Abbreviations
U = UNIDROIT, EX. = Exhibit, Art. = Article ¶=Paragraph

THE LUCKY BAG CASE

Background of Case

In January 2008, Red Corporation (**"Red"**), an apparel manufacturer, and Blue Corporation (**"Blue"**), an online apparel business retailer, signed a Vendor Contract (**"VC"**, Ex.4) in which Red would use Blue's online website, Blue Village, to sell its merchandise. In October 2015, Blue approached Red with an interest to sell Red's New Year lucky bags during Blue Village's New Year sale. Red and Blue signed the Lucky Bag Agreement (**"LBA"**, Ex.6) in which Blue would purchase 10,000 lucky bags from Red. Red delivered the lucky bags to Blue on December 15. Blue was highly pleased with the products and proceeded to its release on January 1, 2016. On January 5, Red received a phone call from Blue that it would be refunding its customers for the dragon embroidered T-shirt, as dragons were considered inauspicious. Furthermore, Blue donated the returned T-shirts without consultation with Red in early February, making it impossible for Red to refund Blue for the T-shirts.

CLAIM: Red requests an arbitral award be rendered to dismiss Blue's claim.

Summary of Pleadings

I. When Red and Blue signed the Lucky Bag Agreement, there was no agreement on what "inauspicious items" were, as Blue failed to provide specific details on "inauspicious items" that should be avoided in the lucky bags. Therefore, Red's obligation was to deliver 10,000 lucky bags, which Red has successfully completed. Red has also performed its obligation to give Blue an opportunity to check the sample of the goods and to provide necessary information to Blue. Therefore, Red has no obligation to compensate for Blue's damages.

II. Even if there is non-performance, the amount of compensation, US$420,000, that Blue is seeking does not stand on reasonable ground, and the harm was due in part to omission of Blue. Furthermore, Blue had donated the T-shirts without consultation to Red, breaching its duty to mitigate harm. Therefore, the amount of compensation shall be reduced.

I. Red has successfully performed its obligation under the Lucky Bag Agreement and thus has no obligation to compensate for Blue's damages.

U7.4.1 stipulates, *"Any non-performance gives the aggrieved party a right to damages"*. However, there is no non-performance from Red, and thus Blue cannot exercise this right.

A) The obligation Red bears under the LBA is to simply deliver 10,000 lucky bags to Blue, as there was no obligation nor agreement within the parties to omit certain products or designs.

(1) Red had the obligation to deliver 10,000 sets of Goods under the LBA.

LBA Art.1.1 stipulates, *"The seller shall sell and deliver to the Buyer 10,000sets of Goods."* "Goods" is lucky bags but nothing particular is mentioned about the contents of lucky bags within the LBA

contract, and only agreement on the contents of the lucky bags between the parties is that the lucky bags shall contain "a combination of shirts [...] US$1,000 worth of products"(¶15).

(2) **There was no agreement on what was considered as "inauspicious".**

This contract is a bargain between two different countries with different customs. Since what is considered to be "inauspicious" varies depending on customs, Blue, which is very familiar with Arbitrian custom, should notify Red what is considered to be inauspicious in Arbitria. Although it was mentioned during the negotiation that "lucky bags should not contain inauspicious items", there was no agreement between Red and Blue on what was considered to be "inauspicious" due to Blue's omission. Reasons are as follows.

① **Blue did not mention any "inauspicious item" in the preliminary negotiation.**

In the preliminary negotiation in October 2015, when Red had asked Blue for taboos in Arbitria, Blue did not mention any particular taboos that should excluded from the lucky bags (¶15). Considering that 4,000 out 5,000 purchasers of the lucky bag with dragon embroidered T-shirt has returned them (¶22), it can be said that the dragon being considered as taboo, is a custom widely known in Arbitria enough that Blue could have notified Red on spot, but Blue neglected to do so.

② **Blue did not mention any "inauspicious item" even after the conclusion of contract.**

After the conclusion of LBA, Blue did not notify Red anything concerning Arbitrian taboo.

From ①~②, it is reasonable to conclude that there was no agreement between Red and Blue on what is considered to be "inauspicious".

(3) Since there was no agreement on what is considered to be "inauspicious" and on what should be excluded from the lucky bags between the parties, Red did not bear the obligation to omit certain products such as dragon embroidered T-shirts; therefore, Red only bore the obligation "to deliver 10,000 lucky bags to Blue".

(4) On December 15, 2015, Blue received the 10000 lucky bags that Red had sent (¶19). Therefore, Red has successfully performed its obligation and is not liable for the compensation of damages.

B) Red has performed its obligation to give Blue an opportunity to check the sample of goods

(1) LBA Art.1.2 stipulates, "*The seller shall give the Buyer an opportunity to check the sample of the Goods when the Buyer requests*", which means Red is obligated to give an Blue opportunity to check the sample of lucky bags only when requested by Blue.

(2) On December 1, 2015, Red showed Blue a shirt, sweater, scarf, blouson, and T-shirt as a sample, to which Blue was very satisfied and did not request for further samples (¶17). Since Blue did not request for further samples, Red did not have the obligation to show further samples, Thus, Red has fulfilled its obligation by showing an adequate sample of the lucky bags as requested by Blue.

C) Red has performed its obligation to provide necessary information to Blue.

(1) As stipulated in LBA Art.4.1, Red bears the obligation to *"provide the Buyer with necessary*

information as required in accordance with Vendor Contract", which is an obligation *"to provide true information regarding the Products"* (VC Art.2.2.5).

(2) In the preliminary negotiation in October 2015, Red had explained to Blue what was included in the lucky bags (¶15). On December 1, 2015, Red had shown a sample of lucky bags and gave further explanation about the lucky bags (¶17). In addition, Red had sent Blue a description sheet for the lucky bags, providing Blue with the information needed to sell the products (¶18). On all occasions, Red has fulfilled its obligation by providing information regarding the lucky bags without falsehood to Blue.

II. <u>Even if there is non-performance, the amount of compensation shall be reduced.</u>

A) There is no reasonable ground for the compensation to be US$420,000.

(1) U7.4.2 stipulates,*"The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance"*. The amount Blue is claiming cannot be said to be harm sustained as a result of non-performance.

(2) What Blue should request for the amount of compensation is the amount of refund for the dragon embroidered T-shirts. However, considering that the T-shirt only constitutes 10% (US$100/1,000) of the whole value of the lucky bag, the amount to be refunded should have been around US$30 (US$300×10%) (¶17). Thus, the amount of damage resulting from Red's non-performance is the number of returned T-shirts multiplied by US$30. Even if the emotional distress of the customers is considered, the refund of US$100 per T-shirt is excessive and does not stand on reasonable ground.

(3) Therefore, there is no reasonable ground for the amount of compensation US$420,000 (U7.4.2), and the amount of compensation shall be reduced.

B) The amount shall be reduced for the part due to Blue's omissions.

(1) U7.4.7 stipulates, *"Where the harm is due in part to an act or omission of the aggrieved party or to another event for which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm"*.

(2) The damage was partially due to the following Blue's omission, and thus, the amount of compensation shall be reduced for the part due to Blue's omission.

① As mentioned in claim I (A)(2), Blue failed to notify Red that a dragon is considered as taboo in Arbitria and should be excluded from the lucky bags.

② When Blue checked the sample of lucky bag, on December 1, Blue had only checked one sample, although Blue knew there were few types of animal embroidered T-shirts (¶17). Since Blue had known about dragon being Arbitrian taboo, Blue should have been more cautious by requesting more samples or by asking what animals were going to be used for the embroideries.

③ On December 15, 2015, when 10,000 lucky bags were delivered to Blue, Blue only inspected 5

lucky bags, which is only 0.05% of the whole stock, and found only the lucky bags with bear embroidered T-shirts and rabbit embroidered T-shirts (¶19). The sample size of inspection is unreasonably small, and it can be said that if Blue had inspected few more lucky bags, Blue would have found dragon embroidered T-shirts, since 5,000 out of 10,000 lucky bags had dragon embroidered T-shirts (¶21).

(3) Therefore, as Blue's omission significantly contributed to the damages, and thus the amount of compensation shall be reduced to that extent.

C) The amount shall be reduced to the extent Blue breached its duty to mitigate harm.

(1) U7.4.8 stipulates, *"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"*.

(2) Blue's donation of the returned T-shirts to the Support Program managed by Arbitrian Ministry of Foreign Affair is against its duty to mitigate harm (U7.4.8). Having known that returned T-shirts could be sold in Negoland in relatively good prices, Blue should have consulted with Red for a refund when all the T-shirts were returned. If Blue had given back the returned T-shirts, Red would have been able to pay US$60 per T-shirt (Ex.11). However, Blue donated them in early February without consultation with Red (Ex10), which is an action that widely deviates from that of a reasonable merchant.

(3) Therefore, in accordance to U7.4.8, the amount of compensation shall be reduced to US$180,000 by subtracting US$240,000, which is an amount that Blue could have received from Red by returning the T-shirts(US$60×4,000=US$240,000), from US$420,000.

THE ALPHA CASE

Background of Case

On March 15, 2016, Red gave a memo to Blue (Ex.13, **"Alpha Memo"**), in which Red agreed to give Blue the right to order and purchase the Alpha Series in precedence of other parties during the first one month from its release ("**preferential treatment"**), to Blue. Alpha Series was first released in Negoland on April 1, 10am(Negoland time). 14 hours later, the sale of Alpha Series in Arbitria began at 10am(Arbitria time) at Blue Village. On April 21, Orange tried to order additional 10,000 sets of Alpha Series by telephone; however, Peacock requested Orange to send a written order form as stipulated in the VC, which Orange did. What was written in the Product column of the order form (Ex. 14, **"Order Form"**) was poorly written "α Series" that looked more like "d Series". Peacock, who was confused with an order of "d Series", had tried to reach Orange to check if the order was correct, however Orange was away. Peacock asked Orange's subordinate, Emerald, to tell Orange to callback, but Emerald ultimately failed to tell Orange, and the call was never returned. Peacock,

who waited for a day, decided to send the d Series on April 22, as the order was urgent. On April 30, Orange, who was surprised with the delivery of d Series, called Eagle to replace d Series and order another Alpha Series again; however, Red rejected Blue's order since it was already May 1 in Negoland time. At the same time, Red and Blue made an agreement that Blue will send the d Series back to Red, in which Blue will arrange the shipment of the d Series and Red will pay its shipping fee. However, while transporting, an earthquake hit the truck loaded with the d Series, and as a result all the d Series was lost.

CLAIM1: Red requests an arbitral award be rendered to dismiss Blue's claim.

Summary of Pleadings

I. The obligation of Red that accrued from the Order Form on April 21 was the obligation to deliver 10,000 sets of "d Series". This comes from the fact that the letter written in the Order Form was poorly written and looked more like d than Alpha, and the fact Blue failed to fill in the Contract column.

II. The order on May 1 2016(Negoland time) was not concluded, because the period of preferential treatment that was set by Red ended on April 30, 2016 (Negoland time). In addition, the Vendor Contract requires a firm written purchase order, but Blue only made a phone call, resulting in an unsuccessful order.

III. Even if there is non-performance, the damage incurred to Blue is due in part to omissions of Blue. Therefore, the amount of compensation shall be reduced to that extent.

I. <u>Red has successfully performed its obligation that accrued from the Order Form sent on April 21.</u>

U7.4.1 stipulates, "*Any non-performance gives the aggrieved party a right to damages*". However, there is no non-performance from Red, and thus Blue cannot exercise this right.

A) The obligation that was accrued from the Order Form was an obligation "to deliver d Series".

Blue's order on April 21, 2016, should be interpreted as an order of "d Series", not as an order of "Alpha Series". The reasons are as follows.

(1) The letter written in the Order Form was ambiguous.

Since "α" and "d" are letters that can be very difficult to be distinguished, as a reasonable merchant, Blue should have prepared an order form with clarity. However, the Products column of the Order Form was very poorly written by Blue, which looked more like "d Series" than "α Series". Furthermore, if Blue had wanted to order "Alpha Series", Blue should have used the official notation "Alpha Series", which was stipulated in the Alpha Memo.

(2) The Contract column was left blank.

Blue should have described the relevant contract in the Contract column of the Order Form. In this case, Blue should have described the "Alpha Memo" in the Contract column. However, Blue left it blank, which led Red to perceive the order as an order of products other than the Alpha Series.

B) Red had performed its obligation by the delivery of 10,000 sets of "d Series" on May 1, and thus is

not liable for the compensation of damages..

II. <u>The order on May 1st was not concluded, thus Red does not bear the obligation to deliver the Alpha Series to Blue.</u>

A) The period of Preferential Treatment has expired.

According to U1.12(3), *"the relevant time zone is that of the place of business of the party setting the time"*. Red is the party that gave Blue the privilege and set the limit to it by setting the period of preferential treatment as one month, the time zone should be the time zone where Red's business is taken place, which is Negoland. Thus, the period of preferential treatment that is stipulated in Alpha Memo is one month from the release of the Alpha Series, which means that the period is from April 1 to April 30 in Negoland time.

B) The order should have been a "firm written purchase order"(VC Art.4.1)

At 11am on May 1, 2016 (Negoland time), Blue tried to order the Alpha Series by telephone call (¶ 28). However, this order could not be concluded since Blue had to issue *"a firm written purchase order"* (VC Art.4.1).

C) Therefore, the order made by Blue at 11am on May 1, 2016 (Negoland time) was not concluded, and Red bears no obligation to deliver the Alpha Series to Blue.

III. <u>Even if Red is in a state of non-performance, the amount of the damage shall be reduced to the extent that Blue had contributed to the damage (U7.4.7).</u>

The Damage, caused by Red's non-performance of obligation that accrued from the order on April 21, was partially due to the following Blue's omissions; thus, the amount of the damage should be reduced (U7.4.7).

A) As mentioned above in claim I , Blue should have prepared a clear order form; however, Blue made Red misinterpret the Order Form as an order of d Series by unclear description in the Products column and the blank entry in the Contract column.

B) When Peacock of Red tried to reach Orange of Blue to check whether Blue's order was an order of "d Series", Peacock left a message to Emerald, Orange's subordinate. Although Peacock had waited for the call back from Orange for a day, Emerald had forgotten to give the message to Orange. As a result, Peacock was not able to clarify the order with Orange and was forced to approve the order of "d Series" since the order was signified as an "urgent order"(¶27). As a reasonable merchant, Blue should have called back.

CLAIM2 Blue shall to pay Red US$1,000,000.

Summary of Pleadings

I. After the discussion in May 1, 2016, Blue had the obligation to return 10,000 sets of d Series to Red as soon

as possible. However, Blue failed to do so. From this non-performance, Red suffered the damage of US$1,000,000, an amount which could have been earned by selling the d Series in Negoland.

II. Blue cannot claim force majeure since Blue had acted unreasonably and unfaithfully. Blue took an unreasonable amount of time to ship the goods back to Red after the agreement was made. In addition, Blue was responsible to insure the products, but had failed to do so.

I. Blue is liable for Red's damages caused by Blue's non-performance in returning d series. (U7.4.1)

U7.4.1 stipulates, *"Any non-performance gives the aggrieved party a right to damages"*. Red is entitled to compensation for damages incurred by Blue's non-performance of its obligation to return the d Series.

A) Blue failed to perform its obligation to return the d series to Red.

In the discussion of May 1, 2016 (¶ 28), Eagle asked Bob Orange "Please return d Series to us [...] 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". In response to Red, Blue replied "In any event, we will return the d Series to you." (¶ 28). Between Red and Blue, an agreement, which stipulates "Blue shall deliver 10,000 units of d Series to Red as soon as possible" was concluded. However, due to the earthquake that occurred while transporting from Blue's headquarters to Arbitria Airport, all of the d Series was lost (¶29). As a result, Blue failed to deliver d Series to Red, resulting in a state of non-performance.

B) Blue has liability for damages.

There was no dispute over the fact that Red could have sold all the d Series for US$100 per jacket if Blue had completed the delivery of the d Series to Red (Ex.17). Red could have earned a profit of US $ 1,000,000 undoubtedly, and thus there was certainty of harm in Red's damage (U7.4.3). In addition, it was easily foreseeable for Blue that Red would lose its profits without delivery of the d Series (U7.4.4).

C) Therefore, Blue is liable for the damages of Red's loss profit of US $ 1,000,000.

II. Blue cannot claim exemption from force majeure.

Blue is not allowed to claim force majeure for the loss of d Series caused by the earthquake because it is remarkably unfair that Blue insists on force majeure. Reasons are as follows.

A) Blue took an unreasonable amount of time to deliver the d Series back to Red.

As mentioned above, a contract, which stipulates "Blue shall deliver 10,000 units of d Series to Red as soon as possible", was concluded on April 30, 2016 (¶ 28). However, it is estimated that the d Series were passed to Black a little before May 27, the day of the earthquake (Ex.16). From May 1, the day of the agreement, Blue kept the d Series for nearly a month. If the d Series had promptly returned to Blue, it was highly possible that the truck loaded with the d Series could have avoided the earthquake. In general, the parties should fulfill their obligations sincerely and in a timely manner. In particular, clothes, which can quickly go out of fashion, should have been sent as soon as possible. However, Blue neglected it for

a month. This fact is severely contrary to the act of a reasonable merchant and the principle of good faith and fair dealing (U1.7).

B) Blue failed to provide insurance although it had the duty to do so.

In the agreement, in which Blue had agreed to send back the d Series to Red, Blue was the party to arrange the shipment of the d Series. Since Blue was the only party to know about the information on the shipment, such as what type of shipment will be arranged and what date the shipment will be made, Blue was the only party that was able to put an insurance on the shipment. Red was not able to know about the specific information on shipment, Red was unable to recognize the necessity of the insurance. Nonetheless, in international trade, it is a common practice that goods are insured. In a circumstance like this, in the case Blue entered a contract with Black in which Black would not be liable for damages incurred by earthquake (Ex.16), Blue should have either provided an alternate insurance or informed Red about the necessary information in order to put insurance. However, Blue had neglected to do so; thus, it would be against fair dealing for Blue to claim force majeure and exempt itself from Red's damages.

C) Therefore, Blue cannot claim force majeure for their non-performance.

THE ROBOT CASE

Background of Case

In May 2016, Red and Blue entered an Equipment Lease Agreement (**"ELA"**, Ex.18) in which Blue had agreed to lease 10 robots to Red, which will be used in Red's warehouse. On July 15, the robots were delivered to Red in accordance with ELA. After a half-month trial run, the robots officially went live on August 1. On September 9, Turkey from Red was hit by Robot A while he was inspecting the goods in the warehouse. Concerned if there was malfunction of the collision prevention sensor (**"sensor"**), Turkey asked Sapphire from Blue to inspect all robots; however, instead of immediate inspection, Sapphire had scheduled an inspection on September 14, even though staff from Blue would have been able to visit Red had Sapphire consulted his colleagues. At the same time, Sapphire told Turkey that there is no problem over using the other robots, and also recommended Red to use the deep-learning function. On September 12, Robot B collided against a column of a rack (**"accident"**) due to a sensor malfunction, and it was later revealed that there were frequent deficiencies found in the same type of sensors as used for Robot A and Robot B. As a consequence of the collision, fire broke out, and US$1 million worth of Red's merchandise and all robots that were lent by Blue were burned to ashes, and the warehouse had to be repaired for US$100,000.

CLAIM1: Blue shall pay US$1,100,000 to Red

Summary of Pleadings

I. Blue had the obligation to lend a robot that does not contain any errors, flaws, and deficiencies, which would

interrupt Red's use of robots. However, Blue had lent a robot with a deficiency in a sensor, which led to the accident that resulted in a loss of Red's merchandise and damage to Red's warehouse. Blue also had the obligation to inspect and repair the robot upon Red's request; however, Blue did not perform this obligation in a timely manner. If Blue had performed its obligation, the deficiency of Robot B would have been found before the accident.

II. Blue is liable for Red's damage as a consequence of it's non-performances. The damage to be compensated for is US$1,000,000 for the lost merchandise and US$100,000 for the warehouse repair.

I. Blue has breached the obligations stipulated in the ELA, and thus is liable for Red's damages.

U7.4.1 stipulates, *"Any non-performance gives the aggrieved party a right to damages"*. Red is entitled to compensation for damages incurred by Blue's non-performance of its obligation stipulated in the ELA.

A) Blue is in a state of non-performance by lending a robot that contains any material deficiency.

(1) Blue had the obligation to lend robots that do not contain errors, flaws, and deficiencies.

Under ELA Art.4.1, Blue assures that the robots will not contain any errors, flaws, and deficiencies that are crucial enough to interrupt Red's use of the robots. Thus, "Equipment"(ELA Art.1.1), that should be delivered to Red are robots that satisfy the conditions assured by Blue in ELA Art.4.1; therefore, Blue had the obligation to lend robots that do not contain any material errors, flaws, and deficiencies.

(2) Blue breached ELA Art.4.1 by lending a robot with a sensor deficiency to Red.

Although Blue had the obligation to lend robots that do not contain any material deficiencies, Blue had lent Robot B, which was equipped with a defective sensor that does not function properly. The following facts show that this deficiency was built-in to Robot B when it was handed over to Red.

① On September 12, Robot B collided against a column of a rack. Had the sensor worked properly, satisfying the specs in the instruction manual, this accident would not have happened(¶35⑤).

② On September 9, 3days before the accident, Robot A had collided with Turkey, who was inspecting goods in the warehouse (¶35②). The robots had only been in use for 2months and there was no improper use of the robots by Red (¶35④).

③ It was revealed that the deficiencies, in which the wire within the sensor disconnects after the use of several months, were frequently found in the same type of sensors used for Robot A,B (¶35⑤).

Considering the facts above, it is only natural to conclude that the deficiencies of the sensors were not caused by exhaustions but were possessed by the robots with same type of sensors from the beginning. On a side note, it is irrational to argue that the temperature was the cause of the Robot B's sensor. The thermometer itself was damaged and the record is not reliable. In addition, it is also highly questionable whether Robot B's sensor deficiency would have been caused by temperature, which was only 5℃ above the recommended temperature(¶35⑧).

B) Blue did not perform its obligation to inspect and repair the robots.

(1) Blue had the obligation to inspect and repair the robots.

ELA Art.4.2 stipulates, *"In case any errors, flaws, and/or deficiencies are found in Equipment [...] Blue shall cure such errors, flaws, and/or deficiencies for free upon Red's request to Blue"*. In the case there is doubt of a material deficiency in one robot, there is a high possibility that other robots have the same deficiency, and it would be highly dangerous to leave it. Thus, Blue had the obligation to repair the deficiencies and inspect other robots in a timely manner when requested by Red.

(2) Blue had breached its obligation and neglected its obligation to above obligation.

When Robot A collided with Turkey on September 9, Red requested Blue to inspect all robots as soon as possible. Red's request was a reasonable and should have been performed immediately, because it is easy to speculate that other robot might possess similar deficiencies as Robot A and such deficiencies could lead to a serious accidents. However, Sapphire had neglected Red's request and did not inspect the robots in a timely manner, even though Sapphire was able to ask other staffs to visit Red for an inspection (¶35②). Therefore, Blue is in breach of its obligation.

II. <u>Blue is liable for Red's damage as a consequence of its non-performance.</u>

A) Red's damage incurred as the result of Blue's non-performance.

(1) Red's merchandise and warehouse were damaged as a result of Robot B's collision, which happened because Robot B's sensor had deficiencies and did not function properly (¶34,35⑤). Furthermore, if Blue had inspected the robots in a timely manner, Blue would have found the deficiency of Robot B before the accident. Thus, there is a causal relationship between Blue's non-performances and the damage (U7.4.3). In addition, considering that the warehouse was full of flammable products such as clothing, it was reasonable for Blue to foresee that if a robot possessed material deficiencies and the deficiencies were left unrepaired, a serious accident could occur, such as fire (U7.4.4).

(2) Although Red had forgotten to enter the relocation of rack, which was collided by Robot B, into the robot management app (¶35①), Blue cannot claim Red is liable of the accident just because Red had forgotten to enter the relocation of the rack. In any case, Robot B would not have collided with the rack if the sensor was properly functioning as Blue had assured on ELA Art.4.1.

B) Since Red's damage of US$1,100,000 (merchandise loss: US$1,100,000, cost to repair the warehouse: US$100,000) is due to Blue's breach of ELA Art.4.1, 4.2, Blue shall pay US$1,100,000 to compensate for Red's damage.

CLAIM 2: Red requests an arbitral award be rendered to dismiss Blue's claim

Summary of Pleadings

I. Blue cannot claim for a compensation for the loss of robots against Red because all robots were lost as a

consequence of the accident that was caused Blue's non-performance of its obligation.

II. Even if Red was found liable for the loss of the robots, the amount of the damage shall be reduced to the extent that Blue's faults have contributed to the accident.

I. <u>Blue cannot claim for the compensation of the loss of robots against Red.</u>

U5.3.3(2) stipulates, *"If fulfilment of a condition is brought about by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the fulfilment of the condition"*.

A) ELA Art.5.3 stipulates that Red would bear the obligation to pay US$50,000 per each robot, if the following condition "*Red is not able to return the Robot in condition functionally equivalent to when it was delivered to Red*" is fulfilled. However, if fulfillment of such condition was brought by Blue, contrary to the duty of good faith and fair dealing (U1.7), Blue cannot rely on fulfillment of such condition (U5.3.3(2)) and cannot claim for a compensation for the loss of robots against Red.

B) 10 robots were lost as a result of fire that broke out from Robot B's collision. As mentioned in Claim1, Robot B's collision was caused by Blue's non-performances. Since the fulfillment of the condition of ELA Art.5.3 was brought by Blue's non-performance, which is an abuse of rights by Blue (U1.7), Blue cannot claim for claim for compensation against Red in accordance to ELA Art.5.3.

II. <u>Even if Red was found liable for the loss of the robots, the amount of the damage shall be reduced to the extent that Blue's faults have contributed to the Robot B's accident.</u>

As a reasonable manufacturer and expert of the robot, Blue should have given appropriate instructions and advices to Red. However, since Blue had given Red following inappropriate advices and contributed to Robot B's accident, the amount of damage shall be reduced (U7.4.7).

A) On September 9, when Turkey requested for inspection of all robots, Sapphire replied, "you may use the other robots for the next 5 days until we visit your warehouse"(¶35②). Considering that Sapphire was not truly aware of the cause of Robot A's collision, it was inappropriate for Blue to instruct Red, who was unfamiliar with the robots, to use the other robots, because this instruction could lead to an usage of other robots with a possible malfunction.

B) On the same occasion as (A), Blue had advised Red to use deep-learning function, which would allow the robots to choose routes different from those originally set in a high possibility (¶35③). In a circumstance where Blue is not aware of the cause of Robot B's collision, advising Red to use such function is an inappropriate advise that could heighten the risk of an accident. In fact, Robot B would not have collided with the rack if the deep-learning function were not in use (¶35⑦).