Glossary

Legal Citations

"¶#" : Number of a paragraph in the problem
"Ex.#" : Number of an exhibit in the problem
"U #" : Article number in the UNIDROIT Principles of International Commercial Contracts 2010
"VC" : Vendor Contract (Exhibit 4); may be followed by clause number
"LBA" : Lucky Bag Agreement (Exhibit 6); may be followed by clause number; may be followed by clause number
"RP" : Return Policy (Exhibit 7); may be followed by clause number
"Memo" : The memo containing the right to order the Alpha Series (Exhibit 13); may be followed by clause number
"OF" : Order Form (Exhibit 14); may be followed by clause number
"ELA" : Equipment Lease Agreement (Exhibit 18); may be followed by clause number
"IS" : Information Sheet (Exhibit 19); may be followed by clause number

Trade Names

"Blue" : Blue Inc., online apparel retail business operator based in Arbitria
"Red" : Red Corp., apparel manufacturing/retailing and elderly care service operator primarily in Negoland
"Black" : Black Inc., an Arbitrian carrier
"Blue Village": A wholly-owned online marketplace of Blue in Arbitria
"Blue Village Negoland": A wholly-owned online marketplace of Blue in Negoland

Lucky Bag Case

【Background】

A Lucky Bag is a sealed bag filled with undisclosed, "lucky" goods sold at steep discounts in the New Year. Other than the "lucky" aura, its main characteristic is the purchase price, cheaper than the total value of the contained goods, stemming from the fact that the buyer does not know what they will get until the bag is opened.

Red, having a history of successfully selling Lucky Bags in Negoland, made a deal with Blue to sell them in Arbitria as well. In order to avoid incidents arising from the cultural differences between the two countries, Red asked Blue about Arbitrian taboos, but Blue couldn't come up with any after being given a snake as an example of a Negolandese taboo. Red also said they would consult their Arbitrian branch on the matter, later failing to do so.

The Arbitrian Lucky Bags contained T-shirts embroidered with a dragon, which is regarded as an inauspicious animal in Arbitria, and that caused most of the customers who got the dragon T-shirts to return them to Blue. Blue, forced to refund the value of the dragon T-shirts, incurred a loss of US$420,000. In order to avoid further costs, Blue went on to donate the dragon T-shirts, being informed later by Red that the T-shirts could have been returned to Red for sale in Negoland as to diminish the loss.

Blue now wants Red to bear the total cost of US$420,000 rising from the dragon T-shirt refunds. Red refuses, arguing that there was no breach of contract on their part and that Blue failed to fulfil its duty to mitigate its own harm by donating the T-shirts.

【Submission】

The Tribunal should find Red liable for damages amounting to US$420,000.

【Legal basis】

Claim (1): Red is in breach of the Lucky Bag Agreement.

1 Red failed to provide Blue with comprehensive information regarding the contents of the Lucky Bags

LBA.4 provides that "*[t]he Seller shall…provide the Buyer with necessary information as required in accordance with the Vendor Contract*". The pertinent provisions of VC would be VC.2.2.5, stating that the Vendor is obliged "*to provide true information regarding the Products, which is stored in the Store Information System*"; and VC.1.5, defining the Store Information System as "*Blue's system where all the necessary information for purchase and sales of the Products is stored*".

By the very nature of a Lucky Bag, it is essential that the final customer does not know the details of what is inside. On the other hand, it is absolutely imperative that Blue knows exactly and minutely what it is selling. According to LBA.4, VC.2.2.5, and VC.1.5, Red owed the duty to provide, "*all the necessary information for purchase and sales*". However, Red never provided Blue with any concrete information regarding the merchandise included in the Lucky Bag. Even after Hawk's announcement that there would be other embroidered animals (¶17), and with a sample of only a bear (which is a real world animal), to expect an imaginary animal such as a dragon would have been far-fetched.

Prior to commencing the sale of Lucky Bags in Arbitria, Red provided a sample for inspection by Blue on December 1. The sample only included T-shirt embroidered with a bear (¶17). Blue was never officially informed of the existence of the dragon T-shirt.

Red may argue that Blue did not demonstrate dissatisfaction when presented with incomplete information and never requested details of the contents of the Lucky Bags. There was, however, no need for Blue to do so as LBA.4 provides that Red should have provided the information regardless of Blue's demand for it or lack thereof. In addition, Red should have made it sure that there would be no taboo goods in the unchecked rest of the shipment (see argument 2 below). It was Red's duty to provide Blue with necessary information detailing all of the purchased merchandise, but Red failed to do so.

2 Red had a duty to avoid Arbitrian taboos and failed to fulfil it

U.5.1.1 provides that "*the contractual obligations of the parties may be express or implied*", while U.5.1.2 states that "*implied obligations stem from (a) the nature and purpose of the contract*".

According to U.5.1.1 and U.5.1.2, Red had an implied obligation to provide items marketable as **lucky** in Arbitria. In LBA, the "*Goods*" are termed as "*the New Year Lucky Bag produced by the Seller for the New Year of 2016*". In Negoland, customers believe that "buying a lucky bag is an auspicious thing to do at the beginning of each year."(¶14) Therefore, Red had understood that the object of the contract is not just clothing items to fill a bag; it is **lucky** items appropriate for the typically superstitious period of New Year, or at the very least, items that cannot be regarded as **unlucky**. To perform this obligation, Red had an implied obligation to understand what was considered lucky and unlucky in Arbitria, and expressly recognised it in the phone conversation in (¶15).

Even Red recognized the need of research in the following statement. Red's Hawk stated that "*we are going to raise the same question with the staff in our Arbitrian branch*", which he later admitted failing to do on January 5 (¶21).

Red may claim that Blue had also made a statement to cooperate in the research process. However, the statement of Ruby of Blue, "*I'll let you know if I think of anything*", could be taken by Red as a promise of cooperation, but the conditional "*if*" makes the object too vague for a promise to be inferred with certainty. Even if Ruby's words were indeed a promise, given that the only examples provided were a snake and a bear, it is natural that Ruby's mind was set on real-world animals. Further, there is no logical interest for Blue in failing to let Red know of anything he had thought of even if it had happened. Therefore, it cannot be said that Blue did not do its part.

Red, in spite of being the one with deep knowledge of the nature of the Lucky Bags (¶14), completely ignored the objective of the goods dealt with and thus breached the agreement.

Red breached the written contract by failing to provide Blue with complete information regarding the contents of the Lucky Bags and by failing to provide Blue with marketable Lucky Bags. Red also breached the implied duty to understand Arbitrian taboos by consulting its Arbitrian branch, after expressly recognising it.

Claim (2): Red must pay Blue US$420,000 in damages.

1. Blue has the right to claim full compensation for the damage Red had caused to Blue.

U.7.4.2 (1) states that (1) "*The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm."* U.7.4.3 (1) and (2), says "*(1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty. (2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence."* U.7.4.4 stipulates *"The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non- performance."*

According to U.7.4.2 Blue has the right to claim full compensation from Red, and this case meets the conditions required in U.7.4.3 and U.7.4.4.

1.1 The harm was certain (U.7.4.3).

Red's non-performance led to the result of consumers returning the T-shirt and Blue refunding for it.

Blue had refunded its customers according to its Return Policy (Ex.7). In the IMPORTANT NOTICE, it is stated that Blue will refund "*the purchase price*". In this case the dragon T-shirt was included in the Lucky Bag, which was purchased for US$300. As a whole, the Lucky Bag was offered to the customers at a 70%-discount price (¶18). However, the amount of discount for each item was not informed. Since the T-shirts were sold for US$100 in Negoland at that time (¶17, ¶21), Arbitrian customers were aware of the price. Therefore, Blue returned US$100 for each T-shirt, which was the only option of "*the purchase price*". Red's breach of obligation, which was providing inauspicious T-shirts, led to Arbitrian customers' resentment and Blue had no choice but to refund by following its Return Policy.

1.2 The harm was foreseeable (U.7.4.4).

According to U.7.4.4, Red should have reasonably foreseen the harm to result from its non-performance at the time of conclusion of the contract.

In VC.2.2.1 it is stated that vender is obliged to be fully acquainted with all conditions relating to returns. Therefore, Red should have fully understood Blue's Return Policy. Blue had openly provided its return policy on its web site (Ex.3) and Red could have easily acquired it.

Therefore, Red could have foreseen the harm to result from its non-performance at the time of the conclusion of the contract.

2. Red did not inform Blue in a timely manner of the possibility of returning the T-shirts

U.7.4.1 states that "*[a]ny non-performance gives the aggrieved party a right to damages*". U.7.4.8 then provides that "*[t]he 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*".

Red may claim that Blue should have returned the T-shirt to Red to mitigate the harm. However, Red could not reasonably expect Blue to return the T-shirt, especially in light of Red's expressed aversion of consignment terms and favouring wholesale terms during the negotiation process (Ex.5). Under wholesale terms Blue undertakes the ownership of the goods, whereas in consignment the ownership remains with Red and Blue may return excess stock (¶8, ¶12, VC.3.1.5).

Moreover, Red may argue that Blue should have given it more time before parting with the T-shirts. However, Blue, as a consignment-focused company which even plans to discontinue its wholesale services to avoid carrying dead stock (¶8), is rationally assumed to have a strict policy regarding the keeping of goods without sales prospects. Red even had the chance to inform Blue, during the phone call on January 5 (¶21), of its willingness to take the T-shirts in return as soon as it knew about the problem, but it failed to do so. Blue was only informed in the letter dated February 15 (Ex.9), by which time Blue had already parted with the dead stock T-shirts after keeping them for a whole month. Under such circumstances, it is not reasonable for Red, the one who decided on a wholesale arrangement (Ex.5), to expect Blue to keep stock of products that no longer have any market value. The logical way to mitigate the harm was to give the T-shirts away and thereby avoid storage expenses, which Blue did.

Blue did not breach its obligation to mitigate its loss because it never knew of the possibility of returning the T-shirts in time, and did its best to avoid extra costs. Thus, Red must pay Blue US$420,000 for the damage it caused.

Alpha Case

【Background】

Blue's Orange made an arrangement with Red's Eagle to receive supplies of the Alpha Series (Red's newest and extremely popular line of polo shirts with the embroidery of "α") in consignment before other parties for a period of one month from the initial release date. Eagle had accepted Orange's orders for the Alpha Series over phone 2 times and Red successfully received the Alpha Series. Blue started its sale on April 2. On April 21, as Peacock required, Orange hand-wrote and sent the order sheet (Ex.14). However, Peacock approved the order sheet as d Series which is a line of jackets featuring an embroidered dragon. When Blue received 10,000 units of the d Series on May 1, Orange immediately called Eagle. The parties agreed to cancel the order and to arrange the shipment of d Series to Red, but Red refused to honor Blue's order requesting an additional supply of the Alpha Series. Then, Blue arranged the shipment of the d Series and handed it to Black, but while on way to Arbitria Airport, the truck loaded with the d Series was hit by an earthquake which destroyed the truck and the entire load of the d Series.

【Submission】

The Tribunal should find Red in breach of its obligation to deliver the Alpha Series and liable for damages amounting to US$250,000.

【Legal basis】

Claim (1): Red has the obligation to pay US$250,000 to Blue for its breach of the legal obligation to deliver 10,000 pieces of the Alpha Series to Blue.

1. Red had an obligation to deliver 10,000 pieces of the Alpha Series to Blue.

1.1 Blue ordered the Alpha Series and not the d Series on April 21 (Negoland time. Only Negoland time is used below).

According to U.4.3 (a), a contract must be interpreted in accordance with the preliminary negotiations between the parties.

On April 21, 2016, Orange told Peacock, a subordinate of Eagle, to ship an additional 10,000 shirts of the Alpha Series via the phone (¶26). Even though, Blue and Red had been handling the purchase of the Alpha Series without a written order form, Orange agreed to send a written form.

It was reasonable to assume that Blue indeed ordered **the Alpha Series** due to the following facts. Firstly, the agreement, written on the Memo, for the exclusive right to purchase and order the Alpha Series was shown to the relevant departments of Red and Blue (¶25) and was in effect at that time (Ex.13). Also, Orange has previously ordered the Alpha Series from Eagle over the phone, and it successfully received 10,000 shirts in March and 5,000 shirts in mid-April (¶26). Secondly, Orange hand-wrote and sent the order sheet an hour and half after the phone call with Peacock.

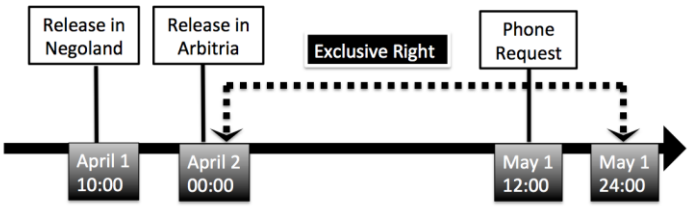
However, after Red's employee keyed the order into its management system, Peacock compared the data and the order sheet and approved the order as **the d Series** (¶26).

In conclusion, under U.4.3 (a) Red must have interpreted the written order sheet in accordance with preliminary matters mentioned above and hence, Blue ordered the Alpha Series on April 21, 2016.

1.2 Even if Blue had failed to order the Alpha Series on April 21, 2016, Red was obliged to accept Blue's order on May 1, 2016.

1.2.1 The exclusive right period to order the Alpha Series commenced from the time Blue started its sales at 00:00 on April 2, 2016.

Chart 1. Exclusive Right Period



Under U.4.1 and U.4.2, a contract must be interpreted according to the common intention of the parties.

On March 15, 2016, Red agreed to allow Blue to purchase and order the Alpha Series in the first month from the release of the Alpha Series, which is recorded in the Memo (Ex.13). At the time of the conclusion of the contract, Blue assumed that it is entitled to start its sale from the time of the release of the Alpha Series in Negoland (April 1, 10:00). However, Blue was forced to sell the Alpha Series after Red's stores commenced sales in Arbitria. Thus, under U.4.1 and U.4.2 Blue's sale of the Alpha Series and the exclusive right period

begins on April 2, 00:00 (Chart 1), and ends on May 1, 24:00.

On May 1, 11:00, Orange called and told Eagle that Blue had ordered the Alpha Series, not the d Series. After that, at 12:00 on May 1, Orange ordered an additional 10,000 shirts of the Alpha Series after cancelling the order made on April 21. Nevertheless, Eagle refused to accept the order of the Alpha Series on the ground that the right to purchase had expired on May 1.

Consequently, the right to order and purchase commenced on April 2, 00:00 and expired on May 1, 24:00. Thus, Red had an obligation to honor Blue's order on May 1, 12:00.

1.2.2 Even if the exclusive right began with release of the Alpha Series in Negoland on April, 10:00, it expires on May 2.

According to *Commentary on UNIDROIT principles of International Commercial Contract* (Stefan Vogenauer and Jan Kleinheistnerkamp, Oxford University Press, 2009, p719 ¶8) on U.1.1.12, "*[t]he computation of time periods, periods of time expressed in days...shall begin at 00:00 on the next day and shall end at 24:00 on the last day of the period.*"

Red might claim that the exclusive right began from the time of the release of the Alpha Series in Negoland which is April 1, 10:00. According to the Commentary on U.1.1.12, even if the exclusive right commenced from the time of the Alpha Series release in Negoland, the period began on April 2, 00:00 and ended on May 1, 24:00 (Chart 1).

Hence, under U.1.1.12 the exclusive right period expires on May 1, 24:00 and Red was under obligation to honor Blue's order on May 1, 12:00.

2. Red is obliged to compensate Blue for damages amounting US$250,000 under U.7.4.1-7.4.4.

U.7.4.1 states that any non-performance gives the aggrieved party a right to damages and U.7.4.2 stipulates "*The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance"* including *"any gain of which it was deprived*".

Red bore an obligation to deliver 10,000 pieces of the Alpha Series to Blue. Even if Blue had failed to order the Alpha Series, Red was under obligation to honor Blue's order on May 1,2016. However, on April 30, 2016, Blue received 10,000 pieces of the d Series and Red refused to honor Blue's order. As a result, Blue incured US$250,000 in damages.

Under U.7.4.3 and U.7.4.4, the damages incured by Blue was certain and foreseeable. Firstly, the damages amounting US$250,000 was the result of Red's non-performance – not providing the Alpha series to Blue. Secondly, Red could have reasonably foreseen the damages amounting US$250,000 would occur as a result of not providing the Alpha series. Thirdly, there is no dispute that if it Red had delivered 10,000 pieces of the Alpha Series, Blue could have sold it and gained US$250,000 (US$100*25%*10,000 units) (Ex.15).

Hence, under U.7.4.1 and U.7.4.2, Blue is entitled for full compensation for the harm sustained as a result of Red's non-performance.

Based on item 1 and 2, Red had an obligation to deliver the Alpha series to Blue.
As a result of that Red is in breach if its obligation to deliver Alpha series to Blue. Furthermore, Red is obliged to pay damages amounting to US$250,000 under U. 7.4.1-7.4.4.

Claim (2): Blue fulfilled its obligation in returning the d series to Red, and is not obliged to pay Red US$1,000,000.

1. Blue fulfilled its obligation in returning the d Series to Red

1.1 Blue had returned the d Series at its place of business.

As stipulated in U.5.3.5 and U.3.2.15, "*[…] either party may claim restitution of whatever it has supplied under the contract […] provided that such party concurrently makes restitution of whatever it has received under the contract[…]*". In U.6.1.6, it is stated that "*[i]f the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform: (a) a monetary obligation, at the obligee's place of business; (b) any other obligation, at its own place of business*."

On April 30, Orange from Blue and Eagle from Red had agreed on the phone to cancel the contract dated on April 21 (¶28). Eagle requested Blue to "arrange for transportation" (¶28), and Blue fulfilled that request. In accordance with U.5.3.5 and U.3.2.15, to return what it has received under the contract, Blue agreed to return the d Series to Red. As there were no terms on returning goods in the VC, the place of performance should be, according to U.6.1.6, Blue's place of business. Hence, Blue had fulfilled its obligation by handing the d Series to Black, a forwarder in Arbitria (¶29).

1.2 Blue fulfilled its obligation under the verbal contract between Red and Blue.

According to U.1.2, "*nothing requires a contract, statement or any other act to be made in or evidenced by a particular form*".

Red may claim that Red and Blue had entered into an oral contract through the conversation between Orange and Eagle on April 30. Eagle said, "*We are happy to pay the cost of shipping for the return, so please arrange the transportation and send them back to us as soon as possible*" and Orange told him in advance, "*We will return the d Series to you*" (¶28). According to U.1.2, this oral agreement states that Blue had an obligation only to arrange the transportation. More importantly, Blue was not liable for the completion of the return or any incident that took place during transportation.

Therefore, under U.1.2, Blue and Red entered into an oral agreement to arrange the transportation and hand it to the carrier. Hence, Blue fulfilled its obligation when it arranged and handed the d Series to Black, a forwarder in Arbitria.

2. Even if Blue had breached its obligation to deliver the d Series to Red, it would be excused under U.7.1.7(1)

U.7.1.7 (1) stipulates that "*[…]non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control[…]*".

The d Series had been destroyed by earthquake during the transportation (¶29), which was beyond the control of Blue and constitutes a force majeure under U.7.1.7 (1). Therefore, even if Blue had breached its obligation to deliver the d Series to Red, its non-performance and the obligation to pay for the damage would be excused.

Moreover, since the contract on the d Series was for consignment sales, ownership of the d Series was remained with Red. Therefore, Red should have insured its own belongings. For the reasons above, Blue is not obliged to pay any damages to Red.

By handing the d Series to Black at its place of business, Blue fulfilled its obligation in returning the goods to Red. Even if Blue owed an obligation to return the goods to Red's place of business, the damage was caused by force majeure. Therefore, Blue is not obliged in any way to pay for the damage.

Robot Case

【Background】

Red had been looking for a solution to the problem of the rising cost of labor. In May 2016, Red reached the conclusion that the high-performance robot developed by Blue would be suitable for using in Red's warehouse. On May 15, 2016 Blue and Red had entered the Equip Lease Agreement, under which Blue agreed to lease 10 robots to Red. On August 1, 2016 after 17 days of trial run, 10 robots went alive and had been performing successfully until September 9. Then Robot "A" had bumped into one of Red's employee. After receiving this news Blue had agreed to fix Robot "A" as it has warranted on the agreement. Unfortunately, another accident occurred on September 12. Robot "B" had collided against a rack and caused a fire. The fire burnt the 10 robots, Red's merchandise worth US$1 million and part of the warehouse.

【Submission】

The Tribunal should find that Blue did not breach its obligation and is not liable for the damages amounting to US$1,000,000. Red's failure to follow the instruction with robots caused damage to Blue's robots. Therefore, Blue is entitled to US$500,000 in damages under the Equipment Lease Agreement.

【Legal basis】

Claim (1): Blue did not breach its obligation in relation to the Equipment Lease Agreement.

1. Blue did fulfill its obligation under ELA (Ex 18).

1.1 Blue's warranty is valid only under certain conditions according to the ELA as interpreted under U4.4.

U.4.4 stipulates that "*[t]erms and expressions shall be interpreted in the light of the whole contract or statement in which they appear*".

ELA 4(1) states that "*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 and flaws and deficiencies which would materially interrupt or disable Red's use of the Equipment.*"

ELA 4(2) further provides: "*In case any errors, flaws and/or deficiencies are found in the Equipment during the period of one year from the delivery of the Equipment, Blue shall cure such errors, flaws and/or deficiencies for free upon Red's request to Blue unless such errors, flaws and/or deficiencies are caused by Red's fault.*"

Under U.4.4, ELA4 should be interpreted in the light of ELA 1(5), which states that "*Red shall follow any and all instructions from Blue...*"

Therefore, in ELA 4(1) Blue warrants that **the robot conforms to the specification as specified and does not and will not contain any significant errors under the condition that Red follows the instruction.**

Furthermore, ELA 4(2) should be construed to mean that **in case of an error, Blue will fix it under the condition that Red has not committed an omission.**

1.2 Blue fulfilled its obligations under ELA 4 (1) and (2) in relation to Robot "A".

On July 17, 2016, Blue delivered 10 fully-functioning robots to Red. From July 15 to July 31, a trial run of

the robots was conducted and no problems were found (¶33). Furthermore, from August 1, 2016, the 10 robots went live and have been functioning properly without any problems ever since. In other words, as indicated in clause 4 (1), Blue supplied Red with robots that did not contain errors and deficiencies including Robot "A".

In addition, on September 9, Robot "A" hit Turkey, but there was no damage to the warehouse or to the robot or Turkey. The accident may have been due to the malfunction of the collision prevention sensor, but it is still not clear. Turkey called to inspect all the robots and check the collision prevention sensors of the other robots. Thus, Blue has agreed to cure Robot A and to visit its warehouse on September 14 (¶35, p18). That means that under ELA 4 (2), Blue did accept Red's request to cure the Robot "A" for free assuming the current error had not been caused by Red.

Hence, as mentioned above Blue fulfilled its obligations under ELA 4 (1) and 4 (2) in relation to Robot "A".

1.3 Blue fulfilled its obligation under ELA 4 (1) in relation to Robot "B".

As mentioned above (claim1, 1.1), at the time Blue delivered the robots to Red, none of the 10 robots contained any errors or deficiencies. Moreover, Robot "B" had been functioning without any error or deficiency since its delivery to Red. However, on September 12, the deep-learning function of Robot "B" was active and it collided head-on with the rack, causing a fire (¶34).

This accident occurred because Red did not follow the instructions. Specifically, Red did not enter accurate information in the management app. Turkey at Red entered the new locations of merchandise and the changes in merchandise on the management app, but forgot to enter the new location of one rack that had been moved 30 centimeters away from its original position (¶34). Secondly, Red did not ensure the inside temperature of the warehouse was as instructed. The incident took place on a day of record heat, and the temperature inside the warehouse may have reached more than 50 degrees Celsius (¶35). In short, if the temperature had been below 45 degrees Celsius, Robot "B"'s collision prevention system could have prevented the collision. Also, if the necessary information relating to the shape of the warehouse had been entered, the Robot "B" could not have collided with the rack.

Hence, Red did not follow the instructions and thus Blue does not warrant that the robots do not contain any errors since, under its interpretation of ELA 4 (1), Blue warrants that the robot does not and will not contain any significant errors only as long as Red follows the instructions.

Under the ELA, Blue warrants the robot's function when Red has followed the instructions. In Robot "B" case, Red failed to follow the instructions by not entering necessary information into the management app and did not check the temperature in the warehouse. Therefore, Blue did not breach its obligation under ELA.

Claim (2): Even if Blue did breach its obligation, the amount to be paid by Blue to Red should be reduced from US$1,100,000.

1. The amount of damages should be reduced according to U.7.4.7

U.7.4.7 stipulates that the amount of the damages should be reduced to the amount that the other party has contributed. In this case, Red did not enter the modification of the rack into the management app (¶34). Even if the collision prevention system was not working, the accident could have been prevented if Red had followed the instructions and entered the required information into the app.

Therefore, even if there was a breach of contract by Blue, the amount of damages should be reduced from US$1,100,000.

Claim (3): Under the terms of the agreement shown in ELA, Red is obliged to pay Blue US$500,000 for the loss of the robots.

1. Under the terms of ELA5 (3), Red is under an obligation to pay Blue US$500,000 for the loss of the robots.

U.7.4.13 stipulates that "*where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non- performance, the aggrieved party is entitled to that sum irrespective of its actual harm.*"

ELA 5(3) provides that upon termination of this agreement, Red shall promptly return any and all portions of the Equipment, pursuant to any and all instructions given by Blue. Where Red is unable to return the Robot in a condition functionally equivalent to when it was delivered to Red, Red shall pay Blue US$50,000 for each such Robot which Red is unable to return to Blue.

In this case, Red cannot return all of the 10 robots because of the accident. Therefore, Blue has the right to receive US$500,000 from Red.

2. According to ELA5 (2) and 5 (2) (iv), ELA is terminated.

ELA5 (2) and 5 (2) states that, the agreement may also be terminated by Blue immediately by sending a written notice to Red, if the robots are damaged to the extent it cannot be restored. In this case the robots are severely damaged to the extent that it cannot be returned. Therefore, this case satisfies the condition of ELA5 (2) and the agreement had been terminated by the e-mail sent by Blue (Ex.21).

Red may claim that Blue's breach of contract had caused the damage of the robots. However, as mentioned in Claim3.1, Red is in breach of ELA 1 (3), 1 (4) and 1 (5). Red did not enter accurate information about the racks using the management app, did not turn the deep-learning mode off, and did not ensure that the temperature of the warehouse remained between the temperatures of -10 degrees and +45 degrees Celsius for which the robots were designed to function properly. As a result, Robot B collided and caused a fire which destroyed all the robots Blue provided to Red.

Consequently, as provided in ELA 5 (2) and 5 (2) (iv), Red is obliged to pay Blue US$500,000 for the loss of the robots.