Blue One Case

Issue 1

Did Blue Inc. have the legal obligation to deliver 200 cases of "Blue One" to Red Corp.?

Blue Inc. had the legal obligation to deliver 200 cases of "Blue One" to Red Corp.

I. In October 2010, a meeting was held between the president of Red Corp, Hiromi Red, and the president of Blue Inc, Taro Blue, and the Basic Contract was concluded for the sale of 200 cases of "Blue One" at 100 USD per bottle annually.

II. The following facts evidence that the Basic Contract was concluded in the meeting in October 2010.
   A. Taro Blue handed a memo to Hiromi Red regarding the content of the agreement.
   B. In fact, for nine years from 2011 to 2019, "Blue One" was continuously supplied by Blue Inc. to Red Corp. under the Basic Contract.
   C. Taro Blue made a statement in 2013 acknowledging the existence of the Basic Contract.

I. In the meeting in October 2010, the Basic Contract for the sale of "Blue One" was concluded.

1 When Hiromi Red was looking for a wine that would be most suited for Red Corp's restaurants, Hiromi Red realized the potential of "Blue One". In order to serve "Blue One" at the restaurants, hotels, and shops operated by Red Corp, Hiromi Red planned to offer Blue Inc. to purchase 200 cases of "Blue One" per a year on a continuous basis.

2 At the same time, Blue Inc. was looking for a customer who would purchase 200 cases of "Blue One" every year in the longer term. In the Written Statement of Taro Blue (Exhibit 3-2), Taro Blue stated "If we knew that there would be a company that would surely purchase 200 cases every year, then we could make a new investment at ease." In addition, since Red Corp. was the company run by Hiromi Red who had the status as the biggest influencer in the culinary world in Negoland, Taro Blue stated, "if Hiromi Red recognized our wine, there would be no doubt that our wine would be recognized in Negoland." Moreover, Blue Inc. was also hoping to start a business transaction on a continuous basis with Red Corp. (the Written Statement of Taro Blue [Exhibit 3-2]).

3 In October 2010, the meeting was held between Hiromi Red and Taro Blue, and both parties agreed to transact "Blue One" on a continuous basis. In the meeting in October 2010, Red Corp. offered to purchase 200 cases of "Blue One" annually from Blue Inc, and Blue Inc. "agreed to sell 200 cases for 100 USD per bottle" (¶15, the Written Statement of Taro Blue [Exhibit 3-2]). As a result, the Basic Contract for the sale of "Blue One" was concluded.

II. The following facts evidence that the Basic Contract was concluded in the meeting in October 2010.

4 The following three facts evidence the existence of the Basic Contract between Red Corp. and Blue Inc.

A. The memo that Taro Blue handed over as the record of the meeting included the words "**Continuous** Trading" and "200 cases **every year**" (the Written Statement of Hiromi Red [Exhibit 3-1]).

The fact that Taro Blue intentionally used the words "**Continuous**" and "**every year**" in the memo evidences that Blue Inc. also considered that transacting on a continuous basis was important.

B. In fact, for nine years from 2011 to 2019, "Blue One" was continuously supplied by Blue Inc. to Red Corp. under the Basic Contract.

The number of cases and prices were changed depending on the year when an additional agreement was reached between both parties (Exhibit 4).

C. In 2013, when Red Corp. told Blue Inc. to change the number of cases in 2013, Blue Inc. refused this proposal on the ground of the existence of the Basic Contract.

In 2013, due to financial difficulties on Red Corp's side, Red Corp. told Blue Inc. to change the number of cases in the Basic Contract to 100 cases only in 2013. However, Taro Blue told Red Corp, "**Please keep the agreement between us.** We have been making plans based on the premise that we will provide 200 cases to your company every year, and we don't want you to suddenly say something like that" and refused Red Corp's proposal (the Written Statement of Taro Blue [Exhibit 3-2]). The statement by Taro Blue, **"Please keep the agreement between us",** is the evidence that Taro Blue himself acknowledged the existence of the Basic Contract.

5 The fact that the additional sales agreement for "Blue One" was exchanged between Red Corp. and Blue Inc. every year (¶17) does not affect the existence of the Basic Contract that was concluded in the meeting in October 2010. This is because the additional sales agreement concluded every year was made to confirm the contents of the Basic Contract, and the contents were the same every year, except for minor changes in price and the number of cases (¶20).

Therefore, Blue Inc. had the legal obligation to deliver 200 cases of "Blue One" to Red Corp.

Issue 2

Is Blue Inc. liable for performance of obligation concerning 100 cases of "Blue One" in relation to the sales agreement dated September 26, 2020?

Blue Inc. is liable for nonperformance of obligation concerning 100 cases of "Blue One" in relation to the sales agreement dated September 26, 2020.

I. According to the Sales Contract which was concluded between Red Corp. and Blue Inc. on September 26, 2020 (Exhibit 6), Blue Inc. had an obligation to deliver 100 cases of "Blue One" to Red Corp. by delivering the goods onboard the airplane.
II. Blue Inc. did not perform its obligation regarding 100 cases of "Blue One".
III. Blue Inc. is not exempted from its liability in accordance with Art. 10 of the Sales Contract (Exhibit 6).

I. According to the Sales Contract (Exhibit 6), Blue Inc. had an obligation to deliver 100 cases of "Blue One" to Red Corp. by delivering the goods onboard the airplane.

6 According to Arts.1 and 2 of the Sales Contract (Exhibit 6), Blue Inc. was obligated to deliver 100 cases of "Blue One" to Red Corp. in terms of FOB (INCOTERMS®2020).

7 After the conclusion of the Sales Contract (Exhibit 6), both parties agreed to change the means of transport from ship to air (Exhibit 7).

7.1 Both parties agreed on only three points when changing the means of transport from ship to air:
(i) The means of transport would be changed from ship to air,
(ii) Red Corp. would bear all costs and risks related to the arrangement of the airplane,
(iii) Blue Inc. would arrange the airplane.

In the email messages between Red Corp. and Blue Inc. (Exhibit 7), both parties did not mention where the delivery of the goods nor when the transfer of risks occurs. Therefore, trade terms did not change from FOB (INCOTERMS®2020).

7.2 Red Corp's statement that "We will bear all costs and risks, but would you arrange the airplane?" refers to the costs and risks related to the arrangement of the airplane, such as the cost for air transportation and the risk of not being able to find the airplane. Therefore, the statement was not an agreement to change the transfer of risks.

8 According to FOB (INCOTERMS®2020), the seller must deliver the goods onboard the vessel (A2). In this case, since there was no agreement between both parties about the change of trade terms, the delivery completes when Blue Inc. delivers 100 cases of "Blue One" onboard the airplane.

9 Therefore, according to the Sales Contract (Exhibit 6), Blue Inc. had an obligation to deliver 100 cases of "Blue One" to Red Corp. by delivering the goods onboard the airplane.

II. Blue Inc. did not perform its obligation regarding 100 cases of "Blue One".

10 On October 7, 2020, after the air carrier received the container containing 100 cases of "Blue One" but before it was to be loaded onto the airplane, lightning caused a fire which completely burned the container (¶23). Therefore, Blue Inc. did not perform its obligation to deliver 100 cases of "Blue One" by delivering the goods onboard the airplane.

11 According to FOB (INCOTERMS®2020), the seller must bear all risks of damage to the goods until they are delivered onboard the vessel (A3). In this case, Blue Inc. bore the risk until the goods were delivered onboard the airplane. Since the goods were not delivered onboard the airplane, Blue Inc. still bore the risk of damages to 100 cases of "Blue One". Therefore, Blue Inc. did not perform its obligation and is liable for nonperformance of obligation concerning 100 cases of "Blue One".

III. Blue Inc. is not exempted from its liability in accordance with Art. 10 of the Sales Contract (Exhibit 6).

12 Art.10 of the Sales Contract (Exhibit 6) stipulates that "Neither party shall be responsible for any failure to fulfill its obligation hereunder due to causes beyond its reasonable control."

13 In this case, since there were 200 cases of "Blue One" remaining in the warehouse of Blue Inc. and since Blue Inc. was able to deliver them to Red Corp, a fire caused by lightning was not a cause beyond Blue Inc's control to prevent Blue Inc. from performing its obligation.

13.1 On October 9, after 100 cases of "Blue One" had been burned, there were still 200 cases of "Blue One" remaining in the warehouse of Blue Inc. (¶24). Thus, Red Corp. requested Blue Inc. to promptly deliver the remaining 200 cases in its warehouse. However, Blue Inc. refused this request insisting that the remaining cases of "Blue One" were supposed to be sold to another buyer (¶24, Exhibit 8). Therefore, the fire caused by lightning did not prevent Blue Inc. from performing its obligation: Blue Inc. elected not to deliver 200 cases of "Blue One" despite remaining able to do so.

13.2 The fact that a purchase agreement for 200 cases of "Blue One" remaining in the warehouse of Blue Inc. had been signed with another buyer did not prevent Blue Inc. from performing its obligation to Red Corp. This is because, when Blue Inc. refused to deliver "Blue One", there were still 200 cases of "Blue One" in the warehouse of Blue Inc, and Blue Inc. was able to deliver them to Red Corp. by taking some steps, such as compensating the other buyer for its damage.

Moreover, in this case, Blue Inc. was obligated to deliver a total of 300 cases of "Blue One", 100 cases to Red Corp, and 200 cases to the other buyer. Hence, even if Blue Inc. was partly exempted from its liability due to force majeure, Blue Inc. should have at least delivered to Red Corp. one-third of 200 cases of "Blue One" remaining in the warehouse of Blue Inc, distributing them with Red Corp. and the other buyer. However, Blue Inc. did not take such a step.

14 Thus, Blue Inc. is not exempted from its liability according to Art. 10 of the Sales Contract (Exhibit 6).

Therefore, Blue Inc. is liable for nonperformance of obligation concerning 100 cases of "Blue One" in relation to the Sales Contract (Exhibit 6).

Issue 3

If the liability of Blue Inc. for nonperformance of obligation is recognized for 200 cases or 100 cases of "Blue One", what should be the amount to be paid to Red Corp. in each respective case?

I. If the liability of Blue Inc. for nonperformance of obligation is recognized for 200 cases of "Blue One", the amount to be paid to Red Corp. should be 2,016,000 USD.
II. If the liability of Blue Inc. for nonperformance of obligation is recognized for 100 cases of "Blue One" (the Sales Contract [Exhibit 6]), the amount to be paid to Red Corp. should be 1,320,000 USD.
III. The fact that Red Corp. did not accept Blue Inc's offer to deliver wines of five famous châteaux instead of "Blue One" does not affect the amount to be paid to Red Corp.

I. If the liability of Blue Inc. for nonperformance of obligation is recognized for 200 cases of "Blue One", the amount to be paid to Red Corp. should be 2,016,000 USD.

15 The damage of 2,016,000 USD that Red Corp. suffered from Blue Inc's nonperformance meets the requirements of compensation stipulated in Arts. 7.4.2~7.4.4 of UNIDROIT Principles of International Commercial Contract 2016 ('UPICC').

Causal Relationship

There is a causal relationship between the nonperformance of Blue Inc's obligation to deliver 200 cases of "Blue One" and the damage of 2,016,000 USD suffered by Red Corp. This is because as a result of Blue Inc's default to deliver 200 cases of "Blue One" to Red Corp, Red Corp. suffered the damage of 120,000 USD which Red Corp. had already paid for 100 cases of "Blue One" under the Sales Contract (Exhibit 6). In addition, Red Corp. lost the opportunity to sell 200 cases of "Blue One", resulting in lost profits of 1,896,000 USD.

Certainty of harm

There is no dispute that if Blue Inc. did not deliver 200 cases of "Blue One", the amount of harm suffered by Red Corp. would be 2,016,000 USD (120,000 USD as the purchase price for 100 cases of "Blue One" under the Sales Contract (Exhibit 6) ＋1,896,000 USD as lost profits for 200 cases of "Blue One") (Exhibit 16 Note (a) and (b)).

Foreseeability of harm

At the time of the conclusion of the Basic Contract in October 2010, Blue Inc. could foresee that if Blue Inc. did not deliver 200 cases of "Blue One", Red Corp. would suffer a loss of the purchase price and lost profits for 200 cases of "Blue One".

16 Therefore, the amount to be paid to Red Corp. from Blue Inc. should be 2,016,000 USD.

II. If the liability of Blue Inc. for nonperformance of obligation is recognized for 100 cases of "Blue One" (the Sales Contract [Exhibit 6]), the amount to be paid to Red Corp. should be 1,320,000 USD.

17 The damage of 1,320,000 USD that Red Corp. suffered from Blue Inc's nonperformance meets the requirements of compensation stipulated in Arts. 7.4.2~7.4.4 of UPICC.

Causal Relationship

There is a causal relationship between the nonperformance of Blue Inc's obligation to deliver 100 cases of "Blue One" and the damage of 1,320,000 USD suffered by Red Corp. This is because as a result of Blue Inc's default to deliver 200 cases of "Blue One" to Red Corp, Red Corp. suffered the damage of 120,000 USD which Red Corp. had already paid for 100 cases of

"Blue One" under the Sales Contract (Exhibit 6). In addition, Red Corp. lost the opportunity to sell 100 cases of "Blue One" at its restaurants and hotels, resulting in lost profits of 1,200,000 USD.

Certainty of harm

There is no dispute that if Blue Inc. did not deliver 100 cases of "Blue One", the amount of harm suffered by Red Corp. would be 1,320,000 USD. This is because the purchase price for 100 cases of "Blue One" under the Sales Contract was 120,000 USD. In addition, there is no dispute that if Red Corp. sold 100 cases of "Blue One" at its restaurants and hotels, Red Corp. would have earned 1,200,000 USD (1,000 USD x 100 cases x 12 bottles) (referring to Exhibit 16 Note (a) and (b)①)

Foreseeability of harm

At the time of the conclusion of the Basic Contract in October 2010, Blue Inc. could foresee that if Blue Inc. did not deliver 100 cases of "Blue One", Red Corp. would suffer a loss of the purchase price and lost profits for 100 cases of "Blue One".

18 In this case, Blue Inc. was obligated to deliver 200 cases of "Blue One" to Red Corp. Red Corp. was planning to sell 140 cases of the total 200 cases at its restaurants and hotels. Thus, if 100 cases of "Blue One" were delivered to Red Corp, Red Corp. would have sold 100 cases at restaurants and hotels. Therefore, lost profits suffered by Red Corp. would be 1,200,000 USD (1,000 USD x 100 cases x 12 bottles).

19 Therefore, the amount to be paid to Red Corp. from Blue Inc. should be 1,320,000 USD.

III. The fact that Red Corp. did not accept Blue Inc's offer to deliver wines of five famous châteaux instead of "Blue One" does not affect the amount to be paid to Red Corp.

20 On October 9, 2020, Blue Inc. offered Red Corp. to deliver 100 cases of second label of five famous châteaux instead of 100 cases of "Blue One" that were burned. However, Red Corp. did not accept this offer because "Blue One and five famous châteaux are different" (Exhibit 8).

21 The fact that Red Corp. did not accept Blue Inc's offer to deliver wines of five famous châteaux instead does not violate the duty of mitigation of harm stipulated in Art. 7.4.8 of UPICC. This is because it was not a "reasonable step" for Red Corp. to accept Blue Inc's offer to deliver wines of five famous châteaux as stipulated in Art. 7.4.8 of UPICC.

21.1 Art. 7.4.8 (1) of UPICC stipulates that "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."

22 In this case, accepting Blue Inc's offer to deliver wines of five famous châteaux instead of "Blue One" was not a reasonable step (the email message from Blue Inc. [Exhibit 8]).

22.1 Wines are chosen based on their mariage with cuisine and the company's business strategy. Thus, "Blue One" are not substitutable even if the prices and ranking are the same. Moreover, "reasonable steps" do not force the company to change its policy or strategy by accepting substitutes. Therefore, accepting Blue Inc's offer to deliver wines of five famous châteaux was not a reasonable step that Red Corp. could have taken.

23 Therefore, the fact that Red Corp. did not accept Blue Inc's offer to deliver wines of five famous châteaux does not affect the amount to be paid to Red Corp.

Kanpai Case

Issue 1

Is Red Corp. entitled to terminate the Exclusive Distributorship Agreements for "Kurenai" and "Kanpai" entered into with Blue Inc.?

【Regarding the Exclusive Distributorship Agreement for Kurenai】

Red Corp. can validly terminate the Exclusive Distributorship Agreement for "Kurenai"

I. Red Corp. has validly terminated the Exclusive Distributorship Agreement with Blue Inc. regarding "Kurenai" under Art.16 (4) ('Kanpai Agreement' [Exhibit 9]).
II. Red Corp's request to Blue Inc. to focus on the sale of "Kanpai" does not affect the obligation of Blue Inc. to fulfill the minimum sales requirement under Art. 9 of the Kurenai Agreement.
III. Red Corp's refusal to change its sales policy for "Kurenai" and to permit the sale of "Kurenai" to individuals (Exhibit 14) does not constitute a breach of Red Corp's duty to cooperate and therefore does not affect the validity of the termination by Red Corp.
IV. Art. 18 of the Kurenai Agreement does not affect Red Corp's right to terminate in accordance with Art. 16.

I. Red Corp. has validly terminated the Kurenai Agreement under Art. 16 (4).

1 Art. 9 of the Kurenai Agreement stipulates the obligation of Blue Inc, as the exclusive distributor, to sell a minimum of 10,000 cases to its customers each calendar year.

2 In addition, Art. 16 (4) of the Kurenai Agreement provides that if Blue Inc. does not meet the minimum sales requirement under Art. 9 for two consecutive years, Red Corp. may terminate the contract.

3 In this case, Blue Inc's sales volume of "Kurenai" was 9,000 cases in 2019 and 7,000 cases in 2020. Thus, Blue Inc. did not meet the minimum sales requirement of 10,000 cases for two consecutive years in 2019 and 2020 (Exhibit 10). Therefore, under Art. 16 (4) of the Kurenai Agreement, Red Corp. can validly terminate the Kurenai Agreement.

4 The Kurenai Agreement was effectively terminated on March 31, 2021, by email messages sent from Red Corp. to Blue Inc. on January 10 and 18, 2021 (Exhibit 15).

II. Red Corp's request to Blue Inc. to focus on the sale of "Kanpai" does not affect the obligation of Blue Inc. to fulfill the minimum sales requirement under Art. 9 of the Kurenai Agreement.

5 On July 24, 2018, Red Corp. told Blue Inc. that "We would like you to put your energy into Kanpai rather than Kurenai at least until 2019." (Exhibit 13). However, this was merely a request for Blue Inc. to increase the sales volume of "Kanpai" on the premise that Blue Inc. does not fall below the minimum sales volume of "Kurenai". Therefore, Red Corp. telling Blue Inc. to focus on "Kanpai" rather than "Kurenai" did not change or exempt the obligation of Blue Inc. to achieve the minimum sales requirement under Art. 9 of the Kurenai Agreement.

III. Red Corp's refusal to change its sales policy for "Kurenai" and to permit the sale of "Kurenai" to individuals (Exhibit 14) does not constitute a breach of Red Corp's duty to cooperate, and therefore does not affect the validity of the termination by Red Corp.

6 Art. 5.1.3 of UPICC stipulates that "Each Party shall cooperate with the other Party when such co-operation may reasonably be expected for the performance of that party's obligations."

7 On June 1, 2020, Blue proposed to Red to sell "Kurenai" to individuals, but Red declined this proposal (Exhibit 14). In this case, Red Corp's decision to change its sales policy and allow the sale of "Kurenai" to individuals is beyond the scope of a reasonably expected co-

operation. This is because the policy of not selling "Kurenai" to individuals in Arbitria is the core of the marketing and branding strategy of "Kurenai", and this was agreed upon by both Red Corp. and Blue Inc. in the conversation when the Kurenai Agreement was signed (¶28). In fact, Art. 8 of the Kurenai Agreement expressly stipulates that "Kurenai" would not be sold to individuals.

8 Therefore, changing Red Corp's sales policy by permitting Blue Inc. to sell "Kurenai" to individuals does not constitute a breach of Red Corp's duty to cooperate and therefore does not affect the validity of the termination by Red Corp.

IV. Art. 18 of the Kurenai Agreement does not affect Red Corp's right to terminate in accordance with Art. 16.

9 Art. 18 of the Kurenai Agreement stipulates that "The parties agree that the other party shall not be liable for any losses, damages, including consequential damages, delays or failures to perform in whole or in part resulting from causes beyond the control of either party including but not limited to...requirements or regulations of any government..."

10 In this case, the request by the Arbitrian government to refrain from serving alcohol from January to March, June to September, and November to December in 2020 (the 'Request') was not a cause beyond the control of Blue Inc. The reasons are as follows.

10.1 Art. 18 of the Kurenai Agreement establishes "requirements or regulations of any government" as a cause "beyond the control of either party". Since it is clear that the Request does not constitute "regulations of any government", the question is whether the Request constitutes a "requirement of any government".

10.2 Considering that Art. 18 of the Kurenai Agreement lists "requirements" as a cause "beyond the control of either party" in connection with "regulations", "requirements" should be interpreted as referring similarly to formal laws and regulations. It should not be taken to include measures with which the parties have no legal duty to comply. Therefore, the Request does not constitute a cause beyond Blue Inc's control because it does not impose any legal obligation. Indeed, 10% of the restaurants in Arbitria to which the Request applied remained open and continued to operate.

10.3 Moreover, as a beverage producer, Blue Inc. was beyond the scope of the Request, which related to restaurants. There were also significant periods during which the Request was not issued. In fact, Blue Inc. managed to sell 7,000 cases (Exhibit 10). Considering these facts, it was possible for Blue Inc. to meet the minimum sales requirement of 10,000 cases in 2020, and the Request does not constitute a cause beyond Blue Inc's control.

11 Therefore, the Request does not constitute a cause beyond Blue Inc's control, and Art.18 of the Kurenai Agreement does not apply.

Therefore, Red Corp. can validly terminate the Kurenai Agreement.

[Regarding the exclusive distributorship agreement for "Kanpai"]

Red Corp. can validly terminate the Exclusive Distribution Agreement for "Kanpai".

I. Red Corp. validly terminated the Exclusive Distribution Agreement between Blue Inc. regarding "Kanpai" under Art. 10 (b) (the 'Kanpai Agreement' [Exhibit 11]).
II. Red Corp's refusal of contributing commercial advertising expenses does not constitute an interference by Red Corp. and therefore does not affect the validity of the termination by Red Corp.

III. Art. 17 of the Kanpai Agreement does not affect Red Corp's right to terminate in accordance with Art.10 (b).

I. Red Corp. validly terminated the Kanpai Agreement under Art. 10 (b).

12 Art. 10 (b) of the Kanpai Agreement stipulates that "...this Agreement may be terminated by either Party by giving ten (10) calendar days written notice of such termination to the other Party in the event of the Material Breach by the other Party. "Material breach" shall include: ...(iii) Distributor's failure to meet the minimum annual purchase quantities agreed for two (2) consecutive years…"

13 Blue Inc. was obligated to purchase the stipulated amount every year under Art. 9 (a) of the Kanpai Agreement. However, as shown in Figure 1, Blue Inc. did not meet the minimum purchase requirement for "Kanpai" for two consecutive years, in 2019 and 2020.

【Figure 1】

Year	①Minimum Purchase Requirement (Art. 9(a) [Exhibit 11])	②Purchase Volume (Exhibit 10)	Quantities Possessed 【Carry over】 〈②−①〉
2017	5,000	8,000	8,000【3,000 cases】
2018	12,000	10,000	13,000【No cases】
2019	**15,000**	**14,000**	**14,000〈-1,000〉**
2020	**16,000**	**11,000**	**11,000〈-5,000〉**

14 Art. 9 (a) of the Kanpai Agreement stipulates "... purchases of Products in excess of the minimum purchase requirement set forth below for any period shall be credited towards the minimum purchase requirement set forth below for the subsequent period."

15 Art. 9 (a) of the Kanpai Agreement should be interpreted to mean that the purchase of "Kanpai" in excess of the minimum purchase requirement is credited only to the following year. This is because the word "period" (referring to "the subsequent period") appears in the singular form. Therefore, Blue Inc. failed to meet the minimum purchase requirement for two consecutive years, in 2019 and 2020.

15.1 In 2019, the minimum purchase requirement for "Kanpai" was 15,000 cases, but Blue Inc. only purchased 14,000 cases, falling short of the minimum purchase requirement by 1,000 cases. There was nothing to be carried over to 2019 because, in 2018, Blue Inc. only purchased 10,000 cases, less than the minimum purchase requirement of 12,000 cases.

15.2 In 2020, the minimum purchase requirement for "Kanpai" was 16,000 cases, but Blue Inc. only purchased 11,000 cases, falling short of the minimum purchase requirement by 5,000 cases. There was nothing to be carried over to 2020 because, in 2019, Blue Inc. only purchased 14,000 cases, less than the minimum purchase requirement of 15,000 cases.

16 Alternatively, Blue Inc. could not carry over the "Kanpai" purchased in excess of the minimum purchase requirement from 2017 to 2019 or 2020. Blue Inc. purchased 8,000 cases

in 2017 (an excess of 3,000 over the minimum purchase quantity of 5,000 cases), but this excess would carry over only to the following year (2018), not to 2019 or 2020.

17 Therefore, since Blue Inc. did not meet the minimum purchase requirement of "Kanpai" for two consecutive years, Red Corp. can validly terminate the Kanpai Agreement under Art. 10 (b).

18 The Kanpai Agreement was effectively terminated on March 31, 2021, by email messages sent from Red Corp. to Blue Inc. on January 10 and 18, 2021 (Exhibit 15).

II. Red Corp's refusal of contributing commercial advertising expenses does not constitute an interference by Red Corp. and therefore does not affect the validity of the termination by Red Corp.

19 Art. 7.1.2 of UPICC stipulates that "A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event for which the first party bears the risk."

20 By email message on July 24, 2018, when Blue Inc. asked Red Corp. about the commercial advertising of "Kanpai", Red Corp. stated, "As for advertising, if your company does it at your own expense, then we would definitely wish your company to do that." (Exhibit 13). Although Red Corp. did not contribute to the advertising expenses, Red Corp. did not prohibit Blue Inc. from running the commercial advertising.

21 Red Corp's refusal of contributing commercial advertising expenses does not constitute an interference by Red Corp. and therefore does not affect the validity of the termination by Red Corp.

III. Art. 17 of the Kanpai Agreement does not affect Red Corp's right to terminate in accordance with Art.10 (b).

22 Art. 17 of the Kanpai Agreement stipulates "No party will be held responsible to the other party nor be deemed to be in default under, or in breach of any provision of, this Agreement for failure or delay in performing any obligation of this Agreement when such failure or delay is due to force majeure... For purposes of this Agreement, force majeure means a cause beyond the reasonable control of a party, which may include acts of God; acts, regulations, or laws of any government…"

23 In this case, the request by the Arbitrian government to refrain from serving alcohol from January to March, June to September, and November to December in 2020 (the 'Request') was not a cause beyond the control of Blue Inc. The reasons are as follows.

23.1 Art. 17 of the Kanpai Agreement establishes "acts, regulations, or laws of any government" as a cause "beyond the reasonable control of a party". Since it is clear that the Request does not constitute "regulations, or laws", the question is whether the Request constitutes "acts of any government".

23.2 Considering that Art. 17 of the Kanpai Agreement lists "acts of any government" as a cause "beyond the reasonable control of a party" in connection with "regulations, or laws", "acts of government" should be interpreted as referring similarly to formal laws and regulations. It should not be taken to include measures with which the parties have no legal duty to comply. Therefore, the Request does not constitute a cause beyond Blue Inc's control because it does not impose any legal obligation. Indeed, 10% of the restaurants in Arbitria to which the Request applied remained open and continued to operate.

23.3 Moreover, as a beverage producer, Blue Inc. was beyond the scope of the Request, which related to restaurants. There were also significant periods during which the

Request was not issued. In addition, "Kanpai" was sold to individuals, and the percentage of sales to individuals was raised from 50% to 80% (Exhibit 14). Regarding these facts, Blue Inc. was able to meet the minimum purchase requirement for 2020, and the Request is not an event beyond Blue Inc's reasonable control.

23.4 Since the termination requirement set forth in Art. 10 (b) of the Kanpai Agreement is the minimum **purchase** requirement and not the minimum **sales** requirement, Blue Inc. was able to purchase "Kanpai" even if it was difficult to sell "Kanpai" under the Request. Hence, the Request is not an event beyond Blue Inc's reasonable control.

24 Thus, Art. 17 of the Kanpai Agreement does not affect Red Corp's right to terminate.

Therefore, Red Corp. can validly terminate the Kanpai Agreement.

Issue 2

Should the interim measures sought by Blue Inc be accepted?

** Petition by Blue Inc. to seek interim measures: Blue Inc. demands that Red Corp. stop selling Kurenai and Kanpai to Green Corp. and that it continue selling Kurenai and Kanpai to Blue according to the exclusive distributorship agreement.*

The tribunal should not grant interim measures to order Red Corp. to stop the sales of "Kurenai" and "Kanpai" to Green Corp. and to continue selling "Kurenai" and "Kanpai" to Blue Inc. according to the exclusive distributorship agreement.

I. To grant the interim measures, Blue Inc's petition must fulfill the requirements stipulated in Art. 26 (3) of the UNCITRAL Arbitration Rules ('UNCITRAL Rules').
II. Blue Inc's petition does not fulfill the requirements stipulated in Art. 26 (3) (a) and (b).

I. To grant the interim measures, Blue Inc's petition must satisfy the requirements stipulated in Art. 26 (3) of the UNCITRAL Rules.

25 Art. 26 (1) of the UNCITRAL Rules, the procedural rules for this arbitration, stipulates "The arbitral tribunal may, at the request of a party, grant interim measures."

26 To grant the interim measures, Blue Inc's petition must satisfy the three following requirements stipulated in Art. 26 (3) of the UNCITRAL Rules.

(i) Harm not adequately repairable by an award of damages is likely to result if the measure is not ordered (Art. 26 (3) (a) the first sentence of the UNCITRAL Rules).

(ii) Such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted (Art. 26 (3) (a) the last sentence of the UNCITRAL Rules).

(iii) A reasonable possibility that the requesting party will succeed on the merits of the claim (Art. 26 (3) (b) of the UNCITRAL Rules).

II. Blue Inc's petition does not fulfill the requirements stipulated in Art. 26 (3) (a) and (b).

27 In this case, Blue Inc's petition does not meet the requirement stipulated in Art. 26 (3) (a) the first sentence of the UNCITRAL Rules namely that "(i) Harm not adequately repairable by an award of damages is likely to result if the measure is not ordered."

27.1 The harms to Blue Inc. if the interim measures are not granted are (A) lost profits due to the inability to sell "Kurenai" and "Kanpai" until the arbitration award is rendered, and (B) damage to its reputation among customers. These are quantifiable as financial losses, and hence these harms are indeed repairable by an award of damages.

27.2 Therefore, even if the interim measures are not granted, Blue Inc. will not suffer from any harm which cannot be adequately repaired by an award of damages.

28 Alternatively, even if Blue Inc's petition fulfills the requirement of (i), Blue Inc. fails to meet the requirement stipulated in the subsequent limb of Art. 26 (3) (a): "(ii) Such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted."

28.1 The potential harms caused to Blue Inc. if the measures are not granted are, as described above, (A) lost profits and (B) damage to reputation among customers. However, it has already been seven months since Blue Inc. stopped placing new orders for "Kurenai" and "Kanpai", and no losses that might jeopardize Blue Inc's business have manifested. Nor is there evidence that Blue Inc's reputation among its customers has actually suffered.

28.2 Furthermore, the Kurenai Agreement expires at the end of December 2022, and the Kanpai Agreement expires at the end of December 2021. As Red Corp. intends to terminate both agreements when they expire, the remaining contractual period is short. For this reason, any harm to Blue Inc. would be small even if the interim measures were not granted.

28.3 In contrast, the harm that Red Corp. will suffer if the interim measures are granted is significant. Its relationship with Green Corp. will deteriorate if the business is suspended, forcing Red Corp. to expend large amounts of time and effort to repair the relationship, in addition to efforts to date. Since the scale of Red Corp's. enterprise is smaller than that of Blue Inc. (Exhibit 1 and 2), Red Corp. will suffer disproportionately from the loss of its business partner.

28.4 Therefore, if the interim measures are granted, the harm suffered by Blue Inc. will not exceed the harm suffered by Red Corp.

29 Alternatively, even if Blue Inc's petition fulfills the requirements of (i) and (ii), Blue Inc. fails to meet the requirement stipulated in Art. 26 (3) (b) of the UNCITRAL Rules: "a reasonable possibility that the requesting party will succeed on the merits of the claim." The reasons for this are set forth in Red's PRELIMINARY MEMORANDUM, Issue 1 of the Kanpai Case.

Therefore, the interim measures should not be granted in this case because the requirements stipulated in Art. 26 (3) (a) and (b) of the UNCITRAL Rules are not fulfilled.

Issue 3

Does the arbitral tribunal have jurisdiction over disputes related to the Exclusive Distributorship Agreement of "Kanpai"?

The arbitral tribunal does not have jurisdiction over disputes related to the Kanpai Agreement.

I. There is no arbitration agreement between Red Corp. and Blue Inc. regarding the Kanpai Agreement.
II. In this case, even if there is an arbitration agreement between the parties, the agreement is invalid because it is not an agreement on a certain legal relationship.

I. There is no arbitration agreement between Red Corp. and Blue Inc. regarding the Kanpai Agreement.

30 In this case, since the place of arbitration is Japan, Red Corp. and Blue Inc. are bound by the Arbitration Act of Japan.

31 Art. 2.1 of the Arbitration Act of Japan defines an arbitration agreement as "an agreement to refer the resolution of all or certain civil disputes which have already arisen or which may arise in the future in respect of a certain legal relationship (irrespective of whether contractual or not) to one or more arbitrators, and to accept the award made."

32 However, in this case, there is no arbitration agreement between Red Corp. and Blue Inc. as defined above.

32.1 Art. 15 (b) of the Kanpai Agreement stipulates that "In case that any dispute or controversy arises out of or in relation to this Agreement between both parties, these disputes or controversies shall be solved based on the rules on dispute resolution in the General Business Agreement ('GBA') between the parties."

32.2 Therefore, the disputes between Red Corp. and Blue Inc. is supposed to be resolved in accordance with the GBA between Red Corp. and Blue Inc. However, since there are no specific agreements between Red Corp. and Blue Inc. such as GBA, there is no dispute resolution clause nor arbitration agreement between the parties.

33 Alternatively, the dispute resolution clause stipulated in the GBA between Yellow Corporation and Blue Inc. does not apply to the dispute resolution cases between Red Corp. and Blue Inc.

33.1 The rights and obligations stipulated in the Kanpai Agreement were assigned to Red Corp. and Blue Inc. on September 15, 2018, under the Assignment of Contract (Exhibit 12). However, the dispute resolution clause provided in the GBA between Yellow Corporation and Blue Inc. is not a part of the Kanpai Agreement and is not assigned to Red Corp. and Blue Inc. by the Assignment of Contract (Exhibit 12).

33.2 Therefore, the GBA between Yellow Corporation and Blue Inc. is not applicable to the dispute resolution cases between Red Corp. and Blue Inc.

II. In this case, even if there is an arbitration agreement between the parties, the agreement is invalid because it is not an agreement on a certain legal relationship.

34 Art. 2.1 of the Arbitration Act of Japan stipulates that an arbitration agreement must be an agreement on certain legal relationships. An arbitration clause can only be recognized as related to a certain legal relationship if it has a specific application, regulating disputes concerning a particular contract.

35 The GBA between Yellow Corporation and Blue Inc. relates instead to "Any disputes or controversies on business between Yellow Corporation and Blue Inc...." (page 39, Dispute Resolution). Therefore, it is a general dispute resolution provision contemplating any kind of dispute between the parties, not an agreement on 'certain legal relationships' within the meaning of Art. 2.1 of the Arbitration Act of Japan, and consequently invalid as an arbitration agreement.

Therefore, there is no arbitration agreement between Red Corp. and Blue Inc, and the arbitral tribunal has no jurisdiction over the dispute related to the Kanpai Agreement.