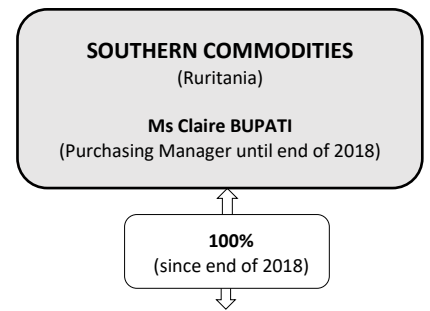


CHEAT SHEET



CLAIMANT

ElGuP plc
(Mediterraneo)

Mr James CHANDRA (COO since June 2018) [WS p9 C1]
Mr Forrest RAIN (Mr CHANDRA's assistant) [WS p18 C5]

CONTRACT FOR THE SUPPLY OF RSPO-CERTIFIED PALM OIL (dated 8 April 2020) [C3 pp13-16]

RESPONDENT

JAJA Biofuel Ltd
(Oceanside, Equatoriana)

Ms Youni Lever (CEO)
Mr Fotearth (COO)
Ms Claire BUPATI (Head of Purchasing since March 2019) [WS p31 R3]
Ms Fauconnier (Ms BUPATI's assistant)

2010-2018:

- Approx. **40 contracts** concluded between Claimant (**Mr Chandra**) and Southern Commodities (**Ms Bupati**) [C1 p9 §2; R3 p31 §2]. **5 not signed** but performed [C1 p9 §3; R3 p31 §3]
- **Before 2016:** Arbitration Agreement: FOSFA/PORAM Contract Form 81 [R4 p32].
- **Since 2016:** Arbitration Agreement in Claimant's GCoS [C1 p9 §4] providing for AIAC Rules [R4 p32]
- Mr Chandra informed Ms Bupati about AIAC Rules in a phone conversation in 2016 [C1 p9 §4; RNoA p27 §12; PO 2 p48 §7].
- **June 2018:** Mr Chandra becomes COO of Claimant [C1 p9 §2].
- **End of 2018:** Respondent was acquired by Southern Commodities [C1 p10 §2; R1 p29]

Since 2019:

- **28 Mar 2020:** (possible offer) During the **Palm Oil Summit** in Capital City in Mediterraneo, Mr Chandra (Claimant) and Ms Bupati (Respondent) agreed on commercial terms for a 5 year, 20,000t palm oil supply contract [NoA p5 §5; RNoA p26 §7; PO2 p49 §13]. Mr Chandra informed Ms Bupati that Claimant would use the same contract template and the same GCoS as with Southern Commodities, except that the law of Mediterraneo (no longer Danubia) applies [RNoA, p26 §10].
- **1 April 2020:** [C2 p12] (possible (i) **acceptance of Summit offer**, or (ii) **first time offer**) E-mail from Ms Bupati (Respondent) to Mr Chandra (Claimant) subject "**Purchase offer**" (1) ordering 20,000t palm oil and requesting that Claimant prepare the relevant contract documentation; (2) discussing arbitration and the applicable law: "**As already indicated at the Summit the submission of the sales contract to Mediterranean law [...] is less a problem for us than the submission to arbitration, in particular if we submit to an institution which exclusively deals with palm oil**". [C2 p 12 5th para]
- **9 April 2020:** [C4 p17]: (possible (i) **acceptance of 1 April e-mail** or (ii) **counter offer**) E-mail from Mr Rain (Claimant), to Ms Fauconnier (Respondent) (1) **enclosing the Contract** signed by Mr Chandra, (2) pointing that **the sale will be governed by the law of Mediterraneo** and (3) that **Claimant's GCoS apply** to issues not regulated in the Contract – but the **GCoS were not enclosed**, and requesting to return of a signed copy. [C4 p17]
- **16 April 2020:** (possible **acceptance through silence/usage**) **Expiration of one week period for objections** established practice through prior contracts [PO2 p49 §9].
- **3 May 2020:** [R2 p30] E-mail from Ms Fauconnier (Respondent) to Mr Rain (Claimant) subject "Determination of 'Recognised Bank'/ further terms of sales contract" (possible (i) **continuation of negotiations** or (ii) **performance steps**), discussing details on **opening a letter of credit, changes to the existing terms** and offering to meet in person to **negotiate open issues but no signed copy of the Contract returned** [R2 p30; C1 p11 §14; C5 p18 §§6-7; C3 p16].
- **29 Oct 2020:** Commodities News article reporting stop of negotiations [C6 p19].
- **30 Oct 2020:** Letter from Ms Lever (Respondent's CEO) to Mr Chandra (Claimant) **terminating any further negotiations on the delivery of palm oil and renouncing all existing contractual relations** [C7 p20].
- **Nov. 2020–Jul. 2021:** Mediation under the AIAC Mediation Rules failed [NoA p6 §§11-13; C1 p11 §18; PO2 p52 §27].
- **15 July 2021:** NoA - Notice of Arbitration [pp25 et seqq.].

PROCEDURAL ISSUES (a) [PO1 p46, III]

Have the Parties validly agreed on the jurisdiction of the Arbitral Tribunal?

Sub-issue (i): What is the law governing the Arbitration Agreement?

Claimant: Law of Danubia applies

→ Arbitration Agreement is valid

Respondent: Law of Mediterraneo applies

→ no valid Arbitration Agreement

Sub-issue (ii): Is the CISG applicable to the conclusion of the Arbitration Agreement in the event it is governed by the law of Mediterraneo?

Claimant: CISG excluded

→ UNIDROIT Principles (Art 2.1) apply

Respondent: CISG applies

MERITS ISSUES (b and c) [PO1 p46, III]

The Parties agree that (except for the arbitration agreement) a contract, if concluded, is governed by the law of Mediterraneo, including CISG [PO 2 §33]

(b) Have the Parties concluded a contract in 2020?

Claimant: Contract concluded (4 possible scenarios)

Respondent: Contract not concluded

(c) If a contract was concluded, were Claimant's GCoS (General Conditions of Sale) validly included?

Claimant: GCoS validly included

Respondent: GCoS never made available

Art. 8 CISG (Intent of the Parties);
Art. 9 CISG (Usage and Practices);
Art. 11 CISG (Form of the Contract);
Art. 14-24 CISG (Formation of the Contract)

ARBITRATION AGREEMENT

Claimant's GCoS (2016), Article 9 [R4 p32]

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the **AIAC Arbitration Rules**. The seat of arbitration shall be **Danubia**. The language to be used in the arbitral proceedings shall be **English**. This contract shall be governed by the substantive law of **Danubia**. [...]"

Hyperlinks to Resources:

THE PROBLEM - Case File including PO2

Analysis for Arbitrators

CISG (all involved states contracting except Danubia)

CISG Advisory Council Opinion No 13 on Inclusion of Standard Terms

UNCITRAL Model Law on Int. Commercial Arbitration

UNIDROIT Principles on Int. Commercial Contracts

New York Convention

AIAC Arbitration Rules (2021)