 resulted from Red's non-performance of its contractual obligation, under U7.4.1.

In conclusion, Blue seeks an arbitral award granting for Red shall reimburse US$420,000 to Blue.

3. Red is under obligation to reimburse US$420,000, since the amount of compensation is reasonable and appropriate to the harm caused by Red's non-performance.

[Estimated counter argument from Red]

Red may claim there was no causal link between Red's non-performance and the compensation paid to customers, which also included in the damages. Therefore, the amount of damages should be reduced to less than US$420,000 by referring U7.4.3 *(Certainty of harm).*

[Response from Blue]

In this case, the purpose of the compensation paid to customers, was not only to compensate customers for selling the bad-luck symbol t-shirts, but also to restore the reputation ruined by these bad-luck symbol t-shirts. Considering both of the above purposes of compensation, the amount of compensation was appropriate and reasonable for harm caused by Red's non-performance. Therefore, Blue refunded each customer US$100 including compensation.

Hence, the direct causal link exists between damages of US$420,000 and Red's non-performance.

In conclusion, Red is under obligation to reimburse US$420,000, since the amount of compensation was appropriate to harm caused by Red's non-performance.

4. The amount of damages should NOT be reduced.

[Estimated counter argument from Red]

Red may claim that the amount of damages shall be reduced, since the harm was due in an "omission" by Blue of not informing Red about taboos in Arbitira according to U7.4.7 *(Harm due in part to aggrieved party)*.

[Response from Blue]

1. Blue did not have to inform Red about taboos in Arbitria.

(1) It was impossible for Blue to inform Red about all taboos in Arbitria from October 2015 to the date of sample examining.

Even in the conversation, after Red asked Blue to inform them about taboos in Arbitria, and Blue said "I will let you know if I think of anything", it does not mean that Blue should take responsibility to inform Red about all taboos in Arbitria. (¶15) Since taboos are innumerable, informing Red about all taboos in Arbitria would be an extremely large burden to Blue, and almost impossible to fulfill, in comparison to Red's confirmation. Therefore, this responsibility should not be recognized. Hence, Blue did not need to inform Red about taboos from October 2015 to date of sample examining.

(2) Blue was not able to inform Red that the dragon is a taboo in Arbitria from the date of sample examining

When Blue was examining the sample on December 1st, Red told Blue *"…,with pinpoint embroidery featuring an animal"*, which made Blue think that the embroidery on the t-shirts would only feature animals(¶17). From this conversation, Blue reasonably thought that the taboos of which needed to be informed to Red were limited to animals. Since in Blue's recognition that a dragon is not an animal, Blue did not have to take the responsibility to inform Red that dragons are taboo.

Hence, Blue did not have to inform Red about taboos in Arbitria.

2. Red should be liable for omitting to inquire about taboos in Arbitira

In conversation, Red told Blue *"Though we are going to raise the same question with the staff in our Arbitrian branch…"*. (¶15) However, it omitted to inquire about taboos with its Arbitria branch. Comparing with Blue's "omission", which was to research all taboos in Arbitria, Red only needed to research those which they decided to produce and include in the Lucky Bags. Even though it was easy and completely possible for Red to fulfill this commitment, Red still failed in it. And this omission directly led to the damages this time.

In conclusion, the amount of damages should NOT be reduced.

[Estimated counter argument from Red]

Red may claim that the amount of damages shall be reduced based on U 7.4.8*(Mitigation of harm),* since the damages could have been mitigated, if Blue had taken a reasonable method such as sending the t-shirts back to Red.

[Response from Blue]

1. **Returning t-shirts to Red was not a reasonable step**

In this case, returning t-shirts to Red was not a reasonable step for Blue since:

(1) Blue was not able to return the t-shirts to Red

(2) Storing returned t-shirts would increase the cost for Blue

(1) Blue was not able to return the t-shirts to Red

In this case, Blue did not think that Red would accept returned t-shirts, and hence did not return the t-shirts to Red. In the conversation between Red and Blue, Red showed an obviously uncooperative attitude towards returned t-shirts and told Blue *"It's up to you to accept returns, but we are not responsible for them."* (¶21) Therefore, Blue was reasonably not able to know that Red would accept these returned t-shirts.
Also in this case, Lucky Bags is a wholesale business between Red and Blue (Ex.5), which means that Blue should take all risks of keeping those returned t-shirts stored. What a reasonable company as Blue should do is to handle these t-shirts as soon as possible, but not to keep it stored and wait for uncooperative Red to agree to accept them. Therefore, Blue was reasonably not able to return the t-shirts to Red.

(2) Storing returned t-shirts would increase the cost of Blue

According to the comment of U7.4.8, *"Evidently, a party who has already suffered the consequences of non- performance of the contract cannot be required in addition to take time- consuming and costly measures."* In this case returning t-shirts back to Red is a time-consuming and costly measure for Blue. Also it is unforeseeable for Blue. These returned t-shirts containing a dragon on it are completely valueless to Blue. The longer these t-shirts were stored in Blue's place, the higher cost to Blue as a result. Therefore, it is necessary for Blue to handle it as soon as possible. Red sent the email agreeing to accept returned t-shirts about 2 months after Blue informed Red of the returns. (¶21, Ex.19) Therefore, waiting until Red agreed to accept the returned t-shirts was a time-consuming and costly measure. It was obviously unreasonable for Blue to store the t-shirts for this period of time.

Hence, the tribunal should deny Red's procedural request since Red failed to prove the existence of reasonable steps. U7.4.8 is not applicable in this case.

In conclusion, amount of damages should NOT be reduced.

Summary of Alpha Case

On April 21st Blue made an oral order of 10,000 Alpha Series by phone and sent an order sheet to Red. Based on Vendor Contract and Memo hand-delivered from Red to Blue, Red is under obligation to deliver those Alpha Series to Blue. However, Red failed to perform this obligation. Red wrongly delivered to Blue 10,000 pieces of d series instead of Alpha Series due to its misunderstanding of the contents of the order sheet. Moreover, even though Blue made another order on April 30th, Red did not deliver the required goods to Blue on that occasion either.
Since then, Blue has lost the opportunity to make a profit of US$250,000. In order to return the d series to Red, Blue delivered the goods to carrier, which is Black. However, these goods were damaged in transit by earthquake.

Claim 1: Red shall reimburse US$250,000 to Blue.(issue 1)

1. **Red did not perform its obligation.**

   (1) Red was obliged to deliver 10,000 pieces of Alpha Series to Blue.

   Article 2.26 of Vendor Contract (Ex.4) stipulates that Red has an obligation to deliver the corresponding goods to Blue. In this case, Red has hand-delivered the memo(Ex.13) to Blue which stipulates that Blue has the right to order and purchase the Alpha Series before other parties for a period of one-month from the initial release date of Alpha Series (¶25). Moreover, Blue made an oral order of 10,000 pieces of Alpha Series by phone (¶26) and then sent an order sheet to Red by email (¶27). Based upon Vendor Contract, memo and the order sheet which arrived to Red on April 21st, this supplying contract resulted. Therefore, Red is under obligation to deliver 10,000 pieces of Alpha Series to Blue.

   (2) There is Red's non-performance of the obligation stated in (1) above.

   However, Red did not deliver ordered goods of 10,000 pieces of Alpha Series to Blue.

Hence, Red failed to perform its obligation.

2. **Blue has the right to full compensation of US$250,000 to Red**

   Blue has the right to damages caused by Red's non-performance of its obligation. Under the requirements of right to damages of Article U7.4.1, three elements (U7.4.2 to U 7.4.4), **(i) a causal link; (ii) certainty of harm; and (iii) foreseeability of harm** should be considered and proven.

   In this case, **(i) (ii)** if Red had delivered 10,000 pieces of Alpha series to Blue, Blue could have sold all of those goods and made a profit of US$250,000. Thus these damages would have not occurred. Moreover **(iii)** Red is able to foresee these damages

   As (i)~(iii) above, Blue has the right to damage of full US$250,000 resulted from Red's non-performance of its contractual obligation, under U7.4.1.

In conclusion, Red shall reimburse US$250,000 to Blue.

3. Even if the claim stated above were dismissed, Red shall still reimburse US$250,000 to Blue since Blue has made another order of Alpha Series on April 30th.

Even if the order sheet from April 21st were not effective, Red was still under obligation to deliver 10,000 pieces of Alpha Series to Blue based on the order made by Blue on April 30th, 2016.

Red was under obligation to deliver 10,000 pieces of Alpha Series to Blue.

According to the memo (Ex.13), the first one-month period of preferential order started from the initial release day. Based on U4.1*(Intention of the parties)* "release" on this memo means "release in Blue Village".

There was a 14-hours' difference between the release in Negoland and Arbitria. If the release had been interpreted as release in Negoland, during these 14 hours there would not have been any advantages for Blue to conclude this preferential contract. Considering the nature of the contract, it is meaningless to Blue and also against the reason why Blue conclude this preferential contract. Therefore, the "release" in the memo should not be interpreted as "release in Negoland", but "in Arbitira."

The beginning of the one-month period should be calculated from the date of release in Blue Village, which is April 1st by Arbitria time. Therefore, April 30th was included in this period. And Blue made an effective order for 10,000 pieces of Alpha Series inside the one-month period (¶28).

Hence, Red is still obliged to deliver 10,000 pieces of Alpha series to Blue. Since Red did not perform its obligation, according to U7.4.1, Blue has the right to damages in full of US$250,000 caused by Red's non-performance.

In conclusion, Red shall reimburse US$250,000 to Blue.

4. Red was obliged to deliver 10,000 pieces of Alpha Series to Blue

[Estimated counter argument from Red]

Red may claim that Red was not able to interpret the order sheet as an order for Alpha Series. Therefore, there was not common intention to deliver Alpha Series to Blue. Hence, the mutual agreement between Blue and Red did not result.

[Response from Blue]

Red was obliged to deliver 10,000 pieces of Alpha Series to Blue, since order sheet (Ex.14) shall be interpreted as an order for Alpha Series.

Red may claim that Red was not able to know Blue's intention, even so, U4.2(2) *(Interpretation of statements and other conduct)* should be applied.

U4.2(2) stipulates *"…, such statements and other conduct shall be interpreted according to the meaning that a reasonable person … would give to it in the same circumstance."*

Based upon U4.2(2), the order sheet shall be interpreted as what a reasonable person as Red would give to it in this case. Therefore, the order sheet(Ex.14) shall be interpreted as an order for Alpha Series. Hence, the mutual agreement resulted and Red's obligation existed.

A reasonable person would be able to interpret the order sheet(Ex.14) as an order for Alpha Series in the same circumstance.

In this case, before the order sheet was emailed, there had been already several negotiations about the Alpha series between Red and Blue. Also this email arrived just 81 minutes after Blue called Red to make an urgent order of Alpha series. Moreover, from the Lucky Bag case, Red should have already known that it was not possible for Blue to order the d series as it included a dragon. Therefore, it is obviously reasonable to connect this email with the Alpha series.
Hence, in this case, Red, as a reasonable person, was able to interpret the order sheet as an order for Alpha Series.

In conclusion, the order sheet shall be interpreted as order of Alpha Series and Red was under obligation to deliver 10,000 pieces of Alpha series to Blue.

5. The amount should NOT be reduced

[Estimated counter argument from Red]
Red may claim that the amount of damage shall be reduced, since the harm was due in an omission by Blue that Emerald forgot to deliver Red's message of requesting a call according to U7.4.7.

[Response from Blue]

The amount of damage should not be reduced since Red's omission was the key factor of the damages

Red omitted to follow the practice established between Red and Blue which is to accept urgent orders from Blue by phone.
U1.9*(Usage and practices)* stipulates that *"The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves."*

There was a practice established between Red and Blue.

Urgent orders by phone from Blue were accepted 2 or 3 times in the previous year (¶26). Also, to prepare for the start of the sales of the Alpha Series, the order of 10,000 pieces of Alpha Series was made by Blue to Red over the phone. Moreover, after the first 10,000 pieces of the Alpha Series were sold out in Blue Village, Blue made another other for 5,000 pieces by phone and Red gladly accepted it (¶26). Based on these facts, there was a practice established between Blue and Red that the oral urgent order by phone from Blue was acceptable to Red.

Red omitted to follow the practice between both parties.

Based upon U1.9, Red should follow this practice which has already been established. However, after Orange called Peacock to make an urgent order for Alpha and told him about the practice, Peacock still insisted on breaking this practice. (¶26) If Peacock had followed this practice and accepted the urgent order, the dispute about the contents of the order sheet would have not happened, the omission by Blue would not have existed, the damage in this case would also not have occurred too. Thus the omission by Red which was not following the established practice was the key factor in this case.

Therefore, Red is liable for damages which occurred by its omission.

Hence, Blue's omission occurred because Red omitted to follow the practice first. Comparing to Red's omission, Blue's omission could almost be ignored.

In conclusion, amount of damage should NOT be reduced.

Claim 2: Blue is NOT under obligation to reimburse US$1,000,000 to Red.

[Estimated counterclaim from Red]

Red is estimated to seek an arbitral award granting for Blue shall pay US$1,000,000 to Red based on U7.4.1 Blue did not perform its obligation to send back 10,000 pieces of d series to Red.

[Response from Blue]

1. **Blue performed its obligation to send 10,000 pieces.**

(1) Blue performed its obligation since CPT is applied in this case

Article 4.3 of Vendor Contract stipulates "*Trade term shall be CPT (Incoterms 2010 Edition)".* According to Article 4.3 of Vendor Contract, all the trades between Blue and Red based on Vendor Contract should under CPT. Since CPT was applied in previous trades between Blue and Red so far, if there was not any new trading conditions specified in the returning this time, CPT should be applied also in this returning.

A4*(Delivery)* of CPT stipulates "*The seller must deliver the goods by handing them over to the carrier contracted in accordance with A3…"*
A3(*Contract of carriage and insurance)* of CPT stipulates "a*) The seller must contract or procure contract for the carriage of the goods…"*

Since the party who contracted with the first carrier was Blue, according to A3, the seller in this returning should be interpreted as Blue. Therefore, according to A4, Blue was only obliged to hand 10,000 pieces of d series over to Black, which is first carrier in this case.

Since Blue handed d Series over to Black, Blue performed its obligation. (¶29)

(2) If (1) above were not recognized, Blue still performed its obligation since U6.1.6 is applied in this case.

The obligation, which was sending 10,000 pieces of d series back to Red, is based on a new oral agreement by phone. Also, the place of performance of this obligation was not decided in the conversation of this new oral agreement (¶28).

U6.1.6(1)(b) stipulates that *"If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform any other (than monetary) obligation, at its own place of business."*

Since sending d series back to Red was a non-monetary obligation, based upon U6.1.6(1)(b), the place of performance should be decided as the place of Blue business.

As such, when Blue handed over 10,000 pieces of d series to Black at Arbitria, the obligation was performed.

Hence, Blue performed its obligation.

2. **<u>Even if Blue's non-performance were recognized, non-performance by Blue should be excused since this is due to force majeure.</u>**

   Even if there were non-performance by Blue, it should be excused according to U7.1.7*(Force majeure)*.

   U7.1.7 stipulates "*Non-performance by a party is excused if that party proves that the nonperformance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract…*"
   In this case, the earthquake was a natural disaster, which is beyond Blue's control. Also, since earthquakes do not occur frequently in this area, it could not reasonably be expected when Blue was entering into this oral agreement with Red.

   <u>Hence, as a consequence of force majeure, this non-performance by Blue shall be excused.</u>

In conclusion, Blue is NOT under the obligation to reimburse US$1,000,000 to Red.

<u>Summary of Robot Case</u>

On May 27th an Equipment Lease Agreement was concluded between Blue and Red that Red would lease 10 X-5 robots with management application software from Blue. The robots were delivered to Red on July 15th. During the trial run of these robots, no problem was found. After these robots went live, they greatly contributed to Red's operational efficiency. However, after Red had changed their arrangement of stocked goods, Red forgot to enter the new location of one rack. On September 12th, when Red's warehouse had been experiencing a power outage on a record hot day, the temperature of Red's warehouse was assumed to reach 50 degrees Celsius. At that time, one robot, Robot "B" collided against a column of this relocated rack, due possibly to malfunction caused by the high temperature. This collision led to a fire. All of the robots and the warehouse were completely burned down.

Claim 1: The tribunal should deny Red's procedural request.

[Estimated counterclaim from Red]

Red may claim that Blue is under obligation to reimburse US$1,100,000 to Red referring to Article 4(3) of Equipment Lease Agreement (hereinafter ELA), based on the ground that the Robot "B" might have contained deficiency since Blue delivered the robots to Red. Also, the deficiency of Robot "B" might have caused an incident, which led to the damages to Red.

[Response from Blue]

1. **Blue did not breach its obligation according to ELA(Ex.18), since Blue has provided the robot "B" and conformed to the requirement of Article 4(1) of ELA to Red.**
2. **Even if Red's claim was accepted by the tribunal, the amount of the reimbursement on the damages caused by Blue, should be reduced, due to the omission of Red, based on U7.4.7 (*Harm due in part to aggrieved party*).**

1. Blue has provided the robot "B" and conformed to the requirement of Article 4(1) of ELA to Red. (issue 1)

(1) There is NO adequate evidence supporting Red's assertion that Robot "B" contained deficiency.

Red may claim that the Robot "B" contained the deficiency of collision prevention sensor. In order to support this claim, Red may point out the incident of Robot "A" and the fact that Blue replaced the sensors in the robots which used the same sensor as Robot "A" and "B". (¶35)

However, the expected claim of Red should be dismissed since Red cannot prove "deficiency" in Robot "B" from these two facts above.

First, the incident of Robot "A" cannot prove assumed deficiency in Robot "B" since Robot "B" worked normally at the time of the incident of Robot "A".

Second, the deficiencies found in the same collision sensor were wire disconnection after the use of several months appropriately. (¶35⑤) It also cannot be proved that at the time of incident, the deficiency of wire disconnection had occurred in Robot "B" at the time of the fire, since Robot "B" worked properly from the time of the trial run up until right before the incident (¶34).

Therefore, Red lacks evidence to support its claim.

Hence, there is NO adequate evidence supporting Red's claim.

(2) There is NO causal link between Blue's non-performance of obligation and the damages.

Even if Blue's non-performance of obligation were recognized, there is no direct causal link between Blue's non-performance and the damages. In this case, Robot "B" might be assumed to contain deficiency. However, the incident in this case was assumed to be caused by temporary malfunction which was due to temperature, but not the deficiency. When the incident happened, Red did not follow the requirements of the Instruction manual (Ex. 19) to stop using the robots as the temperature had already exceeded warranty range. Robots, as a kind of delicate precision instrument, are easily affected by environment factors, such as temperature. This is why Blue has clearly specified the warranty temperature range in the Instruction Manual. Therefore, it is reasonable to consider that the collision was caused by temporary malfunction of Robot "B" due to the temperature that was higher than the warranty range. (¶35⑧)

Hence, there is NO causal link between Blue's non-performance and the damages.

In conclusion the claim of Red should be dismissed.

2. The amount of the reimbursement on the damages caused by Blue, should be reduced, due to the omission of Red. (issue 2)

U7.4.7(Harm due in part to aggrieved party) stipulates *"Where the harm is due in part to an act or omission of the aggrieved party…, the amount of damages shall be reduced to the extent that these factors have contributed to the harm…"*

In this case, while using robots, Red omitted **a)** to conform with the Instruction Manual regarding the warranty temperature range, and **b)** to enter necessary information into the management application according to Article 1(5) of ELA(Ex.21). Therefore, the damages occurred in this time were due in part to Red's omissions.

a) **Red omitted to enter the necessary relocation information of a rack into management application of the robots.**

According to the Information Sheet (Ex. 19), Red should only use the robots after entering all the necessary information into the management application. However, Red omitted to enter the relocation information of a rack. (¶34) If Red had entered this information, Robot "B" would have passed through a new route which is appropriately calculated and would not have collided with the rack, also the damages would not have occurred. Thus, this omission contributed to the damages.

b) **Red omitted to stop using robots to avoid malfunction.**

Information Sheet(Ex.19) stipulates "*The robots are designed to function properly between the temperatures of -10 degrees and +45 degrees Celsius. If the temperature drops too low or becomes too high, the robots may malfunction*".

On the day of the incident, while Red's warehouse had been experiencing a power outage on a record hot day, the temperature in the warehouse was assumed to reach 50 degrees Celsius which was higher than the warranty range. (¶35 ⑧) According to this, Red should have stopped using the robots in order to prevent any malfunction when temperature was expected higher than the warranty range. Red should have stopped using the robots in order to prevent any malfunction. However, Red omitted to stop using the robots even after Red was aware that the temperature in the warehouse might have exceeded the warranty range.

In conclusion, the amount of damages shall be reduced since the damages were due in part to Red's omissions.

Claim 2: Red shall reimburse US$500,000 to Blue. (issue 3)

Article 5(2) of ELA(Ex.21) stipulates *"This Agreement may also be terminated by Blue immediately by sending a written notice to Red should: the Robot be lost or damaged to the damaged to the extent it cannot be restored to a state equivalent to when it was delivered to Red."*
Based on this Article, Blue informed Red about the termination of the agreement (Ex.21). Moreover, Article 5(3) of ELA(Ex.21) stipulates *"In case that Red is not able to return the Robot in a condition functionally equivalent to when it was delivered to Red, Red shall pay to Blue US$50,000 per each such Robot which Red is not able to return to Blue."*
Since all robots were completely burned down, and Red was not able to return the robots to Blue, Red is under obligation to pay US$500,000 to Blue.

In conclusion, Red shall reimburse US$500,000 to Blue.

[Estimated counter argument from Red]
Red may claim that Red does not have to make an allowance in money, since Blue delivered the robots with deficiency, and it let to the impossibility to make restitution of the robots based on 7.3.6(3)*(Restitution with respect to contracts to be performed at one time).*

[Response from Blue]
In this case, as Blue stated in claim 1, Blue delivered the robots without deficiency, which conformed to the requirements of Article 4(1) of ELA(Ex.18).
Moreover, even if Blue had breached the agreement, there was NO causal link between Blue's breach and the fire in the warehouse, which caused the loss of robots, since the incident was due to Red's omission.
Therefore, Red's estimated counter argument shall be dismissed**.**

[END]