SUMMARY OF RED CORPORATION'S SUBMISSIONS

I. Red Corporation ('Red') has not breached any obligation to supply Blue Incorporated ('Blue') with tungsten on a priority basis

II. Red is not obligated to pay royalties to Blue for platinum refining

III. Blue owes Red damages for breaching the Confidentiality Agreement

IV. The Requirements Agreement between Red and Blue should be amended due to hardship

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RARE METALS CASE

I. Red has not breached any obligation to supply Blue with tungsten on a priority basis

Red submits that:

A. Red is not obligated to supply Blue with tungsten under the priority supply agreement executed on August 1, 2000 ('Priority Agreement') because it only applies to metals produced directly by Red or Negoland Metals Corporation ('Negoland Metals'); and
B. Tungsten was traded on an order and sale basis; or
C. To the extent the Priority Agreement applies to tungsten, Red can avoid it; and
D. Even if the Priority Agreement applies to tungsten produced by Negoland Tungsten Corporation ('Negoland Tungsten'), Red did not breach any of its terms by supplying Black Negoland ('Black').

A. Red is not obligated to supply Blue with tungsten under the Priority Agreement because it only applies to metals produced directly by Red or Negoland Metals

1. The Priority Agreement gives Blue the right to order and purchase the rare metals, such as nickel and titanium, which are produced by Red or its affiliate, in precedence to purchasers in countries other than Negoland [*Ex* 6].

2. The use of the word 'affiliate' in the singular shows the parties' common intention that the Priority Agreement only applies to rare metals produced by Red and *one of* its affiliates [UNIDROIT *Principles of International Commercial Contracts* ('UNIDROIT') Art 4.1]. The 'affiliate' referred to is Negoland Metals because:

2.1 The Priority Agreement was concluded in the context of negotiations about the construction of a new refining plant for Negoland Metals [¶12];

2.2 The scope of the Priority Agreement narrowed during the course of negotiations. Blue and Red initially discussed a broad priority supply arrangement for metals sold by Red, but Blue ultimately requested Red 'promise to sell [Blue] rare metals produced by Negoland Metals on a priority basis' [¶12]. From that point on (including in the email negotiations that followed), the Priority Agreement was confined to rare metals produced by Red or its affiliate (singular). In contrast, Red and Blue continued to discuss the 'rare metals' definition in person and by email [*Ex* 5].

3. This interpretation is consistent with the parties' subsequent conduct [UNIDROIT Art 4.3(c)]]. For the first three years of the Priority Agreement, only nickel and titanium were supplied on a priority basis [¶14]. Although Negoland Materials produced platinum during this time, Red and Blue only began to trade platinum when Negoland Materials was absorbed into Negoland Metals. This was because platinum became one of the rare metals produced by Red or its affiliate, Negoland Metals [¶14].

4. Platinum was supplied on a priority basis under the Priority Agreement because:

4.1 From 2003, Red filled all of Blue's orders for nickel, titanium and platinum without incident [¶16]; and

4.2 Red continued to supply Blue with platinum (as well as nickel and titanium) during the rare metals shortage in 2004, despite other companies being willing to pay a higher premium for those metals [¶15].

5. A reasonable person of the same kind as the parties (sophisticated commercial entities) [UNIDROIT Art 4.1(2)] would not conclude the parties' common intention was to include *any* rare metal produced by Red or *any* of its affiliates. This interpretation would be too broad. It would allow Blue to claim a right to priority of supply of any rare metals ever produced by the Red group of companies, in exchange for the construction of *one* nickel and titanium refinery in 2002.

B. Tungsten was traded on an order and sale basis

6. The tungsten produced by Negoland Tungsten was not traded under the Priority Agreement. There was 'clear consensus' between the parties to establish a new company to handle tungsten-related business [¶18].

7. The Priority Agreement was not varied to include Negoland Tungsten because:

7.1 The new agreement was concluded in the context of negotiations between Red and Blue in February 2014 about the construction of a new refining plant [¶19]; and

7.2 Blue wanted to create a new joint venture, while Red raised the possibility of concluding 'a similar deal' for the construction of the tungsten plant. This indicates a new, distinct arrangement, not an amended Priority Agreement [¶19].

8. The tungsten supply in September and October 2015 was on an order and sale basis [¶19; *Ex 9*]. There was no new agreement or conduct that showed priority supply of tungsten to Blue [UNIDROIT Art 3.1.2; Art 2.1.1] because:

   8.1 Although Red offered 'a similar deal' for priority supply, Blue did not accept [¶19];

   8.2 Blue sought a long-term interest in the tungsten business, rather than the same priority of supply arrangement existing under the Priority Agreement [¶¶18-19]. The parties agreed on a licence fee arrangement and ongoing royalties in exchange for Blue's technological assistance [¶19].

   8.3 No written document was exchanged regarding a priority supply deal for tungsten. The parties have a longstanding practice of putting agreements into writing [*Ex* 6; *Ex* 7; *Ex* 17; *Ex* 20];

C. To the extent that the Priority Agreement applies to tungsten, Red can avoid it

9. If the Priority Agreement includes all rare metals produced by Red and all its affiliates, Blue led Red to form it through a fraudulent representation [UNIDROIT Art 3.2.5].

   9.1 Blue made the fraudulent representation by amending the final version of the Priority Agreement terms without disclosing this to Red, contrary to reasonable commercial standards of fair dealing and good faith [UNIDROIT Art 1.7(2); UNIDROIT Art 1.9(2)]. The parties' practice was to use tracked changes to communicate modifications to drafts of the Priority Agreement [*Ex* 5].

   9.2 Blue's failure to notify Red of the change was significant, even if the change appeared minor. Red was unlikely to notice the change because the final document was sent by post and received after the email communication [*Ex* 5; ¶13]. Red and Blue negotiated the terms of the Priority Agreement by email. Red reasonably assumed the version received by post reflected the email exchange. Red did not expect new terms in the Priority Agreement. Red read and signed the document on August 1, 2000. This was 14 days after the email containing the agreed terms [*Ex* 5], so it is reasonable that Red did not notice the change. Blue fraudulently induced Red to believe the Priority Agreement was effectively formed on the parties' agreed terms, subject only to the formality of signature.

   9.3 Blue intended to mislead Red. Blue sought a generous priority arrangement knowing Red was prepared to agree only to a limited priority arrangement. Red rejected Blue's request for supply of rare metals 'in precedence to other prospective purchasers' [*Ex* 5], and proposed a more confined agreement for supply to Blue 'in precedence to other prospective purchasers *in other countries than Negoland*'; Blue accepted this limitation. Blue changed the subject of the Priority Agreement to 'rare metals, *such as* Nickel and Titanium' without notifying Red, to still secure a generous priority arrangement. Blue led Red to conclude the Priority Agreement knowing this gave Blue an advantage to Red's detriment [*Ex* 6; UNIDROIT *Commentary* Art 3.2.5].

10. If Blue's conduct is not fraud, Red can still avoid the Priority Agreement for mistake.

    10.1 Red believed that the Priority Agreement comprised the terms Blue agreed to on July 29, 2000 [UNIDROIT Art 3.2.1; Art 3.2.2; *Ex* 5; *Ex* 8].

    10.2 Blue unilaterally amended the terms to 'rare metals, *such as* nickel and titanium.' Neither Red, nor a reasonable person in this situation, would have agreed to this extended definition [UNIDROIT Art 3.2.2(1)]. This is a fundamental element of the agreement.

    10.3 Blue's representation caused Red's mistake. Blue led Red to believe it accepted the terms of the draft Priority Agreement sent by Red on July 19, 2000 [*Ex* 5; UNIDROIT Art 3.2.2(1)]. Blue knew or ought to have known of Red's mistake [UNIDROIT Art 3.2.2(1)(a)]. This is not simply a case of Red drawing the 'wrong conclusion' [Stefan Vogenauer and Jan Kleinheisterkamp, *Commentary on the UNIDROIT Principles of International Commercial Contracts* (OUP, 2nd ed, 2015) ('Vogenauer') 482]. Blue acted contrary to reasonable commercial standards of fair dealing because it did not consult Red about the change [UNIDROIT Art 1.7].

    10.4 There is no assumption of risk for this kind of mistake in the Priority Agreement [Vogenauer, 487]. Red should not bear this risk because Blue caused the mistaken assumption.

    10.5 Red notified Blue it could not supply Blue with tungsten on November 10, 2015 [¶12]. The mistake became apparent in subsequent communications between Red and Blue [*Ex* 10]. Red then provided notice of avoidance, including reasons [UNIDROIT Art 3.2.11; Art 3.2.12; *Ex* 10].

11. To the extent that the Priority Agreement includes tungsten, Red can avoid it for gross disparity. An interpretation including tungsten would be fundamentally contrary to reasonable commercial standards of fair dealing that underpin the UNIDROIT principles [UNIDROIT Art 3.2.7(2)].

    11.1 This interpretation is uncommercial and unreasonably broad. It would oblige Red to supply Blue with tungsten and any other rare metals it produces in the future on priority. This is uncommercial because Blue would obtain an unjustifiable advantage. This places an onerous obligation on Red and was not in the parties' contemplation when the Priority Agreement formed [UNIDROIT Art 3.2.7(1)].

    11.2 Blue has taken unfair advantage of Red's ignorance to the effect of the changed terms in the formation of this agreement [UNIDROIT Art 3.2.7(1)(a)].

    11.3 A broad reading is contrary to the original nature and purpose of the Priority Agreement. The purpose was for Red to provide priority of supply of nickel and titanium to Blue directly in exchange for Blue's construction of the refinery at a reduced price [UNIDROIT Art 3.2.7(1)(b)]. The entity producing Tungsten, Negoland Tungsten, did not exist when the Priority Agreement formed, on August 1, 2000. Tungsten was only discovered in 2014.

D. Even if the Priority Agreement applies to tungsten produced by Negoland Tungsten, Red did not breach any of its terms by supplying Black

12. Even if the Priority Agreement includes tungsten, Blue only has priority over supplies to purchasers 'in countries other than Negoland' [¶12; *Ex* 6]. The parties' common intention is clear on this point, both in the Priority Agreement's express words and the pre-contractual negotiations [UNIDROIT Art 4.1.1; UNIDROIT Art 4.3(a)]. Red explicitly stated it could not touch rare metals 'earmarked for sales within Negoland', and Blue agreed to priority 'except what [Red] need[s] for domestic sales' [¶12].
13. The Priority Agreement does not restrict how Red earmarks its product for sale.
14. Black is incorporated in Negoland and is a 'purchaser in Negoland' for the purposes of the Priority Agreement. Red's sales to Black form part of its domestic allocation.
15. The Priority Agreement is only concerned with the purchaser's location. The purchaser's reason for buying the product is irrelevant. It would be onerous and uncommercial to impose an obligation on Red to monitor the subsequent use of its product.
16. Red did not breach an obligation to Blue by selling to Black.

II. <u>Red is not obligated to pay royalties to Blue for platinum refining</u>

Red Submits that:

A. The License Agreement between Red and Blue, signed on February 28, 2014 ('License Agreement') only extends to technology Blue owns. Green, and not Blue, owned the technology Red used to refine platinum;
B. There was no license agreement between Red and Blue for the use of the refining technology owned by Blue for refining Red's platinum; and
C. Any patent infringement claims should be brought against Green.

A. The License Agreement only extends to technology Blue owns. Green, and not Blue, owned the technology Red used to refine platinum

17. Under the License Agreement, Blue '[O]wns certain refining technology of rare metals,' the 'Licensed Technology'[*Ex* 7].
    17.1 The parties' common intention is that the scope of the License Agreement is to licence technology owned by Blue [UNIDROIT Art 4.1.3]. The ordinary meaning of the language demonstrates this intention.
18. Red has not breached the License Agreement as Red used Green's technology, not Blue's.
19. Green owned the technology because the laws of Negoland permit a person to license technology that is patent pending [¶25]. The right to license is a right of ownership, which

operates to the exclusion of others. Green's ownership rights were confirmed when its patent application was approved.

20. In any event, Red acted in good faith [UNIDROIT Art 1.7] by clarifying with Green the similarity and status of their technology. This was the most that could reasonably be expected of Red.

B. There was no license agreement between Red and Blue for the use of the refining technology owned by Blue for refining Red's platinum

21. The parties did not modify the License Agreement to include to include platinum.

    21.1 The License Agreement expressly restricts use of the Licensed Technology to tungsten refining [*Ex* 7, § 1.1].

    21.2 The parties did not modify the License Agreement because they did not comply with the merger clause in section 7.10 [UNIDROIT Art 2.1.18; *Ex* 7, § 7.10]

22. The parties did not form a separate agreement for the use of the Licensed Technology for platinum.

    22.1 The conduct of the parties is not sufficient to show agreement [UNIDROIT Art 2.1.1]. The relevant conduct is the November 2015 discussion between Orange and Ruby and the December 10, 2015 email exchange ('the Platinum Discussions') [¶24].

    22.2 Further, Blue did not offer to form a new licensing Agreement [UNIDROIT Art. 2.1.2].

    22.3 If the Platinum Discussions are construed as an offer, there is no evidence Red accepted [UNIDROIT Art 2.1.6(3)]. Blue did not make a statement that silence amounts to acceptance [UNIDROIT Commentary Art 2.1.6(1)].

23. Neither Ruby nor Orange had authority to bind the parties to any modified or new License Agreement [UNIDROIT Art 2.2.5].

24. The parties' common intention following the Platinum Discussions was to revise the License Agreement later. They did not intend to form a new agreement [UNIDROIT Art 4.1.1].

C. Any patent infringement claims should be brought against Green

25. If Green's patent was wrongfully granted, and Green's technology is shown to be identical to Blue's technology, Blue should pursue a remedy against Green.

26. It is wrong to pursue Red for remedies because:

    26.1 It was lawful for Red to purchase a license from Green, pending the decision regarding the patent; and

    26.2 Red's Agreement with Blue did not prevent it from entering into license arrangements with third parties.

    26.3 Red is not the right defendant; Blue should instead pursue Green.

III. Blue owes Red damages for breaching the Confidentiality Agreement

Red submits that:

A. Information concerning the Negoland government's handling of fishing activities affecting fish stocks in the coastal waters of Negoland ('Information') is 'Confidential Information' under the Confidentiality Agreement between Red and Blue, signed on March 15, 2016 ('Confidentiality Agreement')[*Ex* 20];

B. Blue has not performed its obligations under the Confidentiality Agreement; and

C. Red is entitled to damages for Blue's non-performance.

A. The Information is 'Confidential Information' under the Confidentiality Agreement

27. The Confidentiality Agreement protects information that is 'confidential, proprietary, or secret' if it is clearly labelled as confidential or should reasonably be considered confidential given its nature or 'the circumstances surrounding its disclosure' by Red to Blue [*Ex* 20, § 1(1)].

28. The Information is 'confidential… or secret', and was private before Blue's breach.

    28.1 The parties' common intention was that information concerning fishing activity along the Arbitrian and Negolian coasts be be 'confidential or secret' if not in the public domain [UNIDROIT Art 4.1(1)]. This is shown by:

        a) Their pre-contractual discussion of a need to protect private 'data concerning fish stocks' [UNIDROIT Art 4.3(a); ¶33];
        b) The Confidentiality Agreement's opening paragraph [UNIDROIT Art 4.4];
        c) The Confidentiality Agreement's nature and purpose, to facilitate the fish stock project by enabling safe exchange of information [UNIDROIT Art 4.3(d); Vogenauer, 591]; and
        d) The parties' post-contractual exchange of a 'variety of information' related to fishing activities [UNIDROIT Art 4.3(c)].

    28.2 The Information fits this description because it was private and concerned fishing activities affecting fish stocks [¶35].

    28.3 'Confidential…or secret' should not be read to exclude the Information merely because it concerns Negoland's alleged breach of international law [UNIDROIT Arts 1.7, 1.4, 3.3.1; Vogenauer, 220-2, 559; ¶35].

29. The Information should 'reasonably be considered to be confidential' given:

    29.1 Its highly sensitive nature, as shown by the significant impact on Red's business caused by Blue's disclosure of the Information [¶35]; and

29.2 The circumstances surrounding its disclosure to Blue. Red mistakenly transferring it to Blue, together with other confidential information, parts of which were labelled 'For Ministry Internal Use Only' [¶35].

B. Blue has not performed its obligations under the Confidentiality Agreement

30. Blue has not performed section 2(1)(i) [*Ex* 20]. Blue is required not to 'disclose or disseminate' the Information. The obligation is expressed in verb form, requiring a positive act resulting in disclosure or dissemination of the Information [UNIDROIT Art 4.4; Vogenauer, 588]. The positive act of Blue's employee opening the email attachment caused the disclosure [¶¶34, 35].

31. Additionally, Blue has not performed its duty of best efforts under section 2(1)(iv) [UNIDROIT Art 5.1.4; *Ex* 20]. This requires Blue to use the same degree of care to 'avoid [the Information's] disclosure, publication or dissemination' as it would 'its own confidential information of similar importance'. However, this can be 'no less than a reasonable degree of care' [*Ex* 20, § 2(1)(iv)].

    31.1 Blue acknowledged 'unauthorized use or disclosure of' the Confidential Information 'would cause [Red] irreparable harm and significant injury' [*Ex* 20, § 5(1)].

    31.2 Blue's use of standard anti-virus software and systems allowed emails to be opened from unauthenticated addresses. Informal reminders to employees were unreasonable and insufficient [¶34].

32. Blue cannot rely on section 2(2)(ii) [*Ex* 20]. This excuses non-performance of section 2(1) occurring 'through no fault' of Blue. The parties intended the phrase 'through no fault' have its ordinary meaning [UNIDROIT Arts 4.1(1), 4.5; Vogenauer, 588, 602].

    32.1 Blue is at fault for disclosing the Information, because Blue's IT systems should have prevented the opening of attachments from unauthenticated addresses [*Ex* 20, § 2(1)(i)]; and

    32.2 Blue is at fault for failure to exercise the degree of care required [*Ex* 20, § 2(1)(iv)].

33. Blue cannot rely on section 2(3) because its disclosure of the Information was not 'required by law'. While the *Convention on Fish Stocks* requires contracting states to publicly disclose breaches, it does not bind Blue, which is private commercial entities [UNIDROIT Art 1.4; ¶35]. Even if the disclosure was required by law, Blue has not complied with the section 2(3) notice requirements [*Ex* 20, § 2(3); UNIDROIT Art 1.10].

C. Red is entitled to damages for Blue's non-performance

34. Blue's non-performance gives Red a right to damages [UNIDROIT Art 7.4.1].

35. Blue's non-performance caused Red's loss of US$10 million. But for the Information's disclosure, it is reasonably certain that third parties would not have boycotted Red's marine products or denied it essential fishing supplies, [UNIDROIT Arts 7.4.2(1), 7.4.3(1); Vogenauer, 983, 986, 989; ¶35].

36. This type of harm was foreseen by Blue at the time of forming the Confidentiality Agreement [UNIDROIT Art 7.4.4]. Blue acknowledged the disclosure of Confidential Information would cause 'irreparable harm and significant injury' to Red [*Ex* 20, § 5(1)]. A reasonable person in Blue's position would also have foreseen the harm, which flows naturally from the Information's disclosure [UNIDROIT Art 7.4.4; Vogenauer, 994-5; *Ex* 20, § 5(1)].

IV. The Requirements Agreement between Red and Blue should be amended due to hardship

Red submits that:

A. Red has suffered hardship;

B. Because of Red's hardship, the agreement between Red and Blue, signed on September 10, 2012 [*Ex 17*] ('Requirements Agreement') should be amended to a maximum of 1200 tonnes ('t') of Super Red Mix per year.

A. Red has suffered hardship

37. The Requirements Agreement is a long-term contract [UNIDROIT Art 1.11].

38. Within the first five years, three unanticipated events fundamentally altered the equilibrium of the Requirements Agreement. This has caused Red hardship [UNIDROIT Art 6.2.1].

39. Blue's leaking of the Information caused Red hardship.

    39.1 Blue's leak caused some suppliers to refuse to sell Red the ingredients required for Super Red Mix. Red can now only access half the amount of required ingredients, while cost of production has doubled. This fundamentally alters the equilibrium of the Requirements Agreement [UNIDROIT Art 6.2.2; Vogenauer, 816].

    39.2 The Information leak occurred after the parties formed the Requirements Agreement in 2012 [UNIDROIT Art 6.2.2(a)].

    39.3 When the Requirements Agreement was formed, Red could not reasonably have foreseen the risk of a sophisticated virus-infected email affecting the supply of materials necessary to produce Super Red Mix [UNIDROIT Art 6.2.2(b)].

    39.4 The Information leak was beyond Red's control [UNIDROIT Art 6.2.2(c)]. A third party sent the virus, and Blue's employee caused the virus to enter Blue's system. This caused the leak of Information.

    39.5 Red did not assume the risk of the leak [UNIDROIT Art 6.2.2(d)]. The Requirements Agreement does not assume the release of the Information either implicitly or explicitly. Each party was responsible for any leaks of the other party's information.

40. Global warming caused Red hardship.

40.1 Global warming fundamentally altered the equilibrium of the Requirements Agreement [UNIDROIT Art 6.2.2]. The change in ocean currents halved the supply of fish, and therefore production of Super Red Mix [*Ex* 21].

40.2 In a leading case on UNIDROIT Art. 6.2.2, [*Centro de Arbitraje de Mexico* ('CAM') 30.11.2006] the Arbitral Tribunal held the occurrence of El Nino did not satisfy the hardship requirement. The respondent had extensive experience in the agricultural sector and El Nino, a common and well-known climate fluctuation, could not be considered unforeseeable.

40.3 In this case, ocean currents are a natural condition of farming in the ocean. However, unlike in the case of CAM, it is unforeseeable that an ocean current pattern that has been historically stable, will be impacted by global warming in a sudden and unprecedented way.

40.4 The impact of global warming became clear only after the Requirements Agreement formed [UNIDROIT 6.2.2(a); *Ex* 21]. Red conducted a study in August 2012 and confirmed there was 'plenty of supply of Negoland fish' [¶32].

40.5 Red could not have foreseen the impact global warming would have on the ocean current that suddenly reduced Negoland's fish stocks [UNIDROIT Art 6.2.2(b)]. Between 2006 and 2012, the supply of ingredients required for Red Mix had never dropped sharply. There was no indication in the Requirements Agreement that the parties had considered the risk of global warming, or the environmental changes that could impact Red's fish supply for Super Red Mix.

40.6 Red did not assume the risk of global warming impacting fish stocks [UNIDROIT Art 6.2.2(d); ¶32]. The ocean currents' impact on fish stocks was beyond Red's control [UNIDROIT Art 6.2.2(c)].

41. Significant decrease in the Nego-Lira's value caused Red hardship.

41.1 The Nego-Lira's decrease in value from January 2016 increased import costs for Super Red Mix ingredients. This fundamentally altered the equilibrium of the Requirements Agreement [UNIDROIT Art 6.2.2].

41.2 Red could not reasonably have foreseen the decrease in value of the Nego-Lira [UNIDROIT Art 6.2.2(b)]. The devaluation to 1.4 Nego-Lira per 1 Abu-Dollar in a six-month period came after 15 years of parity. This occurred so quickly Red could not use the usual commercial strategies to manage this currency risk.

41.3 Although Red is a state-owned corporation, currency rates are beyond its control [UNIDROIT Art 6.2.2(c)].

41.4 Red did not assume the risk of such significant devaluation [UNIDROIT Art 6.2.2(d)]. When the Requirements Agreement formed, the currency had been stable for 12 years, and there was no suggestion this would drastically change.

42. Because of these three events, Red's production capacity halved while production costs doubled. Experts agree the current situation will not improve in the near future [*Ex* 21(7)]. Red will continue to face severe losses unless Blue agrees to amend the long-term contract.

B. Because of Red's hardship, the Requirements Agreement should be amended to a maximum of 1200t of Super Red Mix per year

43. Red has complied with the terms of the Requirements Agreement while waiting to renegotiate with Blue [UNIDROIT Art 6.2.3(1)].

    43.1 Red requested renegotiation without delay on September 15, 2016 following the Information's leak in April 2016, currency devaluation in January 2016, and ocean currents change in 'Summer 2016', and gave clear reasons [UNIDROIT Art 6.2.3(1)].

    43.2 Red has not withheld performance [UNIDROIT Art 6.2.3(2)]. Blue consented to all supply adjustments [¶37].

    43.3 Blue rejected numerous attempts to renegotiate. This is commercially unreasonable and breaches the principle of good faith and fair dealing [UNIDROIT Art 1.7].

    43.4 Red can reasonably refer this issue to the arbitral panel, because no renegotiation has occurred [UNIDROIT Art 6.2.3(3)].

44. To restore equilibrium, the Requirements Agreement must be amended. It should be amended to reflect the current status quo [UNIDROIT Art 6.2.3(4)(b)].

    44.1 The price of Super Red Mix from January 1, 2017 should be 2.5 Nego-Lira, with no discount. This price is consistent with Red's other customers since Red's hardship. The loss caused by the increased cost of production of Super Red Mix is a loss that should be fairly distributed between Red and Blue.

    44.2 The maximum purchase amount for Blue should be 1200t per year while stocks remain at current levels. At this level, Blue would retain priority over Red's other purchasers. This upholds the parties' common intention in forming the Requirements Agreement [*Ex* 21].

    44.3 Red's requests are reasonable, because they do not restore Red's full loss [UNIDROIT Art 6.2.3(4)(b) Commentary 7].

45. Alternatively, the Requirements Agreement should be terminated immediately [UNIDROIT Art 6.2.3(4)(a)].

V. Sources Cited

Arbitral Award of 30 November 2006 (Mexico City), *Centro de Arbitraje de Mexico (CAM), Unilex 1149*

Stefan Vogenauer (Ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (OUP, 2nd ed, 2015)

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