



**ANNUAL WILLEM C. VIS  
INTERNATIONAL COMMERCIAL  
ARBITRATION MOOT**

# **THE PROBLEM**

Twenty Ninth Annual Willem C. Vis  
International Commercial Arbitration Moot

Vienna, Austria  
2021/2022

Oral Hearings  
9 – 14 April 2022

Organised by:  
Association for the Organisation and Promotion of the Wil-  
lem C. Vis International Commercial Arbitration Moot

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Nineteenth Annual Willem C. Vis (East)  
International Commercial Arbitration Moot  
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Oral Arguments  
28 March – 3 April 2022

Organised by:  
Vis East Moot Foundation Limited



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By email and courier

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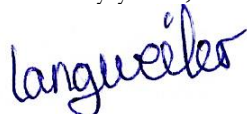
15 July 2021

Dear Director,

- 1 On behalf of my client, ElGuP plc., I hereby submit a Commencement Request and enclose the
  - 2 Notice of Arbitration and proof of service on JAJA Biofuel Ltd pursuant to Rule 2 of the AIAC
  - 3 Arbitration Rules. A copy of the Power of Attorney authorizing me to represent my client in this
  - 4 arbitration is also enclosed.
- 
- 1 The registration fee has been paid. The relevant confirmation for payment is attached as are the
  - 2 required documents.
- 
- 1 The Claimant requests a declaration that Respondent is required to perform its obligations under
  - 2 the contract concluded between Claimant and Respondent in April 2020.
- 
- 1 The contract giving rise to this arbitration is governed by the law of Mediterraneo with the exclusion
  - 2 of the CISG and provides, through a reference to Claimant's General Sale Conditions, that all dis-
  - 3 putes shall be resolved by arbitration according to the Rules of the Asian International Arbitration
  - 4 Center with a seat of arbitration in Danubia.

We nominate Ms Tenera Nigrescens, Cocoseae Drive 3, Capital City, Mediterraneo as arbitrator.

Sincerely yours,



Joseph Langweiler

Attachments:

Notice of Arbitration with Exhibits

Power of Attorney (*not reproduced*)

Confirmation of Payment of Registration Fee (*not reproduced*)



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14 July 2021

**Notice of Arbitration**  
(pursuant to Article 3 of the AIAC Arbitration Rules)

in the Arbitral Proceedings

**ElGuP plc v. JAJA Biofuel Ltd**

ElGuP plc  
156 Dendé Avenue  
Capital City  
Mediterraneo

- CLAIMANT -

Represented by Joseph Langweiler

JAJA Biofuel Ltd  
9601 Rudolf Diesel Street  
Oceanside  
Equatoriana

- RESPONDENT -

**STATEMENT OF FACTS**

1. Claimant, *ElGuP plc*, is one of the largest producers of RSPO-certified palm oil and palm kernel oil based in Mediterraneo. Its annual production lies at around 30,000t.
2. Respondent, *JAJA Biofuel*, is a well-established producer of biofuel based in Equatoriana. It was acquired in late 2018 by Southern Commodities, a multinational conglomerate engaging in all kinds of commodities and their derivatives with its headquarters in Ruritania.
3. For a long time, Claimant had sold 2/3 of its annual palm oil production, i.e. around 20,000t, under a long term contract to a single customer which used it for the production of biofuel. The biofuel was then sold primarily in Europe. In December 2018, the European Union revised its Renewable Energy Directive (RED II). Following considerable pressure from environmental interest groups, in the RED II it was, *inter alia*, foreseen that the EU would start phasing out the use of palm oil-based biofuels in 2023. In light of these unfavourable developments of the European market, Claimant's customer terminated the long-term supply agreement in January 2020 allegedly for cause, claiming temporary problems with Claimant's RSPO certification as a

Relationship of  
JAJA Biofuel  
and Southern  
Commodities



7 pretext. As a consequence of that unjustified termination of the long-term supply contract,  
10 Claimant had to find a customer for 2/3 of its production of certified palm oil on short notice.

4. 1 In light of that, Mr Chandra, Claimant's COO, used the Palm Oil Summit in Capital City in  
2 Mediterraneo on 28 March 2020 to approach Ms Bupati who had been appointed a year before  
3 as the Head of Purchasing for Respondent (Claimant Exhibit C 1). Ms Bupati had for a long  
4 time been the main purchase manager for the palm kernel oil section of Southern Commodities.  
5 In that function she had concluded numerous contracts with Claimant for palm kernel oil. In  
6 the context of the acquisition of Respondent, Southern Commodities had announced that it  
7 would centralize its entire oil business under the roof of Respondent which so far had primarily  
8 produced biofuel from other vegetable oils. The appointment of Ms Bupati as Head of Pur-  
9 chasing was in line with the announced intention to considerably enlarge the palm oil-based  
10 biofuel business.

Ms Bupati with  
DATA Biofuel and  
Southern Commodities  
→ transference of  
business relationship  
linkage of Southern  
Commodities and  
DATA Biofuel

5. 1 Given the favorable price of USD 900/t offered by Claimant for a long-term commitment Ms  
2 Bupati showed great interest in purchasing the entire available production of palm oil from  
3 Claimant from 2021 onwards for five years. In principle, Mr Chandra and Ms Bupati managed  
4 to settle all commercial terms in their negotiations at the Palm Oil Summit. In light of the recent  
5 controversies concerning Respondent's palm oil business, Ms Bupati wanted to get approval  
6 from Respondent's management first, before entering into such a long-term commitment of a  
7 considerable size. Thus, it was agreed that Ms Bupati would get back to Mr Chandra with a  
8 definitive offer within the next three days, who would then prepare the contractual documents.  
9 That was largely the mode of operation which Mr Chandra and Ms Bupati had established for  
10 their numerous palm kernel oil contracts.

negotiation on  
contractual terms  
and delay of  
RESPONDENT'S  
answer → parties  
are at negotiat  
stage

6. 1 On 1 April 2020, Ms Bupati sent an email ordering 20,000t of RSPO-certified palm oil per  
2 annum for the years 2021 - 2025 to be delivered in up to six instalments per annum, delivery  
3 starting in January 2021 (Claimant Exhibit C 2). These were exactly the commercial terms  
4 agreed between the Parties at the Palm Oil Summit.

7. 1 Mr Chandra had his assistant Mr Rain prepare the necessary contractual documents. In line  
2 with the practice established with Ms Bupati in previous transactions, the Contract was based  
3 on Claimant's contract template into which the details of the offer were incorporated (Claimant  
4 Exhibit C 3). On 9 April 2020, Mr Rain sent the Contract signed by Mr Chandra to Ms Bupati's  
5 assistant, Ms Fauconnier. The accompanying letter explicitly mentioned that the Contract  
6 would be governed by the law of Mediterraneo and that the purchase would be subject to the  
7 Claimant's General Conditions. The General Conditions were not included in the letter as they  
8 were known to Ms Bupati from her work for Southern Commodities. In addition, the letter  
9 named Mr Rain as the relevant contact for all questions concerning the Contract and asked for  
10 the return of one of the signed versions for Claimant's "files and the necessary paperwork for  
11 shipment" (Claimant Exhibit C 4).

submission of  
the contract to  
the law of Mediterraneo  
and CLAIMANT'S GC  
→ GC were not  
transmitted →  
knowledge of Ms  
Bupati from previous  
employment

8. 1 On 3 May 2020, Ms Fauconnier contacted Mr Rain to set up a meeting to discuss issues con-  
2 cerning the letter of credit which Respondent was required to open under the Contract. She  
3 asked for a list of acceptable banks and wanted to clarify the documents to be presented for  
4 payment. In the call finally agreed between them, Mr Rain pointed out that so far no signed  
5 copy of the Contract had been received and Ms Fauconnier promised that she would look into  
6 that (Claimant Exhibit C 5). In light of that promise and the fact that in previous transactions  
7 conducted by Ms Bupati for Southern Commodities she had not always returned the requested  
8 signed versions of the contract, Claimant was not worried.

9. 1 That changed on 29 October 2020, when Claimant learned from an article in Commodities  
2 News that Respondent allegedly had stopped all further negotiations with Claimant concerning  
3 the delivery of palm oil and was potentially reconsidering its palm oil-based biofuel activities  
4 (Claimant Exhibit C 6).
10. 1 Mr Chandra immediately called Ms Bupati trying to clarify the issue. He was told that she was  
2 on holiday but would call him back immediately upon her return. The next day, on 30 October  
3 2020, Claimant received a letter from Respondent's CEO, Ms Youni Lever. In that letter she  
4 declared the termination of any further negotiations on the delivery of palm oil and additionally  
5 renounced all existing contractual relations, allegedly due to information about Claimant's in-  
6 fringements of basic RSPO standards (Claimant Exhibit C 7).
11. 1 Four days later, Ms Bupati finally returned Mr Chandra's phone call. She largely confirmed the  
2 content of the letter and offered Mr Chandra to discuss the issue with Respondent's COO,  
3 Mr Fotearth. Over the course of the next month there were several rounds of negotiation with  
4 Mr Fotearth to no avail. Equally a mediation effort between the Parties under the agreed upon  
5 AIAC Mediation Rules vastly failed.
12. 1 It was not even possible to agree on the jurisdiction of this Arbitral Tribunal. For obvious  
2 reasons Respondent apparently considered a trial before the courts of Equatoriana to be more  
3 favorable. These are not only its home turf but are known to be very receptive to arguments  
4 based on the environment.
13. 1 At least, it was agreed between the Parties in the mediation that Mr Chandra should sell the  
2 quantities for the year 2021, if need be with a further reduction. That reduction would then  
3 become part of a damage claim should the present Arbitral Tribunal or the otherwise competent  
4 state court come to the conclusion that the Parties entered into a valid contract in spring 2020  
5 which had not been terminated by Respondent (Claimant Exhibit C 1). While Mr Chandra had  
6 been able to find other buyers for the quantities sold to Respondent under the Contract for  
7 2021, he has not yet been successful for the remaining quantities.

## LEGAL EVALUATION

14. 1 The Arbitral Tribunal has jurisdiction to hear this case. Claimant's General Conditions of Sale,  
2 which have been included into the Contract contain in Article 9 the following arbitration clause:
- 3 "Any dispute, controversy or claim arising out of or relating to this contract, or the breach,  
4 termination or invalidity thereof shall be settled by arbitration in accordance with the  
5 AIAC Arbitration Rules.  
6 The seat of arbitration shall be Danubia.  
7 The language to be used in the arbitral proceedings shall be English.  
8 This contract shall be governed by the substantive law of Danubia.  
9 Before referring the dispute to arbitration, the parties shall seek an amicable settlement of  
10 that dispute by mediation in accordance with the AIAC Mediation Rules as in force on the  
11 date of the commencement of mediation."
15. 1 Contrary to Respondent's allegation in its letter of 30 October 2020 (Claimant Exhibit C 7) and  
2 during the negotiations preceding this Arbitration, the Parties have entered into a binding con-  
3 tract including Claimant's General Conditions of Sale and the arbitration clause contained  
4 therein. The Parties were not still at the stage of contract negotiations.



16.1 According to Danubian contract law, which governs the issue as the law at the place of arbitration, a reference in a contract to general conditions containing an arbitration agreement is sufficient to make the arbitration clause part of the contract. There is no additional requirement, to provide the general conditions to the other party. Furthermore, such a requirement would be a pure formality as Ms Bupati was aware of the existence of the arbitration agreement due to her previous position at Southern Commodities.

17.1 Even if one would consider the law of Mediterraneo to be applicable to the arbitration clause, as the law chosen for the Contract, that would not lead to a different result. First, the inclusion of the clause would not be governed by the CISG, but the non-harmonized substantive contract law which in relation to the conclusion of contracts and the inclusion of standard conditions for international transactions is a verbatim adoption of Article 2.1 of the UNIDROIT Principles. Second, even if it would be governed by the CISG the arbitration clause would be included due to a practice established between the Parties.

18.1 Furthermore, Claimant is entitled to the requested declaration that the Contract was validly entered into and continues to exist. The Parties have entered into a valid Contract for the delivery of 20,000 tons RSPO-certified palm oil per year over a period of 5 years. For the conclusion of the Contract, it is irrelevant that Respondent had not returned a signed version of the contractual document. There is no form requirement under the CISG and that Respondent considered itself bound is obvious from the discussions about suitable banks for the letter of credit.

no deduction to RESPONDENT'S perception should be made from its inquiry regarding the payment method.

19.1 That a conclusion of the Contract is not dependent on the return of a signed version of the contract documents is also evident from Claimant's dealings with Southern Commodities, Respondent's parent company. There have been several instances where Ms Bupati, when acting for Southern Commodities, did not return a signed version of the contractual documents as requested, but performed the respective contract as set out in the documents. Thus, there is a practice between the Parties that unless Respondent objects to the contractual documents within a reasonable period of time, a contract is concluded with the terms of the contractual documents.

business practice should only be applicable between two identical parties within a narrow frame of the subject matter within which one party may arouse the same outcome

20.1 That practice also extends to the inclusion of the General Conditions of Sale even if one would not consider the clear reference to the General Conditions of Sale to be sufficient in itself to make them part of the contract. In the present case, given that Ms Bupati had been provided with a copy of the General Conditions of Sale in her function as the main purchase manager of Southern Commodities and should thus have been aware of their content, it would be a mere formality to require that such terms must be made available to her again.

PO2 n° 33: Ms Bupati can not conclusively confirm that she did in fact receive a copy of the post-2016 terms

21.1 Respondent has not validly terminated the Contract existing between the Parties. The remedies resulting from an existing or perceived lack of the required quality of the goods, including those associated with wrong expectations, are conclusively regulated by the CISG. It does not provide for any right to avoid a contract for mistake. In the present case, the requirements for an avoidance according to Article 49(a) CISG are not met. First, the palm oil is conforming to the contractual requirements and Respondent has not even alleged that the palm oil to be delivered would not be of RSPO-quality, but has merely referred to past events which have long been remedied. Furthermore, according to the Clause 4 of Claimant's General Conditions of Sale, Claimant would have been entitled to an additional period of time of two months to remedy the problems with individual suppliers, before Respondent could have terminated the Contract for cause.

22. 1 By not taking delivery of the quantities for the year 2021 Respondent has breached the Contract.  
2 To mitigate the damages Claimant has sold the quantities of this year to other suppliers at lower  
3 prices, than those provided for in the Contract. This was in line with the agreement concluded  
4 between the Parties in their negotiations. The loss resulting in these sub-price sales amounts to  
5 USD 200,000.

## REQUEST

23. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:

- 1) To declare that the Arbitral Tribunal has jurisdiction to hear the case.
- 2) To declare that the Parties entered into a valid contract for the delivery of 20,000t/annum of RSPO-certified palm oil for the years 2021 - 2025
- 3) To declare that Claimant's General Conditions of Sale were validly included into that Contract and exclude any termination of the Contract for temporary infringements of the RSPO requirements before Claimant was given a suitable period of one month to remove such infringements by its suppliers.
- 4) To declare that Respondent has not validly avoided the Contract either for mistake or for a fundamental breach of contract.
- 5) To order Respondent to compensate Claimant for the damages incurred for the failure to accept the deliveries of the quantities for the year 2021 in the amount of USD 200,000 plus interest thereon.
- 6) To order Respondent to perform the Contract for the years 2022 - 2025.
- 7) To order Respondent to bear the costs of these arbitration proceedings, including the cost incurred by Claimant for legal representation.



Joseph Langweiler

## Witness Statement of Mr James Chandra

Born: 7 June 1967

1. I have degrees in agriculture and economics.
2. 1 Since June 2018, I am the COO of the Claimant in this Arbitration. Until then, I had been the  
2 Head of Sales for 8 years. In that function I had been in regular contact with Ms Bupati who  
3 was at the time still working for Southern Commodities, which became the new parent company  
4 of Respondent in 2018. Since 2010, Claimant and Southern Commodities concluded around  
5 four to five contracts for palm kernel oil per year, one larger contract at the beginning of the  
6 year was usually followed by three or four smaller contracts. From 2010 - 2018 the relevant  
7 negotiations were done by Ms Bupati and myself and then by our respective successors.
3. 1 After Ms Bupati and myself had met in person in 2010 to get to know each other, the contracts  
2 were usually concluded remotely without any in person contact. Ms Bupati would call me and  
3 enquire about the existing conditions. She would then send me an order with a price which  
4 would often be around a dollar less than the prices I had given her for our normal contracts.  
5 For the larger quantity contracts, I would normally accept the requested lower price and prepare  
6 the necessary contract documents which I would then send her. For the smaller contracts I  
7 would occasionally accept the requested reduction of the price or reject it giving explanations  
8 why I could not agree on a reduction. Only in three cases there were further discussions and  
9 minor amendments, in particular to the delivery terms. In all other transactions Ms Bupati then  
10 merely accepted the firm bid made by us. In the large majority of cases the acceptance occurred  
11 via sending back a signed version of the contract. There have, however, been at least 5 cases  
12 where no signed version of the contract was sent back, but the contract was subsequently per-  
13 formed.
4. 1 For the contract documents we always used our contract template, which is a customized and  
2 simplified version of the FOSFA/PORAM 81 contract form. Into this template we inserted  
3 the previously agreed commercial terms including the shipping and insurance terms. In the  
4 accompanying letter or email we additionally provided for the application of our General Con-  
5 ditions of Sale, which were known to Southern Commodities. The content of our General Con-  
6 ditions of Sale remained unchanged, with the exception of the general Arbitration Clause in  
7 Article 9, where we replaced in 2016 the original arbitration clauses from the FOSFA/PORAM  
8 81 contract form by the AIAC model clause. I am not certain whether we sent a copy of the  
9 revised 2016 version to Ms Bupati but I am 100% certain that I told her about the switch to the  
10 AIAC when negotiating a contract with her in 2016.
5. 1 At the end of 2018, we were informed by investigative journalists and film producers that at  
2 least two of our suppliers had breached their sustainability obligations. Unfortunately, the im-  
3 mediately ordered internal investigation proved these allegations to be correct. It turned out  
4 that the two supplies mentioned in the film "Saving Lucy" had in fact delivered 3,000t of oil  
5 palm fruits from plantations which were not following our high sustainability principles. Irre-  
6 spective of that, one of the members of our supervision team had confirmed the RSPO con-  
7 formity against payment of a bribe.
6. 1 We took immediate action against our employee and delisted the two suppliers. Irrespective of  
2 that, when that incident became public in June 2019 with the release of the film "Saving Lucy"

- 3 it was used by one of our major customers as a pretext of declaring the termination of a long-  
4 time supply contract with us. The real reason for the unjustified declaration of termination was  
5 the new European RED II which banned palm oil-based biofuel from 2030 onwards and thus  
6 constituted a major blow to the future of that industry in Europe.
7. 1 That unjustified termination covering around 2/3 of our annual production of palm oil made  
2 it necessary to find new customers for the oil. I was able to sell the production of 2020 at a  
3 considerable discount to a long-time customer. For the quantities from 2021 onwards I con-  
4 tacted Ms Bupati at the Palm Oil Summit in March 2020.
8. 1 I knew from the press that Ms Bupati had become the new Head of Purchasing of JAJA Biofuel,  
2 following its acquisition by Southern Commodities. There had been considerable coverage  
3 about the deal in the press. Southern Commodities had announced that it wanted to concentrate  
4 all its palm oil activities relating to biofuel at JAJA Biofuel. Initially also the palm kernel oil  
5 business had been shifted to JAJA Biofuel to benefit from the greater purchasing power but  
6 was then sold off at the end of 2020.
9. 1 JAJA Biofuel had an excellent reputation in the market for its products but had so far largely  
2 used other vegetable oils to produce biofuel. It was thus clear that for the ambitious output  
3 objectives announced by Southern Commodities, JAJA Biofuel would have to increase its sup-  
4 ply of biofuel considerably.
10. 1 Ms Bupati was very interested in entering into a long-term relationship for the supply of palm  
2 oil with us, but insisted that it had to be RSPO-certified palm oil. She told me that she had been  
3 very surprised about the role played by environmental topics in Equatoriana, both in the general  
4 public, but also within JAJA Biofuel. That was in stark contrast to the attitude she had experi-  
5 enced both in Ruritania, which was one of the largest producers of coal world-wide, and also  
6 within Southern Commodities where environmental concerns also played a minor role.
11. 1 I gave her a quotation for 2/3 of the annual production of our RSPO-certified palm oil for the  
2 next five years at a very competitive price. At the same time, I made clear that in light of the  
3 considerable reduction given no further discount would be possible. She understood that and  
4 accepted it. She indicated, however, that it could eventually be necessary to adapt some of the  
5 “legal” terms which had been used in the previous contracts between us, in particular the dis-  
6 pute resolution mechanism given the wide-spread hostility to arbitration in Equatoriana. I told  
7 her that for us agreeing on anything but arbitration would be very difficult.
12. 1 On 1 April 2020, I received an email from Ms Bupati in which she placed an order with exactly  
2 the same commercial terms I had offered asking me to prepare the contract documents.
13. 1 That was exactly in line with the procedure the two of us had established when she was still  
2 working for Southern Commodities, the parent company of JAJA Biofuel. I had my assistant  
3 Mr Rain to prepare two sets of contract documents and to send them to Ms Bupati on 8 April  
4 asking her to sign one version and return it to me. Furthermore, I asked him to point out that  
5 contrary to our previous practice – which was still reflected in our General Conditions of Sale  
6 as I later found out – the sales contract would be governed by the law of Mediterraneo and not  
7 by the law of Danubia. The decision to change the applicable law for our contracts had been  
8 taken in January 2020, following the advice of one of our lawyers. He had told us in the context  
9 of the unjustified termination of the contract by our previous customer that, in relation to  
10 problems with the supply chain, the law of Mediterraneo would be more favorable to us than  
11 the previously selected law of Danubia. While I had already mentioned the change of the appli-  
12 cable law in our discussions at the Summit, I wanted to remind her of that change.



- 14.<sup>1</sup> I was not worried that Ms Bupati did not send back the signed version. That had happened  
2 before and the practice established with Ms Bupati in our previous contracts was that unless  
3 she objected to the terms of the contract documents within a week she accepted them.
- 15.<sup>1</sup> That understanding was confirmed by the discussions of my assistant, Mr Forrest Rain, with  
2 Ms Fauconnier, Ms Bupati's assistant, who was the responsible person for the performance of  
3 the Contract. Ms Fauconnier had, *inter alia*, enquired which banks would be acceptable to open  
4 the required letter of credit. Such discussions are already the first steps in contractual perfor-  
5 mance and make no sense if there is no contract concluded.
- 16.<sup>1</sup> To me, it was clear that we had agreed on a Contract at that point in time and I was very  
2 surprised when I read the article in the Commodity News in which Ms Youni Lever, the CEO  
3 of JAJA Biofuel, alleged that no contract had yet been concluded and that they were terminating  
4 the negotiations with us. I immediately tried to contact Ms Bupati who was, however, on holi-  
5 day.
- 17.<sup>1</sup> The next day, I received the letter from Ms Lever, in which she informed us about the intention  
2 of JAJA Biofuel to terminate the negotiations and "in the interest of utmost caution" declared  
3 avoidance of any contract concluded.
- 18.<sup>1</sup> The subsequent discussions and mediation with JAJA Biofuel were largely without success. At  
2 least we agreed on a modus to mitigate the damages until a final decision in relation to the  
3 conclusion of the contract has been rendered.

Mediterraneo, 9 June 2021



James Chandra




---

**From:** Claire Bupati <c.bupati@jaja.biofuel.eq>  
**Sent:** 1 April 2020, 8:25 am  
**To:** James Chandra <james.chandra@elgup.me>  
**Cc:** Adrienne Fauconnier <a.fauconnier@jaja.biofuel.eq>  
**Re:** Purchase offer

Dear James,

- 1 It was good to see you at the Palm Oil Summit last week, to catch up and to re-establish our long-  
 2 lasting and successful business relationship in my new function.
- 3 As discussed at the Palm Oil Summit, Southern Commodities is still committed to pursue the planned  
 4 expansion of its palm oil-based biofuel business, despite the temporary anti palm oil movement in  
 5 some parts of the world. JAJA Biofuel is supposed to play a crucial role in this expansion strategy of  
 6 Southern Commodities even if it is not sure yet that the decision to concentrate all palm oil activities  
 7 under the roof of JAJA Biofuel will not be revisited in relation to the palm kernel oil. We are at least  
 8 strongly interested in securing a long-term supply at the conditions we discussed at the Summit.
- 9 In light of that, I would like to place the following order with you as agreed at the Summit:
- 10 20,000t RSPO-certified segregated palm oil per annum for the years 2021 - 2025, cif Oceanside
  - 11 – delivery in up to 6 instalments; at USD 900/t for first year; thereafter market price – 5 %.
- 12 Could you please prepare the necessary contractual documents for signature and send them to my  
 13 assistant, Adrienne Fauconnier, to whom I introduced you at the Palm Oil Summit and whom I put in  
 14 cc. She will take care of the further discussions, if any, and the implementation of the Contract.
- 15 Following our discussion, I assume the documents for the sale of palm oil are largely comparable to  
 16 those for the sale of kernel oil and are based on your shortened version of the FOSFA/PORAM Model  
 17 Contract? As already indicated at the Summit the submission of the sales contract to Mediterranean  
 18 law, which you mentioned as your company's new policy, is less a problem for us than the submission  
 19 to arbitration, in particular if we submit to an institution which exclusively deals with palm oil.
- 20 You are probably aware of the strong opposition of several of the most influential activist groups in  
 21 Equatoriana to investment arbitration castigating its lack of transparency and the perceived self-inter-  
 22 est of the players involved. The fewer potential arguments we give them to attack our business the  
 23 better. At least we should select a non-industry related arbitration institution and provide for some  
 24 sort of transparency, for example applying UNCITRAL's Transparency Rules.
- 25 In light of the general anti-palm oil atmosphere in Equatoriana, it is, however, absolutely crucial for us  
 26 that all palm oil delivered is RSPO-certified and that the supply chain is properly monitored.

Sincerely,  
 Claire

Head of Contracting / JAJA Biofuel Ltd.

9601 Rudolf Diesel Street / Oceanside / Equatoriana / Email: c.bupati@jaja.biofuel.eq



CONTRACT FOR PALM AND PALM KERNEL OIL PRODUCTS IN BULK  
CIF TERMS

<b>Reference Nos</b> ..... <div style="font-size: 2em; font-weight: bold; text-align: center;">81</div> ..... .....
--

**SELLERS:** *ElGuP plc*.....  
 .....  
**BUYERS:** *JAJA Biofuel Ltd*.....  
 .....  
**BROKERS:** .....  
 .....

Date .....8 April 2020.....

\*in case of alternative wording a decision by the parties is required.

Sellers have agreed to sell and Buyers have agreed to buy:

Contract No : 41		Date : 8 April 2020	
Product : <i>RSPO-certified fully segregated palm oil</i>			
Origin : <i>Mediterraneo</i>			
Quantity in metric tons	Shipment Period	Discharge Port	Contract Price CIF
<i>20,000 / per annum 2021 – 2025</i>	<i>2021 - 2025 Up to 6 times per year</i>	<i>Oceanside / Equatori- ana</i>	<i>USD 900/t first year Years 2 -5: market price minus 5% at time of shipment</i>
Special Conditions			
<i>Seller's General Conditions of Sale apply – RSPO-certified fully segregated!</i>			

Payment in

- X (i) in accordance with the provisions of paragraph (a) of the Payment Clause;
- (ii) in accordance with the provisions of paragraph (b) of the Payment Clause;
- (iii) .....
- .....

1. **TOLERANCE:** Sellers have the option of shipping 5% more or less of the mean contract
- 2 quantity. In the event of more than one shipment being made each shipment is to be considered
- 3 as a separate contract but the tolerance on the mean contract quantity is not to be affected thereby.



1 **2. QUALITY AND SPECIFICATIONS:**

2 *RSPO-certified - fully segregated palm oil.* .....

.....  
.....

3 At time and place of shipment, the oil shall be of good merchantable quality of the agreed de-  
4 scription and specifications.

5 It shall not contain substances of non oil-palm origin or materials used in its processing and not  
6 customarily found in oil of the contract description.

7 If the oil is loaded in more than one tank of the same ship, the analysis details of the oil in each  
8 separate tank shall conform with the above.

1 **3. ARRIVAL QUALITY-ADJUSTMENT:** The price shall be subject to adjustment based  
2 on the arrival analysis ascertained in accordance with the provisions of the Sampling and Anal-  
3 ysis Clause paragraph (d) contained in the General Conditions of Sale.

1 **4. DECLARATION OF DESTINATION:** The goods are sold for shipment to  
2 .....*Oceanside/Equatoriana*..... but Buyers have the option to declare .....*any other port in*  
3 *Equatoriana* .....

.....

4 as the port/s of destination with a minimum of ... 500... metric tons to any one port.

5 To exercise this option Buyers shall declare the port/s of destination to Sellers by any means of  
6 rapid written communication not later than 16.00 hours on ...*the day following the day at which*  
7 *the seller declares readiness for shipment*.....

8 The Notices Clause and the Non-Business Days Clause shall not apply to such declaration.

1 **5. SHIPMENT AND CLASSIFICATION:** Shipment in good condition in ship/s which  
2 comply with the FOSFA Qualifications and Operational Procedures for Ships Engaged in the  
3 Carriage of Oils and Fats in Bulk for Edible and Oleo-Chemical Use in force at the date of the  
4 Bill of Lading. The oil is to be shipped on a ship which, after loading in one or more origin ports,  
5 will proceed directly or indirectly, on a geographically normal route from the port/s of shipment  
6 to the port/s of destination.

1 **6. INSURANCE:**

*[not provided]*

1 **7. PAYMENT AND SHIPPING DOCUMENTS:** Payment shall be made at the above-  
2 named place as stipulated in the Preamble for 99% of Sellers' provisional invoice (or for 100%  
3 in the case where shipped weights are final) against a complete set of shipping documents:

- a. 1 by irrevocable and confirmed letter of credit unrestricted for negotiation established
- 2 in Sellers' favour through a recognised bank for 105% of the mean contract quantity.
- 3 Unless otherwise agreed between the parties such credit shall be advised and



4 available to Sellers not later than 10 days from date of contract or the business day  
5 prior to commencement of loading, whichever shall first arise. Should the credit be  
6 opened on terms inconsistent with the contract, Sellers may demand amendment  
7 which shall be arranged by Buyers and notified to Sellers within 7 days of the demand  
8 being received but in no case later than the business day prior to commencement of  
9 loading. The negotiating bank may claim reimbursement by telex/cable from the  
10 credit-opening bank upon confirmation that all documents conform to the credit re-  
11 quirements:

- b. by cash on presentation:
- c. as stated in the Preamble:

4 If Sellers choose to present documents to Buyers through the intermediary of a bank/s all bank  
5 charges incurred including those raised by Buyers bank shall be for Sellers' account unless Buy-  
6 ers demand presentation through a bank of their choice in which case those bank charges shall  
7 be for Buyers account.

8 Any charges for telegraphic remittance of funds to Sellers shall be for Buyers' account. Shipping  
9 document shall consist of -

- (1) Commercial invoice;
- (2) 1 Full set of clean "on board" Bill/s of Lading and/or Ship's Delivery Order/s and/or  
2 other Delivery Order/s in negotiable and transferable form, such other Delivery Or-  
3 der/s guaranteed by a recognised bank if required by Buyers;
- (3) 1 Policy/ies and/or Insurance Certificate/s and/or Letter/s of Insurance in the currency  
2 of the contract and identifying the parcel insured. Letter/s of Insurance shall specify  
3 the insurance company/ies and/or underwriter/s and policy number/s and shall be  
4 guaranteed by a recognised bank if required by Buyers. After payment Letter/s of  
5 Insurance shall be substituted by policy/ies and/or certificate/s on request;
- (4) 1 FOSFA Certificate of Compliance, Cleanliness and Suitability of Ship's Tank from  
2 superintendents in the form in force at the date of the Bill/s of Lading;
- (5) 1 Certificate of Analysis, based on independently sealed samples taken from the rele-  
2 vant ship's tank/s at time of loading, and issued by an independent certified analyst;
- (6) 1 A Certificate of Origin and/or other documents as per the Duties, Taxes, Etc., Clause  
2 of the contract where applicable;
- (7) A Certificate of RSPO conforming production and appropriate segregation.

10 Buyers are to accept photostat or certified copy/ies of items (4), (5), and (7) relating to the whole  
11 parcel/s.

12 Buyers agree to accept Bill/s of Lading containing the Chamber of Shipping War Risk Clause  
13 and/or any other recognised War Risk Clause.

14 Should documents be presented with incomplete set/s of Bill/s of Lading, payment shall be made  
15 provided that delivery of such Bill/s of Lading be guaranteed, such guarantee to be signed, if  
16 required by Buyers, by a first-class bank. Acceptance of this guarantee shall not prejudice Buy-  
17 ers' rights under this contract. Should Sellers have failed to present shipping documents on arrival  
18 of the ship at destination, Buyers shall take delivery under a guarantee acceptable to the ship-  
19 owners to be provided by the Buyers, such guarantee to be signed by a first-class bank if required  
20 by the shipowners. Buyers shall pay for the documents when presented. Any reasonable extra  
21 expenses, including costs of such guarantee or extra handling charges incurred by reason of the  
22 failure of Sellers to provide such documents, shall be borne by Sellers and allowed for in the final

23 invoice. In the event that Buyers take delivery as above and Sellers fail to provide shipping doc-  
24 uments and if the guarantee provided by Buyers as above is encashed by the shipowners, Sellers  
25 shall be responsible for all damages, costs and consequences arising from their failure to present  
26 documents. Buyers shall inform Sellers immediately there is a claim against the guarantee and  
27 Sellers shall have the right to be joined in any legal action arising therefrom.

28 Any monies due by either party to the contract to the other for final invoices and/or accounts for  
29 items on shipments fulfilling this contract shall be settled by either party not later than 21 days  
30 from the date of the invoice, (except as otherwise provided under awards of arbitration or appeal  
31 as governed by the other provisions in the contract), and if not settled a dispute shall be deemed  
32 to have arisen which may be referred to arbitration.

1 **8 DUTIES, TAXES, ETC:** All export duties, taxes, levies, etc., present or future in country  
2 of origin/port of shipment shall be for Sellers' account. All import duties, taxes, levies, etc., pre-  
3 sent or future in port of discharge/country of destination shall be for Buyers' account. Where the  
4 goods are entitled to free entry into or preferential duty in the port of destination named in this  
5 contract, Sellers shall furnish together with the shipping documents a Certificate of Origin and/or  
6 necessary documents in the form valid at the time of shipment, otherwise Sellers shall be respon-  
7 sible for any extra duty incurred by Buyers through the non-production of such Certificate and/or  
8 document/s.

9 At Buyers' request and cost, Sellers shall endeavour to supply any alternative or additional cer-  
10 tificate of origin and/or other documents but payment shall not be withheld for any delay incurred  
11 in complying with such request.

*Signatures*

For Seller

For Buyer



.....  
(James Chandra)  
8 April 2020

.....



---

**From:** Forrest Rain <forrest.rain@elgup.me>  
**Sent:** 9 April 2020, 6:09 a.m.  
**To:** Adrienne Fauconnier <a.fauconnier@jaja.biofuel.eq>  
**Cc:** Claire Bupati <c.bupati@jaja.biofuel.eq>  
**Re:** Contract Documents

1 Dear Ms Fauconnier,

2 Please find attached a pdf of the contract documents which Mr Chandra asked me to prepare.

3 As Ms Bupati expected, the template used is our customized and shortened version of the

4 FOSFA/PORAM 81 form used in the palm oil trade, which also formed the basis of the previous

5 40 or so contracts concluded between Mr Chandra and Ms Bupati.

6 I have inserted the terms of your offer into the Contract, which we accept.

7 Mr Chandra asked me to point out that in deviation from the previous practice established be-  
8 tween Ms Bupati and Mr Chandra the sale will be governed by the law of Mediterraneo.

9 In addition, Claimant's General Conditions of Sale apply to issues not regulated in the attached  
10 document.

11 The management of the Contract will be handled by Mr Chandra personally. Thus, if you have  
12 any questions, I will be your point of contact. Please do not hesitate to contact me.

13 I have sent you two signed versions of the contract documents. Could I kindly ask you to sign  
14 one copy and return it to me for my files and the necessary paperwork for shipments.

Kind regards,

Forrest

**Witness Statement of Mr Forrest Rain**

Born: 21 August 1998

1. I have a degree in biology. Since 2019 I have been working as an assistant for Mr Chandra.
2. 1 In April 2020, Mr Chandra asked me to prepare the contract documents for the 5 years supply  
2 contract with JAJA Biofuel. He provided me with the necessary information and told me to  
3 send them to Ms Bupati and her assistant. He specifically asked me to mention once more that  
4 the sales contract should be governed by the law of Mediterraneo, which was a deviation for  
5 the choice of law clause contained in our sales conditions. The background for this discrepancy  
6 was that, after the unjustified termination of a major supply contract by a customer in January  
7 2020, our lawyer had advised us to submit the contracts in the future to the law of Mediterraneo.  
8 It was planned to revise our general terms accordingly but somehow that had not yet happened.
3. 1 I sent an email and a letter with two signed originals of the contract asking Ms Bupati to return  
2 one version for my files and to facilitate the necessary paperwork. There have been cases, where  
3 our customs authorities had asked for originals of the documents and I wanted to be prepared  
4 for that.
4. 1 In early May 2020, I was contacted by Ms Bupati's assistant, Ms Fauconnier, who wanted to  
2 discuss with me details concerning the letter of credit. She wanted to know which banks would  
3 be acceptable, i.e. would be "recognised banks", and whether we could change the documents  
4 to be submitted. I gave her a list of acceptable banks and tried to address, as far as I could, her  
5 concerns relating to some of the documents requested for presentation. She seemed to be con-  
6 vinced by my explanations and said that there would be probably no need to change the con-  
7 tractual terms, which she would have to check, however, with their lawyers.
5. 1 Furthermore, she wanted to know whether we could amend the arbitration section in clause 7  
2 by adding at least a reference to the UNCITRAL Transparency Rules. As these Rules had al-  
3 ready been mentioned in Ms Bupati's email I had looked them up in preparing the contract. I  
4 explained to her that according to my understanding, which had been confirmed by a friend  
5 who is a lawyer, these Rules had a different scope of application and were not suitable for our  
6 contract. She agreed and thought that Ms Bupati had probably mentioned them because they  
7 had been regularly mentioned in the press in the extensive debate in Equatoriana about the  
8 legitimacy of investment arbitration and its perceived secrecy.
6. 1 During our call I reminded her that the return of the signed version of the contract was still  
2 outstanding. She said that she would look into that but never came back to me.
7. 1 When I talked with Mr Chandra about that he told me not to worry. In the past, Ms Bupati had  
2 on several other occasions forgotten to send back the signed copy of the contract. Irrespective  
3 of that the mother company always considered itself bound by the contract and complied with  
4 it.

7 July 2021

  
Forrest Rain





29 October 2020

## Commodities News

## JAJA Biofuel reconsiders decision to enlarge production of palm oil-based fuels

1 After six weeks of continuous protest and ac-  
 2 tions by activists gaining increasing support of  
 3 the general public in Equatoriana it seems that  
 4 Management of JAJA Biofuel saw the need to  
 5 react to the public. Yesterday, Ms Youni Lever,  
 6 the CEO of JAJA Biofuel announced in a press  
 7 conference that JAJA is presently examining its  
 8 supply chain and all its suppliers of palm oil for  
 9 their compliance with JAJA's commitment to  
 10 the UN SDGs and sustainability in general. De-  
 11 pending on the results of that examination  
 12 JAJA would re-evaluate its decision to increase  
 13 the quantity of its biofuel based on palm oil.

14 The campaign against JAJA Biofuel and its  
 15 palm oil business started with the release of  
 16 the film "Saving Lucy" in Equatoriana in June  
 17 2020. The film is about a female Orangutan  
 18 baby which lost its parents in one of the wild-  
 19 fires used to clear rainforest for palm oil plan-  
 20 tations.

21 For a considerable time JAJA Biofuel had been  
 22 the darling of green investors in Equatoriana.  
 23 Biofuel produced by JAJA Biofuel was widely  
 24 considered to be an essential bridge technol-  
 25 ogy in the fight against global warming. There  
 26 were only few critics who raised general con-  
 27 cerns against the concept of producing biofu-  
 28 els from food crops. For a long time that criti-  
 29 cism had, however, largely focused on palm oil  
 30 due to the negative effects widely associated  
 31 with its production, such as an increasing de-  
 32 forestation of environmentally valuable peat-  
 33 land and the social effects of land grab by mul-  
 34 tinationals.

35 With the takeover by Southern Commodities  
 36 the public attitude towards JAJA Biofuel had,  
 37 however, changed completely. Southern  
 38 Commodities had been for a long time one of  
 39 the most controversial companies trading in  
 40 commodities. Several of its subsidiaries have  
 41 been involved in environmental scandals and  
 42 Southern Commodities had the reputation of  
 43 being very close to some of the most corrupt  
 44 leaders in countries where it sourced its sup-  
 45 plies. Even worse for many environmental ac-  
 46 tivists, Southern Commodities was known to  
 47 be one of the biggest financial supporters of  
 48 the government of Ruritania, which largely de-  
 49 nied any man-made effects on the climate.

In addition, the announcements by Southern Com-  
 modities in the context of the acquisition made  
 clear that it was planning to considerably increase  
 JAJA's production of biofuels based on palm oil.

With the cinema start of the prize winning "Saving  
 Lucy" in Equatoriana, one year after its original re-  
 lease in June 2019 in Mediterraneo, the until then  
 singular actions by environmental activists against  
 JAJA gained considerable traction. Parts of the  
 general public in Equatoriana, which has tradition-  
 ally been very environmentally conscious, started  
 to participate in the actions against JAJA Biofuel.  
 Its premises were blocked and the activists did not  
 only request to abandon any production of biofuel  
 from palm oil but from food crop in general. When  
 these actions started to seriously affect the share  
 price, the management of JAJA Biofuel apparently  
 saw the need for action.

As a first direct step, Ms Lever announced that due  
 to the breaches documented in the film, JAJA Bio-  
 fuel had already stopped its negotiations with EL-  
 GuP for a long-term supply contract. ELGuP had  
 been one of the companies to whom the farmers  
 mentioned in the film had sold their palm oil  
 though it had been produced in clear violation of  
 the RSPO standard. In the film it was submitted  
 that ELGuP had not implemented the requested  
 control system to verify that the palm oil sold to it  
 by its suppliers as RSPO conformant did actually  
 meet the requirements. Quite to the contrary, the  
 film insinuated that at least one of ELGuP's pur-  
 chasing managers had engaged in a flourishing  
 sale of the required certificates.

When these allegations became public in June  
 2019 with the official release of the film, they were  
 another serious blow to the palm oil industry in  
 Mediterraneo which was already suffering from the  
 European RED II. ELGuP immediately issued a press  
 release in which it confirmed what it called "a sin-  
 gular problem with a corrupt employee and two  
 suppliers" against which actions had been taken.  
 At the time, ELGuP refused any further comment  
 on the issue due to the ongoing criminal investiga-  
 tion which had been started against that employee  
 upon ELGuP's insistence.

There are rumors that the incident had already led  
 to the termination for cause by ELGuP major cus-  
 tomer in January 2020. Sources close to the com-  
 pany reported that the case is presently pending  
 before an arbitral tribunal under the AIAC-Rules.



Ms Youni Lever

Chief Executive Officer  
JAJA Biofuel

9601 Rudolf Diesel Street  
Oceanside  
Equatoriana

y.lever@jaja.biofuel.eq

**PER REGISTERED COURIER**

**James Chandra**

Chief Executive Officer

ElGuP plc

156 Dendé Avenue

Capital City

Mediterraneo

james.chandra@elup.me

30 October 2020

**Termination of Negotiations / Auxiliary Termination for Cause (Mistake)**

1 Dear Mr Chandra,

2 I herewith terminate the negotiations for the conclusion of a 5 years supply contract between  
3 ElGuP and JAJA Biofuel.

4 As it is widely known in the market and as you have been told by Ms Bupati, our Head of Con-  
5 tracts, it is of utmost importance for JAJA Biofuel that all suppliers comply with the highest  
6 standards of sustainable oil production. We are convinced that only certified palm oil of the  
7 highest quality should be used in light of our responsibility for the environment and future  
8 generations. Unfortunately, your company and at least two of its suppliers have been involved  
9 prominently in the recent scandal relating to fake RSPO certificates. That excludes your company  
10 from the list of potential suppliers at least for the next three years.

11 In the interest of utmost caution and in the unlikely event that under the applicable laws our  
12 previous negotiations should have resulted in any contractual and pre-contractual rights and  
13 obligations between our two companies these are herewith terminated. The obvious violation  
14 of the RSPO standards by your own personnel – which were shown in the film “Saving Lucy”  
15 when taking bribes for granting certificates – constitutes by all accounts a fundamental breach  
16 of contract entitling JAJA Biofuel to terminate all contractual relationship with immediate effect  
17 for cause.

18 Reserving any rights to damages I remain at your disposal for any further discussion about the  
19 legal consequences associated with this letter.

Yours sincerely

Youni Lever

Chief Executive Officer / JAJA Biofuel

**Please quote our reference when replying.**

**Ref. : AIAC/INT/ADM-123-2021**

16<sup>th</sup> July 2021

**JOSEPH LANGWEILER**

Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo  
[Ref.: *please advise*]

**By Fax, Email & Post**  
(Fax: (0) 146 9850)  
(Email: langweiler@lawyer.me)

**JULIA CLARA FASTTRACK**

Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
[Ref.: *please advise*]

**By Fax, Email & Post**  
(Fax: (0) 214 77 33)  
(Email: fasttrack@host.eq)

Dear Sirs/Madams,

**IN THE MATTER OF AN AIAC ARBITRATION BETWEEN ELGUP PLC  
(CLAIMANT) AND JAJA BIOFUEL LTD (RESPONDENT)**

- 1 We refer to the above matter and the Claimant's commencement request with enclo-
- 2 sures dated 15<sup>th</sup> July 2021.
- 3 Please be advised that this arbitration matter has been registered pursuant to **Rule 2** of
- 4 the **AIAC Arbitration Rules 2018** (the "**Rules**"). According to **Rule 2(2)** of the **Rules**,
- 5 the arbitration commenced on 15<sup>th</sup> July 2021.
- 6 We note that the Claimant has nominated Ms Tenera Nigrescens as the First Arbitrator.
- 7 We wish to bring to your attention **Rule 14(1)** and **Rule 14(2)** of the **Rules**, which states
- 8 that the Director of the AIAC shall fix a provisional advance deposit that is intended to
- 9 cover the costs of the arbitration. The amount of this deposit shall be paid in equal
- 10 shares by both Parties within 21 days upon request from the AIAC.
- 11 Having regard to the above, please be informed that a provisional advance deposit of
- 12 **USD24,000.00** is payable in equal shares by the Parties. The amount to be paid by the
- 13 Parties is as follows:

**ASIAN INTERNATIONAL ARBITRATION CENTRE**

(Established under the auspices of the Asian-African Legal Consultative Organisation)

Bangunan Sulaiman, Jalan Sultan Hishamuddin, 50000 Kuala Lumpur, Malaysia

T +603 2271 1000

F +603 2271 1010

E enquiry@aiac.world



1 Claimant : **USD12,000.00**  
2 Respondent : **USD12,000.00**

3 Please be advised that pursuant to **Rule 14(3)** of the **Rules**, in the event that any of the  
4 Parties fails to pay its share of the deposit, the Director of the AIAC will give the other  
5 Party an opportunity to make the required payment within a specified period of time.  
6 The arbitral proceedings shall not proceed until the provisional advance deposit is paid  
7 in full.

8 We wish to highlight that pursuant to **Rule 14(4)** and **Rule 14(5)** of the **Rules**, further  
9 deposits may be requested following a calculation of the estimated fees and expenses  
10 of the Arbitral Tribunal and AIAC administrative fee. Any unexpended balance shall be  
11 returned to the Parties upon rendering of the final account.

12 Please find enclosed our Invoices no. 10010855 and 10010856 for your reference.

13 Kindly remit the above-stated amount within 21 days by **6<sup>th</sup> August 2021** and submit to  
14 us the proof of the remittance.

15 Finally, we kindly request you to ensure that the following AIAC email addresses are  
16 copied to all communications in this matter:

- [director@aiac.world](mailto:director@aiac.world) (Tan Sri Datuk Suriyadi Bin Halim Omar, Director of the AIAC);
- [counsel@aiac.world](mailto:counsel@aiac.world) (Ms Anggun Sulaiman, Senior International Case Counsel);  
and
- [arbitration@aiac.world](mailto:arbitration@aiac.world) (AIAC Arbitration).

Please do not hesitate to contact us if you have any queries.

Thank you.

Yours faithfully,



**ANGGUN SULAIMAN**

Senior International Case Counsel

Email: [director@aiac.world](mailto:director@aiac.world); [arbitration@aiac.world](mailto:arbitration@aiac.world); [counsel@aiac.world](mailto:counsel@aiac.world)

*[Communication between AIAC – First Arbitrator concerning appointment largely not provided (see Presiding Arbitrator)]*

**Please quote our reference when replying.**

**Our Ref. : AIAC/INT/ADM-123-2021**

20<sup>th</sup> July 2021

**TENERA NIGRESCENS**

Cocoseae Drive 3  
Capital City  
Mediterraneo  
[Ref. No.: *Please advise*]

**By Post & Email**  
(Email: [t.nigrescens@mail.me](mailto:t.nigrescens@mail.me))

**JULIA CLARA FASTTRACK**

Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
[Ref. No.: *Please advise*]

**By Email**  
(Email: [fasttrack@host.eq](mailto:fasttrack@host.eq))

Dear Ms Nigrescens,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC  
(CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)**

- 1 We refer to the above matter.
- 2 We thank the First Arbitrator for accepting the appointment and returning the duly executed copies of the Letter of Acceptance and the Declaration.
- 3
- 4 Please be advised that pursuant to **Rule 4(5)(a)** of the **AIAC Arbitration Rules 2018** (the “**Rules**”), the Respondent is at liberty to nominate the Second Arbitrator within 30 days after the receipt of the notification from the Claimant nominating the First Arbitrator.
- 5
- 6
- 7 If the Respondent fails to nominate upon the expiration of the said 30 days, the Second Arbitrator will be appointed by the Director of the AIAC.
- 8

Thank you.

Yours faithfully,

*Tan Sri Suriyadi*

**TAN SRI DATUK SURIYADI BIN HALIM OMAR**

Director

Email: [director@aiac.world](mailto:director@aiac.world); [arbitration@aiac.world](mailto:arbitration@aiac.world); [counsel@aiac.world](mailto:counsel@aiac.world)

**JULIA CLARA FASTTRACK**

Advocate at the Court  
14 Capital Boulevard  
Oceanside  
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Tel. (0) 214 77 32 Telefax (0) 214 77 33  
fasttrack@host.eq

By email and courier


Asian International Arbitration Centre  
Director of the AIAC  
Bangunan Sulaiman,  
Jalan Sultan Hishamuddin,  
50000 Kuala Lumpur  
Malaysia  
arbitration@aiac.world

14 August 2021

**Case Reference: AIAC/INT/ADM-123-2021  
ElGuP plc v. JAJA Biofuel Ltd.**

- 1 Dear Director,
- 2 I hereby indicate that I represent Respondent in the above referenced arbitral proceedings. The
- 3 power of attorney is attached.
- 4 Please find enclosed Respondent's Response to the Notice of Arbitration, a copy of which has
- 5 been sent directly to Claimant.
- 6 Respondent agrees to communicate by email only. Emails may be sent to fasttrack@host.eq.
- 7 As arbitrator we nominate Mr Georges Chavanne, Rue Ester 37, Oceanside, Equatoriana.
- 8 Could you please take the necessary steps for his appointment?

Kind regards,



Julia Clara Fasttrack

Attachments:

Response to the Notice of Arbitration with Exhibits  
Power of Attorney (*not reproduced*)

cc. Joseph Langweiler



**JULIA CLARA FASTTRACK**

Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
Tel. (0) 214 77 32 Telefax (0) 214 77 33  
fasttrack@host.eq

**Response to the Notice of Arbitration**  
(pursuant to Article 6.1. to 6.2.(d) of the AIAC Rules)

in the Arbitral Proceedings

**Case Reference: AIAC/INT/ADM-123-2021**

**ElGuP plc (Claimant) v.  
JAJA Biofuel (Respondent)**

14 August 2021

**Introduction**

1. 1 Claimant, after having been at the center of one of the greatest greenwashing scandals in the  
2 palm oil industry with considerable repercussions on all market players tries to create a case  
3 where there is none by
  - 4 turning obviously still ongoing contract negotiations into an already concluded con-  
5 tract,
  - 6 including standard conditions which were never made available to Respondent and  
7 clearly contradict the discussion of the Parties.

**Facts**

2. 1 Respondent is one of the pioneers in the production of sustainable biofuels in Equatoriana.  
2 Until its acquisition by Southern Commodities it had produced its biofuel largely from local  
3 energy crops such as corn or rapeseeds, with an increasing share of advanced biofuels produced  
4 from non-food feedstock.
3. 1 Environmental issues and sustainability have always played a major role in the public discussion  
2 in Equatoriana. That is reflected by the existence of very powerful and influential environmental  
3 activist groups, the amount of green investment and some groundbreaking decisions requiring  
4 the government and companies to take specific actions to protect the environment and to pre-  
5 vent global warming. As a consequence of that, the acquisition of JAJA Biofuel by Southern  
6 Commodities in 2018 and the resulting changes in the management were seen very critically.  
7 The announcement of the plans to considerably increase the production of biofuel based on  
8 palm oil raised considerable public opposition in Equatoriana and the actions by activists seri-  
9 ously affected the production by JAJA Biofuel. To address these concerns, JAJA Biofuel's new  
10 CEO Ms Youni Lever invited news outlets to inform the press in detail about the future plans  
11 of JAJA Biofuel and its continued commitment to sustainability and the protection of the



environment in December 2019. She announced in particular that only RSPO-certified palm oil would be used for the production of biofuel despite its higher price (Respondent Exhibit R 1).

4.1 Given the limited availability of such RSPO-certified palm oil, Ms Bupati was very happy when Mr Chandra approached her at the Palm Oil Summit at the end of March 2020 and offered a long-term supply of RSPO-certified palm oil at a very good price. Ms Bupati had heard rumours that Claimant had just lost one of its major customers and was looking for new customers. Mr Chandra confirmed the loss of a major customer and told Ms Bupati that in reaction to what he considered to be an unjustified termination, Claimant had initiated arbitration proceedings against its previous customer claiming damages for breach of contract. It was apparent that Mr Chandra did not want to disclose further details about the ongoing dispute but was at the same time confident to be entitled to damages. As a consequence, Ms Bupati did not ask further about the reasons for the contract termination but focused on realizing the commercially attractive opportunities created by the termination for Respondent by discussing the terms of the contract.

5.1 Ms Bupati made, however, clear to Mr Chandra, that JAJA Biofuel was operating in a completely different political and commercial environment than Southern Commodities and that environmental issues played a much more important role (Respondent Exhibit R 2).

6.1 Mr Chandra asserted that this would not be a problem for Claimant, but to the contrary would be in line with Claimant's general policy of sustainable production. While Ms Bupati knew from the past that Claimant offered also RSPO-certified products, she was surprised to hear that they made up 80% of the overall quantity produced by Claimant. In light of the price differences between RSPO-certified and non-certified palm products, Southern Commodities had always bought the non-certified palm kernel oil. For palm oil the difference between certified and non-certified oils was around USD 30/t for mass balanced oils and USD 70/t for segregated oils.

7.1 Due to the exceptional circumstances, Claimant was not only willing to enter into a long-term supply contract guaranteeing a steady supply of RSPO-certified segregated palm oil, but also offered a very favorable price. It was fixed for the first year at USD 900/t and then for the remaining four years at 5% below the "market price", which fluctuates in Mediterraneo between USD 1,000/t and 1,200/t for CFR contracts. It was obvious that Mr Chandra was convinced to be able to recover the difference to the market price as damages from its previous customer.

8.1 Given the size of the contract and the political sensitivity of the palm oil expansion, Ms Bupati wanted to discuss the agreed commercial terms of the contract with Respondent's management first before making a firm offer.

9.1 Following the approval of the transaction and its commercial terms by Respondent's CEO, on 1 April, Ms Bupati sent an email to Mr Chandra making an offer on the basis of the commercial terms agreed and asked him to prepare the necessary contractual documents (Claimant Exhibit C 2).

10.1 During their discussion at the Palm Oil Summit Mr Chandra had informed Ms Bupati, that Claimant would use the same contract template for the palm oil sales that it had used for the palm kernel oil sales to Southern Commodities. The only changes were that the contract would be submitted to the law of Mediterraneo and no longer to the law of Danubia. Furthermore, the General Conditions of Sale were supposed to be the same.



- 11.1 These General Conditions of Sale had been sent to Southern Commodities in October 2011.  
2 Ms Bupati had a closer look at them in the context of an arbitration which had been initiated  
3 by Claimant against Southern Commodities in 2014 concerning the payment for a delivery. At  
4 that time, Claimant's contract template as well as its General Conditions of Sale contained a  
5 different arbitration clause. It was the original arbitration clause from the FOSFA/PORAM  
6 Contract Form 81, which provided for arbitration under the rules of a commodity arbitration  
7 institution (**Respondent Exhibit R 3**).
- 12.1 That was the background for Ms Bupati's request in the offer of 1 April 2020 to at least avoid  
2 arbitration under the rules of a palm oil specific arbitration institution (**Claimant Exhibit R 2**).  
3 When she wrote the email she had forgotten that Mr Chandra had informed her during their  
4 discussions of the first contract for 2016 on the phone, that Claimant after the experience in  
5 the arbitration with Southern Commodities had changed the arbitration clause. It was from  
6 then on using the Model Clause of the Kuala Lumpur Regional Center, which has now been  
7 renamed into Asian International Arbitration Center. Apparently, in the context of that change  
8 of the chosen institution the general arbitration clause was also removed from Claimant's con-  
9 tract template and only included into its General Conditions. At least the contract itself from  
10 the second contract 2016 onwards did no longer contain a general arbitration clause.
- 13.1 While Ms Bupati cannot exclude that Southern Commodities received a copy of the 2016 ver-  
2 sion of Claimant's General Conditions, it is uncontested that neither the current version nor  
3 any previous version of Claimant's General Conditions was ever sent to JAJA Biofuel.

## Legal Considerations

### *Jurisdiction*

- 14.1 The Arbitral Tribunal lacks jurisdiction as the arbitration clause contained in Claimant's General  
2 Conditions was never validly included into the contract. Contrary to Claimant's allegation, the  
3 conclusion of the arbitration clause is not governed by the law of Danubia, but by the law of  
4 Mediterraneo including the CISG. According to the CISG, even if a contract should have been  
5 concluded (quod non), the General Conditions of Sale including the Arbitration Clause would  
6 not have been validly included into the contract. The General Conditions were never made  
7 available to Respondent by Claimant.
- 15.1 There can be no inclusion by a practice established between the Parties. Claimant's General  
2 Conditions of Sale included into the various contracts with Southern Commodities contained  
3 two different arbitration clauses. Until 2016 they provided for arbitration in favor of a palm oil  
4 specific arbitration institution and from then until the end of 2018, when Ms Bupati stopped  
5 working for Southern Commodities, they were referring to arbitration under the rules of the  
6 Kuala Lumpur Regional Centre. Furthermore, there was never any practice established between  
7 Claimant and Respondent.

### *Substance*

- 16.1 Claimant is not entitled to any of the requested reliefs. The Parties never entered into a valid  
2 contract but were still at the stage of negotiations. Even if one were to interpret the email of  
3 Ms Fauconnier as an offer, though it is not, Claimant rejected such offer by insisting on the  
4 application of its General Conditions of Sale.

17. This counteroffer in turn was never accepted by Respondent which did not sign the contract and returned it to Claimant as requested.

18. Claimant cannot rely on an alleged practice established between the Parties. This was the first contract for the sale of palm oil between the Parties. Any practice established in the around 40 contracts concluded between Southern Commodities and Claimant for the sale of palm kernel oil is irrelevant for the relationship between Claimant and Respondent.

19. Even if one were to assume the valid conclusion of a contract between the Parties (quod non), Respondent would have validly terminated the contract. Respondent was unaware of the fact that Claimant had previously sold palm oil as RSPO-certified though it did not comply with the necessary requirements, so that it could not be guaranteed that the RSPO certified palm oil sold to Respondent was actually RSPO-certified. In so far Respondent erred about a crucial feature of the oil purchased and was thus entitled under the law of Mediterraneo to avoid the contract for mistake. Contrary to Claimant's allegation, the CISG does not regulate the issue of avoidance for mistake but that question as to the validity of the contract is governed by the non-harmonized rules of the Mediterranean Civil Code.

20. Furthermore, as the General Conditions of Sale were not included into the alleged contract, Claimant cannot rely on Clause 4 of its General Conditions of Sale giving it the right to try to remedy any problems resulting from its supply chain before any remedies could be invoked by Respondent. Thus, Respondent could also terminate the – anyway non-existent – contract on the basis of Article 49(a) CISG due to Claimant's fundamental breach of contract.

21. On the basis of the aforementioned facts, Claimant is obviously neither entitled to the requested declarations nor to any of the other claims. Thus, the case should be dismissed outright.

### Requests for Relief

22. In light of the above, Respondent requests the Arbitral Tribunal to make the following orders:

- To reject all claims made;
- To order Claimant to bear the costs of this arbitration, including any legal costs.

  
Julia Clara Fasttrack

| Environment | Business | Sustainability |

# Eco-Trade

19 December 2019

## Companies

1 **Danubia** • In a press conference, Ms Youni Lever, the new CEO of JAJA Biofuel expressed her vision for the  
2 future of JAJA Biofuel after its controversial acquisition by Southern Commodities. Ms Lever, who had been  
3 installed by the new owner, replaced the very popular previous CEO Mr Hasselmann who had managed to turn  
4 JAJA Biofuel into one of the darlings of the supporters of a green economy. Thus, his replacement by the largely  
5 unknown Ms Lever has raised serious concerns about the future course of JAJA Biofuel and has led to several  
6 very critical articles.

7 It was obvious that the main purpose of Ms Lever's press conference was to address these concerns and  
8 criticisms raised by several influential environmental activist groups from Equatoriana. For many of these groups  
9 Southern Commodities with its roots in the trade of coal and precious minerals and its involvement in some of  
10 the most serious environmental pollutions is a symbol of the current carbon-based economic system they fight.  
11 Thus, Southern Commodities' bid for JAJA Biofuel was seen very critically.

12 Given the strong opposition against the use of palm oil for the production of biofuel expressed by many envi-  
13 ronmental activist groups, which are traditionally very strong and influential in Equatoriana, it appears highly  
14 doubtful that Ms Lever reached her objective with the press conference. The announcement that Southern  
15 Commodities would concentrate all its palm oil business in JAJA Biofuel which it intended to develop into one  
16 of the leading producers of palm oil-based biofuel was not taken very well. Ms Lever's statement that JAJA  
17 Biofuel would ensure that only RSPO-certified palm oil would be used did not help much. There are considerable  
18 doubts in the industry that sufficient RSPO-certified palm oil would be available on the market. Furthermore, it  
19 was questioned whether customers would actually buy the more expensive biofuel produced with RSPO-certified  
20 oil which is between 30 and 70 US\$ more expensive than non-certified oil.




---

**From:** Adrienne Fauconnier <a.fauconnier@jaja.biofuel.eq>  
**Sent:** 3 May 2020, 8:25 am  
**To:** Forrest Rain <forrest.rain@elgup.me>  
**Re:** Determination of "Recognised Bank" / further terms of sales contract.

- 1 Dear Forrest,
- 2 Thank you for the contractual documentation and sorry for the belated reply, but I have been  
 3 swamped with other projects.
- 4 In light of the upcoming biennial discussions with our banks next week and the problems we  
 5 had with the payment terms in another contract recently, we would like to specify the payment  
 6 terms and directly determine the names of the banks which would classify as "recognised  
 7 banks" in the sense of the Contract.
- 8 There are also two other issues where I would suggest changes to the existing terms of the  
 9 contractual documents to take into account particularities of JAJA Biofuel's present situation.
- 10 I will be visiting other palm oil producers in Mediterraneo during the next two weeks and  
 11 could offer to meet during that time, to get to know each other personally. I think it is always  
 12 easier to negotiate open issues in person.
- 13 If that does not work for you could we agree on a date for a phone call the week thereafter? I  
 14 will be available the entire Tuesday and Wednesday.
- 15 I am looking forward to hearing from you.

Sincerely,  
 Adrienne

Contracting Department  
 JAJA Biofuel Ltd.  
 9601 Rudolf Diesel Street  
 Oceanside / Equatoriana  
 Email: [a.fauconnier@jaja.biofuel.eq](mailto:a.fauconnier@jaja.biofuel.eq)

### Witness Statement of Ms Claire Bupati

1. I was born on 1 December 1966.
2. From 2004 until 2019, I worked in various functions in the purchasing department of Southern Commodities. From 2010 onwards, I was responsible for the purchase of palm kernel oil. In that function I had regular contacts with ElGuP plc and Mr Chandra. We concluded overall around 40 contracts over the years. I normally called Mr Chandra and other suppliers and asked for quotations. On the basis of such quotations, I then made offers for fixed quantities which were often a little bit below the quotations received or had different shipping or insurance terms.
3. With Mr Chandra I had established a practice that if the terms of my offer were acceptable to him he would prepare the necessary contractual documents and send them to me for acceptance and signing. In around 80% of the cases I had then signed the documents and returned a copy of the contract to Mr Chandra. There were, however, also three cases when the added terms were unacceptable and I asked for changes after having received the contract documentation. In these instances my requests were then more or less accommodated and the documentation was changed accordingly before I signed it. It is correct that in five cases I did not return a signed version of the respective contract but we nevertheless performed all of them.
4. In 2018, Southern Commodities purchased JAJA Biofuel. Southern Commodities' intention was to centralize all of its biofuel activities in JAJA Biofuel which was an established player in the biofuel market, but has so far only produced biofuel from other vegetable oils. My experience in the palm kernel oil market and the resulting connection to the palm oil producers was one of the reasons why Southern Commodities offered me the position as Head of Purchase at JAJA Biofuel. Originally, also the palm kernel oil business was transferred to JAJA Biofuel but then sold of as it did not really fit into JAJA's business of producing biofuels.
5. Contrary to the expectation of the management of Southern Commodities, the planned increase of the palm oil share in the biofuel of JAJA Biofuel went everything but smoothly. I assume that the management of Southern Commodities had underestimated the different political climates in Ruritania and Equatoriana. Thus, from the day it was announced that Southern Commodities would take over JAJA Biofuel there had been considerable political opposition from powerful environmental groups to Southern Commodities' plan to enlarge the quantities of palm oil-based biofuel. At the beginning, Southern Commodities and the new management it had installed in JAJA Biofuel were convinced that they would be able to outlive such opposition without the need to abandon the expansion plans as such. To reduce the criticism, it was publicly announced that JAJA Biofuel would only use RSPO-certified palm oil, despite its higher price and its limited availability. As only 20% of the available palm oil fulfills the certification requirements it has proven very difficult to acquire the necessary quantities at an acceptable price.
6. In light of that, I thought it to be a lucky coincidence when Mr Chandra approached me at the Palm Oil Summit. I had heard that they had lost a major customer and were looking desperately for a short notice replacement. Mr Chandra told me that he was very much interested in the offer made by myself at the Palm Oil Summit.

Oceanside, 12 August 2021

  
Claire Bupati

**General Conditions of Sale  
(before changes in 2016)**

**Article 9: Arbitration Clause**

1 **9**      **ARBITRATION:** Where both parties at or subsequent to the date of the contract agree,  
2 any dispute arising out of or in connection with this contract shall be submitted to arbitration in  
3 Malaysia in accordance with the Arbitration Act of Malaysia 1952 (as revised in 1972) and in  
4 accordance with the PORAM Rules of Arbitration and Appeal in force at the date of the contract.  
5 In all other cases, any dispute arising out of the contract, including any question of law arising in  
6 connection therewith, shall be referred to arbitration in London (or elsewhere if so agreed) in  
7 accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats  
8 Associations Limited, in force at the date of this contract and of which both parties hereto shall  
9 be deemed to be cognizant.  
10 Neither party hereto, nor any persons claiming under either of them, shall bring any action or  
11 other legal proceedings against the other of them in respect of any such dispute until such dispute  
12 shall first have been heard and determined by the arbitrators, umpire or Board of Appeal (as the  
13 case may be), in accordance with the Rules of Arbitration and Appeal governing the dispute, and  
14 it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators,  
15 umpire or Board of Appeal (as the case may be), shall be a condition precedent to the right of  
16 either party hereto or of any person claiming under either of them to bring any action or other  
17 legal proceedings against the other of them in respect of any such dispute.

**General Conditions of Sale  
(after changes in 2016)**

**Article 9: Arbitration Clause**

1 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termi-  
2 nation or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitra-  
3 tion Rules.  
4 The seat of arbitration shall be Danubia.  
5 The language to be used in the arbitral proceedings shall be English.  
6 This contract shall be governed by the substantive law of Danubia.  
7 Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that  
8 dispute by mediation in accordance with the AIAC Mediation Rules as in force on the date of the  
9 commencement of mediation.

**Please quote your reference when replying.**

**Our Ref.: AIAC/INT/ADM-123-2021**

15<sup>th</sup> August 2021

**JULIA CLARA FASTTRACK**

Advocate at the Court

14 Capital Boulevard

Oceanside

Equatoriana

[Ref.No: *please advise*]

**By Email**

(Email: [fasttrack@host.eq](mailto:fasttrack@host.eq))

Dear Sirs/Madams,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC  
(CLAIMANT) AND JAJA BIOFUEL LTD. (RESPONDENT)**

- 1 We refer to the above matter and to your letter dated 14<sup>th</sup> August 2021.
- 2 We are in receipt of your Response to the Notice of Arbitration with enclosures dated  
3 14<sup>st</sup> August 2021.
- 4 We note that the Respondent has agreed to communication by way of email only and  
5 nominated Mr Georges Chavanne as the Second Arbitrator.
- 6 Furthermore, we confirm that both the Claimant and Respondent have paid their share  
7 of the provisional advance deposit. The official receipts for the said payments are en-  
8 closed herewith.
- 9 At this juncture, we would like to point out that on 1<sup>st</sup> August 2021, the AIAC Arbitration  
10 Rules 2021 (the “**2021 Rules**”) came into force. The **2021 Rules** contain significant  
11 amendments to the **2018 Rules** to reflect contemporary standards and practices in in-  
12 ternational arbitration. Key features of the **2021 Rules** include:
- (i) the merging of Part I and Part II of the **2018 Rules** to ensure a harmonious and coherent set of procedural rules that are modelled on the UNCITRAL Model Law (as revised in 2013);
  - (ii) incorporation of a Fast Track Procedure to provide for expedited arbitrations and minimising the need for a standalone set of AIAC Fast Track Arbitration Rules (Rule 8);

**ASIAN INTERNATIONAL ARBITRATION CENTRE**  
(Established under the auspices of the Asian-African Legal Consultative Organisation)

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- (iii) revisions to the process of appointing the Arbitral Tribunal, including a new provision on multi-party appointments (Rule 9);
- (iv) revisions to the Emergency Arbitration provisions to enhance clarity (Rules 17 and 18);
- (v) new provision on Summary Determination for the early dismissal of claims (Rule 19);
- (vi) revisions to the joinder and consolidation provisions, including a new provision for the consolidation of multi-contract disputes (Rules 21 and 22);
- (vii) substantive revisions to the provisions on the closure and termination of proceedings, the technical review process, and the release, correction and interpretation of awards to enhance clarity (Rules 32 – 39)
- (viii) revisions to the provisions relating to costs and deposits to enhance clarity (Rules 40 and 41); and
- (ix) revisions to the confidentiality provision to reflect best practices (Rule 44).

1 We also wish to emphasise that the **2021 Rules** have retained similar deposit calcula-  
2 tions to those found in the **2018 Rules**, which means that the benefits outlined above  
3 can be availed by the Parties at no extra cost. In light of the above, if the Parties and the  
4 Arbitral Tribunal are agreeable to adopting **2021 Rules** to this proceeding, please con-  
5 firm the same in writing to the AIAC. In the absence thereof, the **2018 Rules** shall apply  
6 to this proceeding.

Please do not hesitate to contact the undersigned should you have any queries.

Thank you.

Yours faithfully,



**ANGGUN SULAIMAN**

Senior International Case Counsel

Email: [director@aiac.world](mailto:director@aiac.world); [arbitration@aiac.world](mailto:arbitration@aiac.world); [counsel@aiac.world](mailto:counsel@aiac.world)

c.c. **Joseph Langweiler**  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo  
[Ref.: *please advise*]

**By Email**  
(Email: [langweiler@lawyer.me](mailto:langweiler@lawyer.me))



*[Communication between AIAC – Second Arbitrator concerning appointment largely not provided (see Presiding Arbitrator)]*

**Please quote our reference when replying.**

**Our Ref.: AIAC/INT/ADM-123-2021**

16<sup>th</sup> September 2021

**Prof Nikolaus von Jacquin**

Botanical Gardens 1

1011 Vindobona

Danubia

[Ref. No.: *Please advise*]

**By Post & Email**  
(Email: [nikolaus@jacquin.da](mailto:nikolaus@jacquin.da))

Dear Prof. von Jacquin,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC  
(CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)**

- 1 Warm greetings from the Asian International Arbitration Centre (the “AIAC”).
- 2 We note that the Director of the AIAC has confirmed the First and Second Arbitrators’
- 3 nomination of you as the Presiding Arbitrator pursuant to Rules 4(5)(a) and 4(7) of the
- 4 AIAC Arbitration Rules 2018.
- 5 The Letter of Appointment and five (5) copies of the Letter of Acceptance together with
- 6 the Declaration are enclosed for your execution.
- 7 Please also find enclosed the AIAC’s Code of Conduct for Arbitrators, the Recom-
- 8 mended Good Practices for the Conduct of Arbitration Proceedings, and Drafting of
- 9 Awards in AIAC Administered Arbitrations under the AIAC Arbitration Rules 2018, and
- 10 a copy of the Electronic Fund Transfer (“EFT”) form requesting your banking details for
- 11 ease of fee deposits.
- 12 Kindly return four (4) duly signed copies of the Letter of Acceptance and Declaration
- 13 together with the duly completed EFT form to us for our further action.

Thank you.

Yours faithfully,



**ANGGUN SULAIMAN**

Senior International Case Counsel

Email: [director@aiac.world](mailto:director@aiac.world); [arbitration@aiac.world](mailto:arbitration@aiac.world); [counsel@aiac.world](mailto:counsel@aiac.world)

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**AIAC ARBITRATION [AIAC/INT/ADM-123-2021] IN THE MATTER OF  
AN ARBITRATION BETWEEN ELGUP PLC (CLAIMANT) AND JAJA  
BIOFUEL (RESPONDENT)**

Pursuant to Rules 4(5)(a) and 4(7) of the AIAC Arbitration Rules 2018, I hereby appoint

**PROF. NIKOLAUS VON JACQUIN**

as the Presiding Arbitrator in the above arbitration.

Dated this 16<sup>th</sup> September 2021.

*Tan Sri Suriyadi*

.....  
Tan Sri Datuk Suriyadi Bin Halim Omar  
Director

**IN THE MATTER OF AN AIAC ARBITRATION**

**BETWEEN**

**ELGUP PLC**  
156 Dendé Avenue  
Capital City  
Mediterraneo

**CLAIMANT**

**AND**

**JAJA BIOFUEL LTD**  
9601 Rudolf Diesel Street  
Oceanside  
Equatoriana

**RESPONDENT**

**LETTER OF ACCEPTANCE**

1 The Parties allegedly entered into a contract (No. 41) dated 8<sup>th</sup> April 2020, whereby the  
2 Claimant was to supply RSPO-certified fully segregated palm oil to the Respondent for  
3 the years 2021 to 2025 (hereinafter the “Contract”). The Claimant’s General Conditions  
4 of Sale were allegedly incorporated into the Contract by way of reference.

5 A dispute arose between the Parties regarding the validity of the Contract whereby the  
6 Claimant is of the position that a valid contract exists, which the Respondent has  
7 breached, and the Respondent opposes this position contesting the conclusion of a  
8 contract. The Parties attempted to negotiate and mediate the dispute but were unable  
9 to resolve such.

10 On 14<sup>th</sup> July 2021, the Claimant served a Notice of Arbitration (the “NoA”) on the Re-  
11 spondent alleging that the Respondent breached the Contract and claimed for both  
12 compensatory and declaratory relief. The Claimant is of the position that the tribunal  
13 has the jurisdiction to decide the matter.

14 On 14<sup>th</sup> August 2021, the Respondent served a Response to the NoA (the “RNoA”) on  
15 the Claimant claiming that no valid contract had been entered into and therefore the  
16 tribunal has no jurisdiction over the matter. The Respondent further alleged that should  
17 the tribunal find a valid contract exists, then it validly terminated the Contract.

18 The alleged arbitration clause is contained in Article 9 of the General Conditions of Sale  
19 of the Contract and reads as follows:

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- 1 Any dispute, controversy or claim arising out of or relating to this con-  
2 tract, or the breach, termination or invalidity thereof shall be settled by  
3 arbitration in accordance with the AIAC Arbitration Rules.  
4 The seat of arbitration shall be Danubia.  
5 The language to be used in the arbitral proceedings shall be English.  
6 This contract shall be governed by the substantive law of Danubia.  
7 Before referring the dispute to arbitration, the parties shall seek an ami-  
8 cable settlement of that dispute by mediation in accordance with the  
9 AIAC Mediation Rules as in force on the date of the commencement of  
10 mediation.

71 In the Respondent's email dated 1<sup>st</sup> April 2021, it acknowledged that the Claimant's new  
72 policy was for the Claimant's sale contracts to be submitted to Mediterranean law. The  
73 Claimant confirmed such in its email dated 9<sup>th</sup> April 2021 stating the sale was to be  
74 governed by the law of Mediterraneo.

75 On 15<sup>th</sup> July 2021, the Claimant submitted its Commencement Request to the Director  
76 of the AIAC enclosing the relevant documents. On 16<sup>th</sup> August 2021, the AIAC con-  
77 firmed commencement under Rule 2(2) of the AIAC Arbitration Rules 2018 and raised  
78 the provisional advance deposit, which has been paid in full.

79 In its Commencement Request, the Claimant nominated Ms Tenera Nigrescens as the  
80 First Arbitrator, which was confirmed by the Director of the AIAC on 16<sup>th</sup> July 2021. On  
81 20<sup>th</sup> July 2021, Ms Nigrescens accepted the appointment as First Arbitrator.

82 In its letter to the Director of the AIAC dated 14<sup>th</sup> August 2021, the Respondent nomi-  
83 nated Mr Georges Chavanne as the Second Arbitrator, which was confirmed by the  
84 Director of the AIAC on 15<sup>th</sup> August 2021. On 20<sup>th</sup> August 2021, Mr Chavanne accepted  
85 the appointment as the Second Arbitrator.

86 On 14<sup>th</sup> September 2021, the First and Second Arbitrator nominated me, Prof. Nikolaus  
87 von Jacquin, as the Presiding Arbitrator, which was confirmed by the Director of the  
88 AIAC on 16<sup>th</sup> September 2021.

89 As such, I, Prof. Nikolaus von Jacquin, have been appointed as the Presiding Arbitrator  
90 in the above dispute by the Director of the AIAC pursuant to Rules 4(5)(a) and 4(7) of  
91 the AIAC Arbitration Rules 2018.

92 I, Prof. Nikolaus von Jacquin, hereby confirm my acceptance of the appointment as the  
93 Presiding Arbitrator in the above dispute.

Dated: 17th September 2021



.....  
PROF. NIKOLAUS VON JACQUIN

## DECLARATION

### AIAC ARBITRATION (AIAC/D/ADM-123-2021) IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC (CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)

I, Prof. Nikolaus von Jacquin, having accepted my appointment as the Presiding Arbitrator in the above matter, hereby declare:

- 1) That I am able to act impartially in the above matter.
- 2) That I am independent of each of the parties and that I shall remain so.
- 3) That I have read the Code of Conduct for Arbitrators and agree to abide by it. (Please check the box)
- 4) That I will devote the time necessary to discharge my duties as arbitrator diligently, efficiently and according to the Recommended Good Practices for the Conduct of Arbitration Proceedings and Drafting of Awards in AIAC Administered Arbitrations under the AIAC Arbitration Rules 2018. (Please check the box)
- 5) That I am not at liberty to unilaterally apply a fee arrangement, and that any agreement on fees reached with the parties will be communicated to the Director of the AIAC. (Please check the box)
- 6) I agree that there are, to the best of my knowledge, no facts or circumstances, past or present, likely to give justifiable doubts to my impartiality and/or independence. (Please check the box)
- 7) I agree that I will immediately disclose in writing to the Director of the AIAC and to the parties, should I gain knowledge of any facts or circumstances that may give rise to justifiable doubts as to my impartiality and/or independence during the course of the arbitration proceedings. (Please check the box)

After consideration of paragraphs 2 and 3 of the Code of Conduct for Arbitrators, I wish to make the following disclosures to the Director and to the parties of facts and circumstances which are of such a nature that they may give rise to justifiable doubts as to my impartiality or independence:

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**ASIAN INTERNATIONAL ARBITRATION CENTRE**

(Established under the auspices of the Asian-African Legal Consultative Organisation)

Bangunan Sulaiman, Jalan Sultan Hishamuddin, 50000 Kuala Lumpur, Malaysia

T +603 2271 1000

F +603 2271 1010

E [enquiry@aiac.world](mailto:enquiry@aiac.world)



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Dated: 17<sup>th</sup> September 2021



.....  
PROF. NIKOLAUS VON JACQUIN





**Please quote our reference when replying.**

**Our Ref.: AIAC/INT/ADM-123-2021**

**Your Ref.: Please Advise**

20<sup>th</sup> September 2021

**PROF. NIKOLAUS VON JACQUIN**

Botanical Gardens 1

1011 Vindobona

Danubia

**By Post & Email**

(Email: nikolaus@jacquin.da)

Dear Prof. von Jacquin,

**IN THE MATTER OF AN ARBITRATION BETWEEN ELGUP PLC  
(CLAIMANT) AND JAJA BIOFUEL (RESPONDENT)**

1 We refer to the above matter.

2 We thank you for accepting the appointment as the Presiding Arbitrator and returning  
3 the duly executed copies of the Letter of Acceptance and the Declaration.

4 Please be advised that pursuant to **Rule 14(2)** and **Rule 14(3)** of the **AIAC Arbitration**  
5 **Rules 2018** (the “**2018 Rules**”), the Asian International Arbitration Centre has requested  
6 the Parties to pay a provisional advance deposit in equal shares and the requested sum  
7 has been paid in full. Given that the arbitral tribunal is now fully constituted, you may  
8 proceed with this arbitration proceeding.

9 We also wish to highlight that pursuant to **Rule 13(4)** of the **Rules**, the Parties and the  
10 arbitral tribunal are at liberty to agree on the fees and expenses of the arbitral tribunal  
11 (the “**Fee Agreement**”). This Fee Agreement is to be executed within 30 days after the  
12 appointment of the arbitral tribunal and is to be communicated to the Director of the  
13 AIAC within the said period. For the avoidance of doubt, the Parties and the arbitral  
14 tribunal may discuss the Fee Agreement even in the absence of the payment of the  
15 provisional advance deposit. If the Parties and the arbitral tribunal fail to come to an  
16 agreement upon the expiration of the said 30 days, the fees of the arbitral tribunal shall  
17 be fixed by the Director in accordance with Schedule 1 (*cf.* **Rule 13(2)** of the **2018**  
18 **Rules**). For the avoidance of doubt, the arbitral tribunal may not unilaterally apply dif-  
19 ferent fees.

20 At this juncture, we would like to point out that on 1<sup>st</sup> August 2021, the AIAC Arbitration  
21 Rules 2021 (the “**2021 Rules**”) came into force. The **2021 Rules** contain significant  
22 amendments to the **2018 Rules** to reflect contemporary standards and practices in in-  
23 ternational arbitration. Key features of the **2021 Rules** include:

- (i) the merging of Part I and Part II of the **2018 Rules** to ensure a harmonious and coherent set of procedural rules that are modelled on the UNCITRAL Model Law (as revised in 2013);
- (ii) incorporation of a Fast Track Procedure to provide for expedited arbitrations and minimising the need for a standalone set of AIAC Fast Track Arbitration Rules (Rule 8);
- (iii) revisions to the process of appointing the Arbitral Tribunal, including a new provision on multi-party appointments (Rule 9);
- (iv) revisions to the Emergency Arbitration provisions to enhance clarity (Rules 17 and 18);
- (v) new provision on Summary Determination for the early dismissal of claims (Rule 19);
- (vi) revisions to the joinder and consolidation provisions, including a new provision for the consolidation of multi-contract disputes (Rules 21 and 22);
- (vii) substantive revisions to the provisions on the closure and termination of proceedings, the technical review process, and the release, correction and interpretation of awards to enhance clarity (Rules 32 – 39)
- (viii) revisions to the provisions relating to costs and deposits to enhance clarity (Rules 40 and 41); and
- (ix) revisions to the confidentiality provision to reflect best practices (Rule 44).

1 We also wish to emphasise that the **2021 Rules** have retained similar deposit calculations to those found in the **2018 Rules**, which means that the benefits outlined above  
 2 can be availed by the Parties at no extra cost. In light of the above, if the Parties and the  
 3 Arbitral Tribunal are agreeable to adopting **2021 Rules** to this proceeding, please con-  
 4 firm the same in writing to the AIAC. In the absence thereof, the **2018 Rules** shall apply  
 5 to this proceeding.  
 6

7 Finally, we kindly request you to ensure that the following AIAC email addresses are  
 8 copied to all communications in this matter:

- [director@aiac.world](mailto:director@aiac.world) (Tan Sri Datuk Suriyadi Bin Halim Omar, Director of the AIAC);
- [counsel@aiac.world](mailto:counsel@aiac.world) (Ms Anngun Sulaiman, Senior International Case Counsel);  
and
- [arbitration@aiac.world](mailto:arbitration@aiac.world) (AIAC Arbitration).

Thank you.

Yours faithfully,

*Tan Sri Suriyadi*

**TAN SRI DATUK SURIYADI BIN HALIM OMAR**

Director

Email: [director@aiac.world](mailto:director@aiac.world); [arbitration@aiac.world](mailto:arbitration@aiac.world); [counsel@aiac.world](mailto:counsel@aiac.world)

**Encl.** copy of the Letter of Acceptance and Declaration of the Presiding Arbitrator

**c.c. TENERA NIGRESCENS**

Cocoseae Drive 3  
Capital City  
Mediterraneo

**By Email**  
(Email: [t.nigrescens@mail.me](mailto:t.nigrescens@mail.me))

**GEORGES CHAVANNE**

Rue Ester 37  
Oceanside  
Equatoriana

**By Email**  
(Email: [georges.chavanne@post.eq](mailto:georges.chavanne@post.eq))

**JOSEPH LANGWEILER**

Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo  
[Ref. No.: *Please advise*]

**By Email**  
(Email: [langweiler@lawyer.me](mailto:langweiler@lawyer.me))

**JULIA CLARA FASTTRACK**

Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
[Ref. No.: *Please advise*]

**By Email**  
(Email: [fasttrack@host.eq](mailto:fasttrack@host.eq))

**Prof. Nikolaus von Jacquin**  
Botanical Gardens 1  
1011 Vindobona  
Danubia

By email and courier  
Joseph Langweiler  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo

Julia Clara Fasttrack  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana

cc. Asian International Arbitration Centre

**Arbitral Proceedings**  
**Case Reference: AIAC/INT/ADM-123-2021**

**ElGuP plc (Claimant) v.**  
**JAJA Biofuel Ltd (Respondent)**

25 September 2021

1 Dear Colleagues,

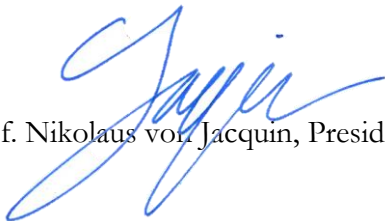
2 After having been duly appointed by the Asian International Arbitration Centre (AIAC), the Arbitral  
3 Tribunal has familiarized itself with the case.

4 To discuss the further conduct of the proceedings the Arbitral Tribunal would like to invite the  
5 Parties to a telephone conference on 7 October.

Kind regards,

For the Arbitral Tribunal

Prof. Nikolaus von Jacquin, Presiding Arbitrator



**Prof. Nikolaus von Jacquin**  
Botanical Gardens 1  
1011 Vindobona  
Danubia

By email and courier  
Joseph Langweiler  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo

Julia Clara Fasttrack  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana

cc. Asian International Arbitration Centre

**Arbitral Proceedings**  
**Case Reference: AIAC/INT/ADM-123-2021**

**ElGuP plc (Claimant) v.**  
**JAJA Biofuel Ltd (Respondent)**

8 October 2020

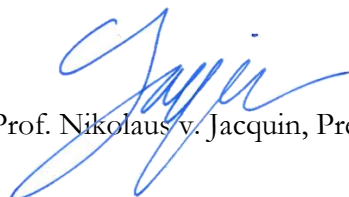
Dear Colleagues,

The Arbitral Tribunal appreciates your cooperation during yesterday's TelCo.

Please find attached Procedural Order No. 1 which is based on the discussion during the TelCo.

Kind regards,

For the Arbitral Tribunal



Prof. Nikolaus v. Jacquin, Presiding Arbitrator

# PROCEDURAL ORDER NO. 1

of 8 October 2021

**in the Arbitral Proceedings**  
**Case Reference: AIAC/INT/ADM-123-2021**  
**ElGuP plc v. JAJA Biofuel Ltd**

- I. Following the receipt of the file from the Asian International Arbitration Center the Arbitral Tribunal held a telephone conference with both Parties on 7 October 2021 discussing the further conduct of the proceedings.
- II. The Arbitral Tribunal takes note of the fact that in the telephone conference of 7 October 2021 both Parties agreed:
  - to conduct the proceedings on the basis of the 2021 AIAC Rules - Global Solution;
  - to limit the first phase of the Arbitration to questions listed below addressing the Arbitral Tribunal's jurisdiction and conclusion of the Contract and the eventual inclusion of Claimant's General Conditions of Sale,
- III. In light of these agreements and considerations, the Arbitral Tribunal hereby makes the following orders:
  1. In their next submissions and at the Virtual Hearing the Parties are required to address the following issues:
    - a. Have the Parties validly agreed on the jurisdiction of the Arbitral Tribunal?
      - i. What is the law governing the Arbitration Agreement?
      - ii. Is the CISG applicable to the conclusion of the Arbitration Agreement in the event it is governed by the law of Mediterraneo?
    - b. Have the Parties concluded a contract in 2020?
    - c. If a contract was concluded were Claimant's General Conditions of Sale validly included into that alleged contract?

The Arbitral Tribunal is aware that the various questions are closely connected to each other. Thus, the Parties are free to decide in which order they address the various issues. **No further** questions going to the merits of the claims, in particular the avoidance or termination of the (allegedly existing) contract should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.

2. The submissions are to be made in accordance with the Rules of the Moot agreed upon at the telephone conference. For their submissions the following Procedural Timetable applies:
  - a. Claimant's Submission: no later than 9 December 2021;
  - b. Respondent's Submission: no later than 27 January 2022.
3. It is undisputed between the Parties that
  - Equatoriana, Mediterraneo and Ruritania are Contracting States of the CISG;





- the general non-harmonized contract law of all three countries is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts;
  - Danubia is not a Contracting State of the CISG;
  - under Danubian general contract law the inclusion of standard conditions into an existing contract requires a clear statement that such conditions are to be applied but not that they are made available to the other party;
  - all four countries are Member States of the New York Convention and their national arbitration law is a verbatim adoption of the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. While Danubia and Equatoriana have adopted Option 1 of Article 7, Mediterraneo and Ruritania have adopted Option 2.
4. There is consistent jurisprudence in Equatoriana that in sales contracts governed by the CISG, the latter also applies to the conclusion and interpretation of the arbitration clause contained in such contracts. By contrast in Mediterraneo, there are conflicting decisions of lower courts and the issue can be considered to be open. In Danubia, courts have generally rejected the application of the CISG to arbitration clauses contained in sales contracts even if the law governing the arbitration agreement was the law of a Contracting State.
  5. In the event Parties need further information, Requests for Clarification must be made in accordance with para. 29 of the Rules of Moot no later than 30 October 2021 via their online party (team) account. No team is allowed to submit more than ten questions. Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the Claimant and its business.
- (2) Questions relating to the Respondent and its business.
- (3) Questions related to Southern Commodities and its business.
- (4) Questions relating to the contracts for the sale of palm kernel oil concluded between Claimant and Southern Commodities in the years 2010 - 2018.
- (5) Questions relating to the commercial side of the agreements.
- (6) Questions relating to the contract template.
- (7) Questions relating to Claimant's General Conditions of Sale.
- (8) Questions concerning the applicable laws and rules.
- (9) Other questions.

IV. Both Parties are invited to attend the Virtual Hearing scheduled for 9 April to 14 April 2022, Vindobona, Danubia. The details concerning the timing and the software to be used will be provided in due course.

Vindobona, 8 October 2021

Prof. Nikolaus von Jacquin, Presiding Arbitrator



## PROCEDURAL ORDER NO. 2

of 8 November 2021

in the Arbitral Proceedings: AIAC/INT/ADM-123-2021  
ElGuP plc v. JAJA Biofuel Ltd

- 1. Where is Claimant's production of palm oil based?** In Mediterraneo and it has an annual output of 30.000t of palm oil and 7.000t of palm kernel oil.
- 2. Are there differences between the certification requirements for "palm kernel oil" and "palm oil" or different contracting practices?** No. In particular, Claimant uses the same template for both types of contracts, though its customers buy palm kernel oil only for the manufacture of foodstuff while in the past Claimant's palm oil has primarily been used to produce biofuel or for industrial application. Southern Commodities had until 2020 only purchased palm kernel oil from Claimant.
- 3. Has there ever been any commercial relationship between ElGuP plc and JAJA Biofuel Ltd before this one?** No, with the exception that ElGuP made delivery under the last two of its 2018 palm kernel oil contracts concluded with Southern Commodities to JAJA Biofuel's subsidiary to which the palm kernel oil business of Southern Commodities had been transferred after Southern Commodities had taken over JAJA Biofuel at the end of 2018.
- 4. What is the exact relationship between JAJA Biofuel and Southern Commodities?** After the acquisition by Southern Commodities JAJA Biofuel is now a 100% subsidiary of Southern Commodities but remained otherwise an independent legal entity. At the same time Southern Commodities' palm kernel oil unit was transferred to JAJA Biofuel and became a wholly owned subsidiary of JAJA Biofuel.
- 5. What happened to the personnel of Southern Commodities' palm kernel oil unit after its transfer to JAJA Biofuel?** Of the 40 employees who had worked previously in the palm kernel oil unit of Southern Commodities in Ruritania only 3 left the company when it became a subsidiary of JAJA Biofuel. 26 became employees of JAJA Biofuel's subsidiary and stayed in Ruritania where the subsidiary was located. 10 employees were moved from the palm kernel oil unit to the newly founded palm oil unit within JAJA Biofuel and had to move to Equatoriana and JAJA Biofuels' headquarters. The same applied to Ms Bupati who was promoted to become the Head of Purchasing for all types of oil products, in part due to her connections with the palm oil industry.
- 6. Is Southern Commodities still operating directly in the palm oil industry, without JAJA Biofuel?** No. After the transfer of its palm kernel oil unit which became a subsidiary of JAJA Biofuel Southern Commodities had not further palm oil activities of its own.
- 7. How many contracts did Mr. Chandra and Ms. Bupati conclude between 2016 and 2018?** Overall they concluded eight contracts in that period, two of which – one large and one small contract - were not signed but were performed. All contracts were based on Claimant's template used also for the contract in dispute and declared Claimant's GCoS to be applicable, as did the pre-2016 contracts. While it cannot be positively excluded that the revised GCoSs with the new arbitration clause were sent with the first contract, it is uncontested that they were not sent when the later seven contracts were concluded. It is equally uncontested that Mr. Chandra informed Ms Bupati via phone that the new arbitration clause was the model clause of the KLRCA (AIAC) providing for the seat of the arbitration in Danubia and the application of Danubian law to the contract.
- 8. When were the most recent contract negotiations between Ms Bupati and Mr Chandra before entering into the contract?** The most recent negotiation between the two occurred in June 2018 directly after the appointment of Mr. Chandra as COO of ElGuP and concerned the

delivery of palm kernel oil for 2019 to Southern Commodities. In 2019 the negotiations for new contracts failed as Mr. Chandra's successor failed since he finally sold Claimant's entire production of palm kernel oil for 2020 to another customer which considerably increased the amount purchased from Claimant. There had been no negotiations with Ms Bupati in her new function.

9. **In what time frame did Ms Bupati typically object to the sending of the contract by Mr Chandra if she did not agree with the proposed contractual terms?** In the three cases where Ms Bupati has raised objections to the contract documents they were raised within one week after she had obtained the documents. That was also the time frame within which she had send back the signed contracts though there have been two cases where that happened after a month.
10. **For the five unsigned contracts between Southern Commodities and CLAIMANT was a letter of credit opened following the receipt of the contracts by Southern Commodities?** Yes, a letter of credit was opened in all cases. All of these contracts concerned shipments which were to be made several months after the conclusion of the contracts. In line with the practice adopted between the Southern Commodities and Claimant were made available six weeks before the actual shipment and not, as foreseen in clause 7a of the model contract within 10 days from the date of contract.
11. **Is it a common business practice in the palm oil industry to include arbitration clauses in the general conditions?** Yes. most contracts are based on contract models providing for arbitration, usually under the rules of specialized commodity arbitration institutions such FOSFA or PORAM, as was the case under Claimant's template until the change in 2016. At the same time most of these contracts explicitly exclude the application of the CISG. There was, however, never such an explicit exclusion in Claimant's templates which consistently had merely declared the law of Danubia to be applicable.
12. **Did Ms. Bupati and Mr. Chandra have the authority to bind ElGuP and JAJA BioFuel?** Yes, and both had empowered their assistants to take the necessary actions for the conclusion of the contract in close cooperation with them. The only reason why Ms Bupati wanted to get management approval were the problems with environmental groups reported in the edition of Eco Trade of 19 December 2019 (R-1) and her interest to ensure that there had been no change in business policy before she entered into such a long-term contract.
13. **What are the "commercial terms" which had been agreed between Mr Chandra and Ms Bupati at the Palm Oil Summit?** These are the terms mentioned by Ms Bupati in the indented part of her email of 1 April 2020, i.e. description of goods, quantity, delivery terms, price. Furthermore, Mr Chandra had also mentioned that under Claimant's new policy contracts should be governed by the law of Mediterraneo while the remaining terms would be those of the previous contracts including Claimant's GCoS. There had, however, been no detailed discussion about those terms but only about the commercial terms.
14. **Has an award already been rendered in the arbitration proceedings between Claimant and its previous customer?** An award was rendered on 3 October 2021 in which the Arbitral Tribunal considered the termination by Claimant's previous customer to be justified under Danubian law. The contract in question was based on the same template and included Claimant's General Conditions of Sale (GCoS). The award was based on a consistent jurisprudence of Danubian courts which have interpreted the Danubian equivalent to Art. 7.3.1 UNIDROIT-Principles. That interpretation is that, in the absence of exceptional circumstances, problems within the seller's supply chain affecting the quality of the goods would generally qualify as a fundamental breach of contract entitling the buyer to terminate the contract. It was the same jurisprudence which led to the advice by Claimant's outside counsel, Mr. Langweiler, to amend the choice of law clause in Claimant's GCoS and to choose the law of Mediterraneo instead. The previous customer was, however, ordered to pay all damages resulting from the replacement sale of the 2020 harvest, as Claimant had not been able to search for other customers due to the late declaration of termination in January. The jurisdiction of the Arbitral Tribunal in that case had

not been contested by either party and the award therefore merely contained a statement that the Arbitral Tribunal had jurisdiction on the basis of the arbitration clause contained in Article 9 of the GCoS.

- 15. Why did the Claimant not modify the arbitration clause when it decided to change the law governing the contract from Danubian contract law to the law of Mediterraneo?** Claimant's inhouse counsel had been so busy in preparing the arbitration proceedings against the previous customer and other work that it completely forgot to implement the advice of Mr. Langweiler, its outside counsel, to amend the choice of law part in Article 9 GCoS. It only did so in November 2020, following the letter by Ms Lever and the ensuing discussions with Mr. Chandra. Due to the arbitration friendly environment in Danubia and the supportive attitude and the experience of Danubian courts there had been a clear advice by Mr. Langweiler to merely change the choice of law part in Article 9 but leave the remainder and in particular the seat of arbitration untouched.
- 16. Has Claimant ever mentioned to Respondent that Claimant wanted the law of Mediterraneo without CISG to govern the Sales Contract, except the assertions made in Mr. Langweiler's letter on page 3 and in the NoA on page 7?** No. With the switch to the law of Mediterraneo Claimant just followed the advice it had received from its outside counsel, Mr. Langweiler, during the preparation of the arbitration against its previous customer. Mr. Langweiler had based its advice at the time on the assumption that the reference to the law of Mediterraneo would include the CISG. In the present case Mr. Langweiler had originally intended to plead that the contract would be governed by the non-harmonized law of Mediterraneo, which he considered to be more favorable to Claimant's case as it had more lenient requirements for the inclusion of standard conditions. He changed that strategy at the last moment when he was looking for potential arbitrators to be appointed by Claimant. During that process he found an article by Ms Nigrescens, one of the leading sales law experts in Mediterraneo, in which she had not only criticized the "overly burdensome rules for the inclusion of standard terms adopted by some courts under the CISG" but had also argued against extending the CISG to arbitration clauses, which she considered to be entirely separate agreements. That change of strategy, was however not reflected in the statement in the letter of 15 July 2021 referring still to a general "exclusion of the CISG".
- 17. Was the cause for termination of the contract and subsequent arbitration between CLAIMANT and their previous client discussed between Mr. Chandra and Ms. Bupati?** No. Mr. Chandra had just mentioned the fact that the contract had been terminated and that proceedings had been initiated as in his view the termination was clearly unjustified.
- 18. Did Ms. Bupati have access to the current version of Claimant's GCoS in spring 2020?** No. While it is undisputed that she had received a copy of the pre-2016 version and had a closer look at them during the 2014 arbitral proceedings between Claimant and Southern Commodities she cannot find the copy of the GCoS anymore. She also has no access to the post-2016 version but cannot exclude that it has been send to her. She can, however, confirm that Mr. Chander has discussed the change to the Arbitration Clause with in 2016. She had never asked for a copy of the new GCoS or enquired about their content after the email from 9 April 2020. The GCoS are also not easily accessible on Claimant's website.
- 19. How did Respondent get hold of the two versions of the arbitration clause submitted as R 4?** Respondent had obtained Claimant's GCoS from Mr Dosep whom it had hired on 1 June 2020. Until then Mr Dosep had been working for the palm kernel oil company which since 2019 has bought Claimant's entire production of palm kernel oil. He had been the account manager who had been responsible for the relationship to Claimant in that company and had actually been hired to strengthen the palm kernel oil business before finally the decision was taken in November 2020 to sell off that unit. Mr. Dosep had copies of the various versions of Claimant's GCoS in his files.

- 20. Had Ms Fauconnier been involved in any prior dealings with Claimant?** No. Before becoming the assistant of Ms Bupati after the latter's promotion in June 2019 Ms. Fauconnier had worked as account managers in JAJA Biofuel soybeans unit. The only person in JAJA Biofuel and Southern Commodities which had concluded any prior contracts with Claimant was Ms Bupati.
- 21. Is there any communication between the parties between 9 April 2020 and 3 May 2020?** No. Ms Bupati had, however, told Mr. Chandra at the Summit that she would be on holiday for three weeks from 5 April 2020 onwards but that her assistant Ms Fauconnier would take care of any issues which might arise and could if need be also contact her during the holidays.
- 22. Why did Ms. Fauconnier want to fix the acceptable bank and discuss a change of documents?** JAJA Biofuel had just been in a major discussion with another supplier which in light of a sharp increase in price wanted to get out of a contract for the delivery of soya beans by alleging the LC provides by JAJA Biofuels had not been issued by an acceptable bank. In light of the size of the contract Ms. Fauconnier wanted to avoid comparable problems in the present contract. Furthermore, she wanted to ensure the Certificates of RSPO conforming oil under clause 7 no. 7 were issued by an independent third party certified by the Equatorian ministry of environment and that Ms Bupati's transparency concerns were reflected
- 23. Did Ms. Fauconnier take any further steps concerning the letters of credit that might be considered as willingness to perform the contract?** Following the call with Mr. Rain, on 30 May 2020 Ms Fauconnier contacted several of the acceptable banks to get quotations as to the terms for the letter of credit. The LCs had to be opened not later than six weeks before the first shipment as had been agreed at the Palm Oil Summit between Ms Bupati and Mr Chandra. Ms Bupati had explained subsequently to Ms Fauconnier that for the larger contracts which had been concluded long before the actual shipment date they had always deviated in this point from the rules in Clause 7a of the Contract. On 2<sup>nd</sup> June Ms. Fauconnier was diagnosed with COVID and away from work for a whole month followed by her annual four weeks holiday. Upon her return to work in early August, there were other more pressing issues, since the first shipment was not before January 2021. Thus no further steps were taken until the termination letter of 30 October 2020. Claimant, by contrast, had in early October contacted several shipping companies to get quotations for the first shipment without, however, having entered into binding contracts yet.
- 24. What happened in the 2014 arbitration between the Claimant and Southern Commodities?** The arbitration had been conducted under the PORAM Rules of Arbitration and Appeal in Danubia. The underlying contract had been one of the few contracts which had not been signed by Ms Bupati but had been performed. After a dispute had arisen the Parties had agreed to arbitrate in accordance with para. 1 of the pre-2016 arbitration clause under the PORAM Rules of Arbitration. At that time the arbitration clause had still been included both in the contract template and the GCoS. In the GCoS there had furthermore been an Article 9 bis, which had provided that the contract was to be "governed by the substantive law of Danubia". Claimant had been very unhappy with the conduct of the arbitration and the arbitrator appointed by the institution. In Claimant's view he had considerably delayed the arbitral proceedings for nearly two years and then had started to work for a company whose major customer was Southern Commodities. Furious that its complaints to the institution had not resulted in the removal of the arbitrator, Claimant had decided to replace the pre-2016 commodity arbitration clause by a clause declaring the rules of a well-known arbitration institution with some knowledge in the trade to be applicable. At the same time it included the choice of law clause in favor of Danubian Law contained until then in Article 9bis of the GCoS into the new Article 9 GCoS. The text of the clause was originally based on a draft of the 2017 Model Arbitration Clause by the Kuala Lumpur Regional Center for Arbitration. In 2018, when the Center changed its name to Asian International Arbitration Center the reference to the institution in the clause was amended accordingly.



- 25. Where was the pre- 2016 arbitration clause placed in previous contracts between Southern Commodities and Claimant?** It was Clause 9 in the contract template and Article 9 in the GCoS. When Claimant removed clause 9 from its template, it forgot to amend the reference to arbitration in the final paragraph of clause 7 accordingly, to which Ms Fauconnier was referring in her discussion with Mr. Rain. After the meeting at the Palm Oil Summit Ms Bupati had told Ms Fauconnier about her long lasting relationship with Mr. Chandra as well as about the 2014 arbitration between Southern Commodities and Claimant under the rules of PORAM. As Ms Fauconnier had not seen Claimant's GCoS and was not aware of the changes made in 2016 she thought that the 2014 arbitration had been conducted under that provision and that Ms Bupati's concerns related to that clause.
- 26. Is there another version of the arbitration agreement contained in Claimant's GCoS, in force between 2016 and 2018?** The arbitration clause submitted by Respondent in R4 as the clause contained in the GCoS after the 2016 changes is in fact already the amended version contained in the GCoS in 2020. The clause used from 2016 – 2018 was identical with the exception that it mentioned the institution's old name, i.e. KLRC.
- 27. What is the incentive for Respondent to engage in mediation under AIAC mediation rules with Claimant?** When it became clear that the negotiation between Mr. Chandra and Mr. Fotearth would probably not be successful Claimant had suggested a mediation under the AIAC Mediation Rules as provided for in Art. 9. Under the condition that this could not be considered to be an acceptance of Claimant's position as to the conclusion of a contract and an agreement on Art. 9 of Claimant's GCoS Mr. Fotearth consented to a mediation.
- 28. Was RESPONDENT in negotiations with other suppliers apart from CLAIMANT?** Yes. As there was very little RSPO-certified palm oil available on the market Ms Fauconnier visited several palm oil producers to express Respondent's interest in purchasing RSPO-certified palm oil in the future. Until October 2020, however, only one further contract for one year had been finally negotiated and signed.
- 29. Have the problems with the RSPO certification that the Claimant has faced effectively been resolved?** Yes. There have no further cases been reported after Claimant fired the controller and delisted the two suppliers.
- 30. Was Respondent's CEO, Ms Youni Lever, aware of the allegations concerning Claimant selling non-RSPO certified palm oil when she approved the transaction with Claimant in March 2020?** No. She only became aware of them after the film "Saving Lucy" was released in Equatoriana on 15 June 2020.
- 31. What is stated in Clause 4 of CLAIMANT's GCoS?** "In case of any breach of contract, in particular concerning the conformity of the goods, the seller is given two months after being notified by the buyer to remedy such breach. Only if the remedial actions were not successful may the buyer terminate the contract." The clause is not unusual for the palm oil industry in that part of the world.
- 32. How do national courts in Danubia and Mediterraneo address the matter of the applicable law to the arbitration clause?** As there are no specific choice of law provisions for arbitration agreements Courts in both jurisdictions determine the law applicable to the arbitration in accordance with the rule contained in Art. V 1a NYC or the equivalent provision of the local arbitration law.
- 33. Are the Parties in agreement that should a contract have been concluded at least all other provisions apart from the arbitration clause are governed by the law of Mediterraneo, including the CISG?** Yes
- 34. Have the relevant states (Mediterraneo, Equatoriana, Ruritania) declared any reservations according to Articles 92, 94, 95 or 96 CISG?** No



35. **Are the rules on formation of contracts in the (general) contract law of Danubia based on the UNIDROIT Principles?** Yes and as there are no special rules for the formation of arbitration agreements beyond those in Art. 7 of the national arbitration law, these rules are considered to be applicable also for the conclusion of arbitration agreements. Furthermore, individually agreed clauses always prevail over standard terms under Danubian Contract Law.
36. **Are Danubia, Equatoriana and Mediterraneo civil law country or common law countries and what are their conflict of laws rules?** Equatoriana is a common law country while the other two are civil law countries. All three have incorporated the Hague Principles on Choice of Law in International Commercial Contracts into their national conflict of laws rules.
37. **Is there any relevant trade usage in the palm oil industry which plays a role for the dispute beyond the explicitly mentioned facts as to contracting practices?** No.
38. **Have the various witness statements prepared with the help of lawyers?** No
39. **The Arbitral Tribunal would like to make the following correction and clarifications to its Procedural Order 1:**
- a. In paragraph III.1a the Parties should address the jurisdiction of the Arbitral Tribunal and in particular – but not necessarily exclusively – the questions (i) and (ii)
  - b. In paragraph III.1 there is a comma missing as it should state “No further questions going to the merits of the claims, in particular the avoidance or termination of the (allegedly existing) contract, should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.” Those further issues include inter alia the alleged (non-)conformity of the oil.
  - c. In the PO no. 1 it should read 8 October 2021 (instead of 2020) and several dates in the declaration of acceptance of the Presiding Arbitrator should be changed from 2021 to 2021 (p. 38, para. 2 and 3) or the date of commencement from 16<sup>th</sup> August 2021 to 16<sup>th</sup> July 2021.
40. **Claimant would like to make the following corrections and clarifications to its submissions:**
- a. In para. 23 of the Notice for arbitration it should read in relation to request no. 3: “was given a suitable period of **two** month” (instead of one)
  - b. The reference in Mr. Rain’s email l of 9 April 2020 to “Claimant’s” – while correct with hindsight – should have been to the “**Seller’s** General Conditions of Sale”
41. **Respondent would like to make the following corrections and clarifications to its submissions:**
- a. The author of the email of 1 April 2020 referred to in para. 16 of the Response to the Notice of Arbitration was not “Ms Fauconnier” as stated but Ms Bupati.
  - b. The reference on pa. 27 para. 11 should be to “Respondent Exhibit R **4**” and not “3”.

Vindobona, 8 November 2021

For the Arbitral Tribunal

Prof. Nikolaus von Jacquin, Presiding Arbitrator