LUCKY BAG CASE

<Claim 1>

RED CORP. BREACHED ITS OBLIGATION TO PROVIDE THE NEW YEAR LUCKY BAGS TO BLUE INC.

1. Red's obligation

On October 27, 2015, Blue Inc. ("Blue") and Red Corp. ("Red") concluded the Agreement as indicated in Exhibit 6 (the "Agreement") for the supply of Lucky Bags ("Lucky Bags") to Blue through Blue Village, a full online apparel retail business managed by Blue, for the 2016 New Year Sale.

Since the specifications of Lucky Bags were not described in the Agreement, the specifications should be decided according to the essential character of Lucky Bags (1.1) and the samples checking and the description sheet sent from Red (1.2). In accordance with 1.1 and 1.2, Lucky Bags must not contain "inauspicious things" and must contain "t-shirts with animal embroidery". However, Red breached its obligation by providing Lucky Bags that contained "inauspicious things" and not "animal" embroidered t-shirts.

1.1 The essential characters of Lucky Bags

Red had the obligation to provide Lucky Bags that fulfill the essential character of Lucky Bags. In Negoland, buying the Lucky Bags at the beginning of each year is believed to be auspicious (¶14). Since Blue was fascinated by Red's New Year Lucky Bags, Blue asked Red to sell them as a core product for Blue Village's 2016 New Year Sale in Arbitria (¶14). Red agreed. Thus, Lucky Bags that Red had to provide to Blue in Arbitria must have the essential character that is considered auspicious in Arbitria.

This is also interpreted from remarks of Hawk, a manager at Red's apparel business department, in October 2015. Hawk mentioned "*Please tell me any taboos that should be avoided for selling lucky bags in Arbitria. ... our lucky bags for the Negoland market never contain inauspicious things...we are going to raise the same question with the staff in our Arbitrian branch*" (¶15). This proves that Red had understood that inauspicious things in Arbitria must not be included in Lucky Bags, to be sold in Arbitria.

Therefore, Red had to provide Lucky Bags without any inauspicious things of Arbitria.

1.2 Lucky Bags must contain t-shirts embroidered with animals

From (a) and (b) described below, Red promised to provide Lucky Bags that contained t-shirts embroidered with animals.

(a) The samples checked by Blue

According to Article 1.2 of the Agreement, Red must give Blue an opportunity to inspect samples of Lucky Bags. The purpose of Article 1.2 is for Blue to examine whether the products fulfill the Agreement.

On December 1, Ruby, a chief at Blue's online business department, visited Red to check the samples of Lucky Bags pursuant to Article 1.2 (¶17). In the conversation between Ruby and Hawk, Hawk said, "*A t-shirt is also included...with pinpoint embroidery featuring an animal*" by showing the t-shirt embroidered with a bear. In the important situation of examining the samples of Lucky Bags, Red had shown the t-shirt embroidered with an animal of a bear and said that they would put them in Lucky Bags (¶17). Therefore, Red had the obligation to provide Lucky Bags that contained t-shirts embroidered with "animals".

(b) The description sheet sent from Red for the customers in Blue Village (¶18)

In early December, Red sent the description sheet to Blue pursuant to the Article 4.1 of the Agreement (¶18). The Article stipulates, *"the Seller (Red) shall send the descriptive text for the Goods (Lucky Bags) and provide the Buyer (Blue) with necessary information as required in accordance with the Vendor Contract.*" Also, Article 2.2.5 of the Vendor Contract (the "VC") stipulates, *"Vendor (Red) is obliged to provide true information regarding the Products"*. In this case, Red informed that the t-shirt from the newest line has one point embroidery featuring an animal. With this description sheet, Red assured Blue that t-shirts with animal embroidery must be contained in Lucky Bags.

From (a) and (b), Red had to provide Lucky Bags that include animal embroidered t-shirts.

2. Red breached its obligation

Red breached its obligation by providing Lucky Bags that contained an inauspicious thing in Arbitria, a dragon embroidered t-shirts, and by not providing the "animal" embroidered t-shirts which Red and Blue had agreed (¶18).

2.1 The dragon was an inauspicious thing in Arbitria

Blue Village began to receive complaints from purchasers in Arbitria from January 3. 4,000 out of 5,000 purchasers demanded return of the t-shirts embroidered with a dragon (¶22). This fact clearly shows that a dragon was considered extremely inauspicious in Arbitria.

2.2 The "animals" embroidered t-shirts were not included in Lucky Bags

The t-shirts that Red was obliged to provide was "t-shirts with animal embroidery". An animal is a "living being" (I P.474 of The Oxford English Dictionary by the Oxford press, the latest printed version 1989) and a dragon is a "mythical monster…with wings and claws and

able to breathe out fire"(Ⅳ.1012) , which is not a living being at all. Under these definitions, the dragon is not an animal.

Therefore, Red failed to provide Lucky Bags that contained t-shirts with "animal" embroidery.

Hence, Red breached its obligation by providing Lucky Bags that contain "inauspicious things" and not "animal" embroidered t-shirts.

<Claim 2>

THE AMOUNT OF DAMAGES PAYABLE BY RED TO BLUE IS US$420,000.

1. Blue is entitled to claim for damages

Due to Red's non-performance, Blue suffered a loss of US$420,000. Blue is entitled to claim for damages under Article 7.4.2-7.4.4 of the UNIDROIT Principles of International Commercial Contracts 2010 (UNIDROIT Principle) since there were (a) the causal relationship between Red's non-performance and Blue's damages, and (b) Red could have foreseen the damages at the time of concluding the Agreement.

(a) The causal relationship

Due to the t-shirts embroidered with a dragon, which was regarded as inauspicious in Arbitria, 4,000 purchasers returned the products to Blue, and Blue gave a refund of US$100 per t-shirt. As a result, Blue suffered a loss of US$420,000 in total, that is US$400,000 for 4,000 returns and US$20,000 as costs of handling 4,000 refunds (Exhibit 8). All of these occurred due to Red's breach of its obligation by providing Lucky Bags with a dragon embroidered t-shirts.

Red might argue that the amount of US$100 per t-shirt was unreasonable. However, such argument should be rejected for two reasons. First, the retail price of the t-shirts was US$100, and second, purchasers were severely harmed psychologically due to the inauspicious t-shirts.

Thus, US$100 was the reasonable refund price and this shows the causal relationship between Blue's damages and Red's non-performance.

(b) The foreseeability of harm

At the time of concluding the Agreement, Red could have foreseen that if Red had sold Blue with products that both parties did not agree on, then Blue would receive complaints from purchasers and it would incur the harm by accepting returns from purchasers.

From (a) and (b), Blue is entitled to full compensation for the harm sustained as a result of non-performance of Red.

2. The mitigation of the harm

There were no "reasonable steps" that Blue could take to mitigate the harm. According to the Article 7.4.8 of the UNIDROIT Principle *"The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps."* However, in this case, there were no reasonable steps that Blue could take.

Blue was unable to take "reasonable steps", such as (a) selling the returned t-shirts in Arbitria, (b) selling the returned t-shirts in territories other than Arbitria, and (c) selling the returned t-shirts to Red. The reasons are as follows.

(a) Selling the returned t-shirts in Arbitria

With the fact that 4,000 out of 5,000 t-shirts had been returned to Blue by its customers in Arbitria (¶22), it was unreasonable for Blue to sell the product again in Arbitria.

(b) Selling the returned t-shirts in territories other than Arbitria

Blue was prohibited from reselling the products in countries other than Arbitria under Article 4.2 of the Agreement. Therefore, Blue was unable to sell the t-shirts in territories other than Arbitria.

(c) Selling the returned t-shirts to Red

It was unreasonable for Blue to ask Red to buy back the returned t-shirts from Blue. In the e-mail sent from Hawk on October 12, 2015 (Exhibit 5), Hawk mentioned, *"We are setting aside some of the lucky bags for your platform by assuming the risk of not being able to sell out… If this wholesale arrangement is acceptable to you, we will supply you with 10,000 New Year lucky bags..."*. Here, Red requested Blue to bear the risks of the dead stock in a wholesale arrangement. Also, on January 5, when Ruby called Hawk about the returned t-shirts, Hawk mentioned, *"It's up to you to accept returns, but we are not responsible for them" (*¶21). From these facts, it was reasonable that Blue thought Red would not accept the return of the t-shirts from Blue, and trying to sell the products to Red was not a "reasonable step".

Hence, at the time, no other measures for mitigating the harm were reasonable in Blue's position.

ALPHA CASE

<Claim 1>

RED IS UNDER THE OBLIGATION TO PAY BLUE US$250,000 FOR ITS BREACH OF OBLIGATION TO DELIVER 10,000 UNITS OF "ALPHA SERIES" TO BLUE.

1. Red's obligation and its non-performance

Red had the obligation to deliver 10,000 units of "Alpha Series" to Blue. However, Red delivered "d Series" to Blue. Due to Red's non-performance, Blue incurred the damages of US$250,000. Therefore, Red shall pay US$250,000 to Blue as compensation for the damages.

2. Red's obligation of delivering "Alpha Series" to Blue

On March 15, 2016, Red had promised Blue to provide "Alpha Series" as the prior destination (¶25), by handing the memo of Exhibit 13 to Blue. The memo stipulates that *"Red shall give Blue the right to order and purchase the Alpha Series in precedence to other prospective purchasers during the first one month period from the release of the Alpha Series"*. Here, Red was obliged to provide "Alpha Series" to Blue, when Blue had made the order within the preferential period.

According to the Article 4.2 of the VC, "*Vendor (Red) shall, upon its receipt of such purchase order, deliver the corresponding Product*". On April 21, 2016, Blue sent the written purchase order (the "Order") of "Alpha Series" (Exhibit 14). Since the Order was made during the first one month of the preferential period, Red had an obligation to deliver 10,000 units of "Alpha Series".

2.1 The Order from Blue was for "Alpha Series"

Blue ordered "Alpha Series" by sending the Order (Exhibit 14) to Red. Although Red is arguing that the Order was for "d Series" (¶28), the Order should be considered as for "Alpha Series," based on Article 4.2 of the UNIDROIT Principle. According to the Article 4.2 (1) of the UNIDROIT Principle, "*the statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention*".

In this case, Red was aware of Blue's intention to order "Alpha Series" by the Order. One hour before sending the Order, Orange had told Peacock, a chief of Blue's online business department that Blue would like to order "Alpha Series" additionally on the phone (¶26). Furthermore, Red had known that a dragon is regarded as inauspicious thing in Arbitria. From this recognition, Red had known that Blue would never order "d Series" with "dragon

"embroideries. In addition, Peacock made a call for Blue, wondering why Blue would place an order of "d Series".

From all of these reasons, Red had known Blue's intention, therefore, the Order should be interpreted as for "Alpha Series".

In conclusion, Red had the obligation to provide 10,000 units of "Alpha Series" to Blue.

3. The additional order of "Alpha Series"

Even if the Order was judged as the order of "d Series", Red still owed the obligation to provide 10,000 units of "Alpha Series" to Blue based on Blue's additional order on April 30, 2016 (¶28).

3.1 The order was made within the preferential destination period based on the Arbitria time

On March 15, 2016, Red agreed to make the Blue Village the preferential destination for "Alpha Series" (Exhibit 13). By this arrangement, Blue Village would receive supplies of "Alpha Series" in precedence to prospective purchasers for a period of one month from the initial release date (¶26). The purpose of this arrangement was to provide the certain period for Blue to sell "Alpha Series" through Blue Village. In accordance with this purpose, the time zone of Arbitria is applied to the preferential destination period. In this case, the date of the release of "Alpha Series" was April 1 in Arbitria time, and the order was made on April 30 in Arbitria time. Thus, the order was made within one month from the release date of "Alpha Series."

Arbitria Time	3/31 10:00	3/31 20:00	4/1 0:00	4/1 10:00	4/30 9:59	4/30 21:00	5/1	5/2 23:59
Negoland Time	4/1 0:00	4/1 10:00	4/1 14:00	4/2 0:00	4/30 23:59	5/1 11:00	5/2	5/3 13:59

Even if Blue's argument in 3.1 was not accepted, the preferential period would be extended to May 2 by applying the UNIDROIT Principle 1.12 (2). According to the UNIDROIT Principle 1.12 (2), *"if the last day of the period is a … non-business day, …the period is extended until the first business day"*. In this case, the last day was Saturday; a non-business day, thus the preferential period will be extended until May 2 Monday.

Since the order had been done within the preferential period, Red had the obligation to provide Blue with 10,000 units of Alpha Series.

Moreover, the additional order was valid since there was a practice that Eagle had accepted Orange's urgent orders by phone (¶26).

4. Red shall pay for the damages amount to US$250,000 caused by its non-performance

Due to Red's breach of its obligation, Blue could not sell "Alpha Series" and suffered damages of US$250,000 (Exhibit 15). Blue is entitled to full compensation for the damages under Article 7.4.2 of the UNIDROIT Principle, since the conditions under the UNIDROIT Principle are fulfilled.

There was causal relationship between Blue's damages and Red's non-performance of its obligation, because there was no dispute over the fact that "Alpha Series" would have sold out, if Blue had received the "Alpha Series". As for foreseeability of harm, Red could easily foresee that Blue would not sell "Alpha Series" and incur damages at the time of conclusion of the contract. Also, there is the certainty of harm according to the NOTE of Exhibit 15. Therefore, Red must compensate US$250,000 for damages pursuant to the UNIDROIT Principle.

<Claim 2>

BLUE IS NOT UNDER THE OBLIGATION TO PAY US$1,000,000 FOR BREACH OF ITS OBLIGATION WITH REGARDS TO THE RETURN OF THE "d SERIES".

1. Blue's obligation to deliver the "d Series"

In relation to "d Series", which was delivered incorrectly to Blue, Red asked Blue to arrange the transportation and to return the 10,000 units of "d Series" to Red on April 30, 2016 (¶28). Blue accepted the request and arranged the return of "d Series" by engaging Black, a forwarder in Arbitria. Thus, Blue had the obligation to deliver "d Series" to Red, and to arrange the transportation.

2. Trade term CPT (Incoterms®2010) should be applied to Blue's obligation to deliver "d Series"

Blue's obligation was returning "d Series" to Red in accordance with CPT as stipulated in Article 4.3 of the VC. CPT is applied for the return of "d Series" since Article 4.3 of the VC does not provide that CPT is limited to the application of the shipping from Red to Blue.

According to CPT A4, Blue is obliged to deliver the goods by handing them over to the carrier. In A5, Blue is also obliged to bear all the risks of losses or damages until the goods are delivered to the first carrier. In this case, Blue had performed its obligation by handing over the goods to the forwarder Black in Arbitria (¶29), and at the moment Blue handed over "d Series" to Black, all the risks of losses or damages were transferred to Red. Moreover,

Blue performed its obligation by arranging Black as Red requested. Therefore, Blue is not obliged to pay the damages since there was no breach of its obligation to return "d Series".

3. Blue performed its obligation to deliver "d Series" under UNIDROIT Principle

Even if CPT is not applied for the shipping of "d Series", Blue performed its obligation because the place of performance was Blue's place of business under the UNIDROIT Principle. According to the Article 6.1.6 of the UNIDROIT Principle, "*if the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform: (b) at its own place of business*". In this case, if CPT is not applied for the shipping, there was no clause of the performing place of the return under the VC. Pursuant to Article 6.1.6 of the UNIDROIT Principle, the place of performance was Blue's place of business. Therefore, Blue performed its obligation by handing over "d Series" to Black at Blue's place of business.

4. Blue is exempted from the non-performance of its obligation under force majeure

Even if Blue had breached its obligation to return "d Series" to Red, Blue is exempted from compensation for the damages because the earthquake interrupted Blue from performing its obligation.

According to Article 7.1.7 of the UNIDROIT Principle, *"non-performance by a party is excused, if that party proves that the non-performance 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 or to have avoided or overcome it or its consequences".*

In this case, the earthquake was beyond Blue's control, and it could not be expected reasonably at the time of concluding the VC.

Therefore, Blue is exempted from paying the damages under force majeure.

Robot Case

<Claim 1>

BLUE DID NOT BREACH ITS OBLIGATION UNDER EQUIPMENT LEASE AGREEMENT.

1. There is no Blue's breach of the ELA

1.1 Scope of warranty

Red might argue that Blue breached its warranty under Article 4(1) of the Equipment Lease Agreement (the "ELA") because the collision prevention sensor of Robot B did not work as specified in the Instruction Manual when Robot B collided with the rack on September 12, 2016.

Article 4(1) of the ELA stipulates, *"Blue hereby warrants to Red that the Equipment conforms to the specification as specified in the instruction manual provided by Blue. Blue further warrants to Red that the Equipment does not contain errors, flaws and/or deficiencies which would materially interrupt or disable Red's use of the Equipment."* Under this article, Blue made warranties on the quality and the performance of all robots. However, these Blue's warranties are not unlimited. In this case, according to the Information Sheet (Exhibit 19), all robots are designed to *"function properly between the temperature of -10 degrees and +45 degrees Celsius."* This statement in the Instruction Sheet explains that Blue warrants the quality and the performance of Robots are valid only when all robots are used under the environment from -10 degrees to +45 degrees Celsius.

1.2 Blue did not breach the warranty

Robot B collided with the rack on September 12, 2016. However, as elaborated below, the fact that Robot B collided with the rack is not the evidence that proves Blue's breach of the warranty. Blue's breach of the warranty does not exist for the following reasons.

(a) Robot B was used outside of the limitation of the warranty

In this case, the temperature inside the warehouse would have reached 50 degrees Celsius when the collision occurred (¶35⑧). The warranty in Article 4(1) of the ELA is applicable only when all robots are used under the temperature between -10 degrees and 45 degrees Celsius. Therefore, the malfunction of collision prevention sensor was beyond the limitation of the warranty.

(b) There is no evidence to prove that Robot B contained the deficiency before September 12, 2016

Robot A's collision (¶35②) and Blue's voluntary replacement (¶35⑤) do not prove that Robot B contained deficiency before the temperature exceeded 45 degrees Celsius. These facts are insufficient to evidence that Robot B had the same kind of deficiency as other robots. On account of Robot A, since each robot differs, the malfunction of the same type of the collision prevention sensor cannot evidence Robot B's deficiency. In addition, the fact that Blue had made voluntary replacement to prevent the deficiency of the collision prevention sensor, does not indicate Robot B had the same deficiency as other robots. Therefore, it does not indicate Robot B had the deficiency before September 12.

2. Blue did not breach the obligation to take appropriate responses

On September 9, the Robot A hit Turkey. After that accident, Red stopped using Robot A and inquired to Sapphire. On the phone call between Red and Blue, Turkey of Red answered to Sapphire of Blue's question *"Is there any other concern ?"* and explained that *"except the*

incident with Robot A things are fine" (¶35③). From the fact that Robot A had been stopped and the response by Turkey, Sapphire understood that the situation was not urgent. Thus, Turkey offered Sapphire to visit Red's warehouse to inspect all ten robots on September 14, the earliest day he could visit. Turkey accepted. Therefore, Blue's responses to Red was appropriate.

<Claim 2>

THE AMOUNT TO BE PAID BY BLUE TO RED IS NOT US$1,100,000.

1. Blue is not liable to pay full compensation

Blue is not liable to pay full compensation for the harm since the harm partially attributed to Red.

2. The amount of Red's damages is reduced

Even if Blue had the obligation to pay for the harm, Blue is not liable for full compensation under Article 7.4.7 of the UNIDROIT Principle. Since this harm was due in part to Red's act and omission, the amount of compensation must be reduced.

According to Article 7.4.7 of the UNIDROIT Principle, "*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, the damages caused by the collision of Robot B were partly contributed by Red's act and omission.

(a) Red's omission to forget to enter the new place of the rack to the management app

Robot B collided with the rack due to Red's omission to enter the new location of the rack to the management app (¶35①). Information Sheet (Exhibit 19) clearly states *"... in the event of a change in the shape of the warehouse…the racks…such new information"*. However, Red forgot to input the relocation when they changed the location of the rack on September 10 (¶34). It is obvious that the collision would not have occurred if Red had entered the relocation of the rack into the management app (¶35①).

(b) Red's act to switch on the deep-learning function

As written in the Information Sheet, it is Red's responsibility to use the deep-learning function (Exhibit 19). If Red had not switched on the deep-learning function, Robot B would not have chosen to take the path which was blocked by the rack (¶35⑦), and the incident would not have occurred.

Therefore, under the Article 7.4.7 of the UNIDROIT Principle, the amount of the damages should be mitigated to the extent that Red's act and omission have contributed to the harm.

<Claim 3>

RED HAS AN OBLIGATION TO PAY US$500,000 TO BLUE ON ACCOUNT OF THE LOSS OF ALL ROBOTS BASED ON THE ARTICLE 5(3) OF THE ELA.

1. Red has the obligation to pay US$500,000 to Blue

According to Article 5(2)(iv) of the ELA, "This *agreement may also be terminated by Blue immediately by sending a written notice to Red should; the Robots be lost or damaged to the extent it cannot be restored to a state equivalent to when it was delivered to Red."* In this case, all ten robots were completely lost by the fire accident and the contract was terminated by sending a letter from Blue to Red (Exhibit 21). According to Article 5(3) of the ELA, *"Upon any expiration or termination of this Agreement, … Red shall pay to Blue Fifty Thousand United States dollars (US$50,000) per each such Robot which Red is not able to return to Blue."* In this case, Red was unable to return all ten robots since all of them were burnt due to the collision incident.

Therefore, Red shall pay US$500,000 to Blue under the Article 5(3) of the ELA.

2. Red is not exempted from its obligation to pay US$500,000 to Blue

According to Article 7.1.2 of the UNIDROIT Principle, "*A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission".* Red might argue that Blue cannot rely on Red's non-performance of returning the Robots under the Article 7.1.2 of the UNIDROIT Principle, since it was caused by Blue's breach of obligation. However, Red's argument should be dismissed, because Blue did not breach the warranty or any kinds of obligations as already stated in Claim 1. Even if Blue breached its warranty or other obligations, Red cannot be excused from its non-performance by insisting that Blue interfered the performance of Red's obligation. This is because Red's act and omissions contributed to the collision incident.

In this case, Red's non-performance of the obligation to return the robots was caused not only by Blue's non-performance, but also Red's acts and omission such as failing to input the relocation of the rack (¶34), to continue the use of robots under the situation that the air-conditioning system of the warehouse had been stopped for two hours (¶35⑧), and to switch on the deep-learning function (¶35③).

Therefore, Red is not exempted from its obligation to pay Blue since Red cannot claim the interference by Blue to the extent that Red's act and omissions contributed to the collision incident.