

**GMU-CI Arb International Maritime Arbitration Competition,  
2022, Moot Problem.**

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**TCALP**

**TC ASIA LAW PARTNERSHIP**

Our Ref: TCALP/Dec/2021-001

Date: 1<sup>st</sup> November 2021

Direct Line: +65 656565 5656/5657

[Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

Thomas Chan, Partner

**The Gujarat International Maritime Arbitration Centre**

Gujarat Maritime University,  
Transitory campus GNLU,  
Knowledge Corridor, Attalika Avenue,  
Koba, Gandhinagar, India - 382426

By Email and Registered Post

FOR THE ATTENTION OF THE CHAIRMAN OF THE GIMAC  
([chairman@gimac.org.in](mailto:chairman@gimac.org.in))

**NOTICE OF ARBITRATION**

Dear Sirs and Madams:

**IN THE MATTER OF A GIMAC ARBITRATION UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

1. We are the legal representatives of Kalinga International Commodities Private Limited (hereinafter known as KICPL), the Claimant, and stated below herein is our Client's Notice of Arbitration:
2. The Claimant, KICPL is a private company incorporated on 10 August 1992. It is classified as a non-govt company and is registered at RoC-Zindian. Their state of registration is Utkalisha. The Claimant is a leading commercial exporter/importer of different commodities (i.e. export of coal and other minerals and import of machinery/equipment, petroleum and chemical products).
3. The Respondent 1, Malaca International Shipping Pte Ltd (hereinafter known as MISPL) is a private company registered at Accounting and Corporate Regulatory Authority and incorporated on 4 November 1990 in Zingapore with its Unique Entity Number (UEN) as 19901104-MIS-H.
4. The Respondent 2, Malaca Resources Sdn Bhd (hereinafter known as MRSB) is a private company registered in Zalyasia that deals with the production of iron pellets.
5. The Claimant and the Respondents entered into a Long-Term Contract dated 15 November 2019 (the "Contract"), where the Claimant agreed to buy and the Respondents agreed to sell 24 shipments of Zalyasian iron ore pellets throughout the contractual period, which was agreed to be between January 2020 till December 2023 with 6 shipments per year at the discretion of the seller. The Claimant had informed the Respondents that a higher quality of iron pellets are a prerequisite as one of the products of the steelmaking was for the manufacture of steel components towards ready-made bridges for military and non-military use.
6. In the terms of the contract, it was agreed that each shipment would be 100,000 WMT (+/- 5% at seller's option); with one shipment to be performed every two months (at seller's option, and the seller (Respondent 1 and Respondent 2) would spread the shipments across fairly and evenly basis so that each year the overall shipment quantity is 600,000 WMT (+/- 5% at seller's option) for every year. The Claimant had also informed

the Respondents, that the timing of the delivery was essential as the Claimant was supposed to manufacture products based on the shipping timelines.

7. The shipments were due to commence latest from January 2020 onwards. The Respondents provided the first shipment of 94,900 WMT on 30 January 2020. An extension was provided to Respondents for the contractual performance of the contract on 13 May 2020. Irrespective of the extension, Respondent No. 1 failed to provide the remaining shipments, in breach of its obligation as seller under the Contract. The Claimant sent several requests to Respondent 1 to perform the Contract, the Respondents continued to be in breach of the Contract.
8. The Respondents sent the 2<sup>nd</sup> shipment on 6 May 2020 which was scheduled to arrive at Baradip on 13 May 2020. However, the cargo was delayed by 21 days as it arrived on 3 June 2020. Further, the cargo delivered by the respondent was damaged by rainwater. The Claimant also noticed that the Respondents failed to cover the cargo properly with a heavy-duty PVC tarpaulin. Based on the assessment by an independent surveyor engaged by the Claimant, the moisture in the pellets were assessed at approximately 9%.
9. On 3 June 2020, it came to the notice of the Claimant that due to the Respondents fault in management of the cargo, the quality of the iron pellets have been significantly reduced and due to over-exposure to sea, the standard of the iron pellets was reduced in terms of its effectivity.
10. On 5 October 2020, the Claimant issued a Notice of Demand to the Respondents, putting the Respondents on notice that it was in breach of the Contract, and demanded the Respondents to urgently confirm whether they were still intending to perform the Contract. Enclosed is the Notice of Demand is annexed as "**NoD**".
11. On 14 October 2020, Respondent 1 replied to the Notice of demand and confirmed that it had not provided any remaining shipments under the Contract, and it would not be making any further shipments because it took the position that it was under no obligation to do so. The Respondent also raised the invoice towards the payment for the first Shipment on 30 January 2020 remained unpaid till date. Enclosed is Respondent's Response to Notice of Demand is annexed as "**RNoD**".
12. Given the Respondents clear intention not to perform the Contract, the Claimant took note of the Respondent's repudiatory breach and terminated the Contract on 15 October 2020. Enclosed is Claimant's Notice of Termination is annexed as "**NoT**".
13. The Claimant seeks to claim and recover from the Respondents all loss, damages and expenses incurred as a result of the Respondent's breach of the Contract and demands that this dispute is referred to arbitration.

#### **ARBITRATION AGREEMENT AND GOVERNING LAW**

14. Clauses 14 and 15 of the Contract is provided as follows:

##### **Clause 14: ARBITRATION**

*Any dispute arising out of or in connection with this contract shall be referred to and finally resolved by arbitration administered by the Gujarat International Arbitration and Mediation Centre ("GIMAC") in accordance with the Arbitration Rules of the GIMAC for the time being in force, at the date of the commencement which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Zingapore and the place of the arbitration shall be GIFT City. The Tribunal shall consist of three arbitrators, where each party shall appoint an arbitrator and both the nominated arbitrators shall appoint the presiding arbitrator. The language of the arbitration shall be English.*

##### **Clause 15: GOVERNING LAW**

*This contract shall be governed by and construed in accordance with English law.*

## RELIEF AND QUANTUM OF CLAIM

15. The Claimant is yet to confirm the losses and damages as the same is yet to fully crystalize. The Claimant accordingly reserves its right to amend and/or supplement its claims as necessary.
16. The Claimant hereby claims the following from the Respondents:
  - a. All losses and damages suffered by the Claimant for the Seller's failure to ship 24 shipments. In this regard, the provisional losses and damages suffered by the Claimant for 24 shipments is **US\$ 120,000,000.00**.
  - b. In the alternative, all losses and damages suffered by the Claimant for the Seller's breach of Contract, to be assessed by the Tribunal.
  - c. Legal costs and costs of the arbitration.
  - d. Interest on all sums awarded by the Tribunal, including but not limited to interest on the principal claim sum awarded, as well as interest on legal costs and costs of the arbitration, at a reference rate and period(s) as determined to be appropriate by the Tribunal.

## PROPOSED CLAIMANT NOMINATED ARBITRATOR

17. The Claimant proposes Mr. Rahul Rastogi, who is on the GIMAC's panel of arbitrators, as arbitrator, and invites the Respondent to agree to the Claimant's proposal.
18. Mr. Rastogi has consented to the Claimant's nomination.
19. In the event that the parties are unable to agree on the three-member tribunal, then the GIMAC may proceed to appoint the Arbitral Tribunal under the GIMAC Rules. The Claimant suggests that the arbitral tribunal should be experienced in English law shipping and commodity arbitrations.
20. All the Claimant's rights and remedies are fully reserved, and nothing stated or unstated herein shall be construed as an admission by the Claimant or a waiver of any of its rights or remedies.

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**Thomas Chan, Partner**  
**Claimant's Representative**

**TCALP**

**TC ASIA LAW PARTNERSHIP**

Our Ref: TCALP/Oct/2020-001

Date: 5<sup>th</sup> October 2020

Direct Line: +65 656565 5656/5657

[Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

Thomas Chan, Partner

**To:**

Malaca International Shipping Pte Ltd

#1-2, Corporate Headquarters,

Raffles Street, Zingapore

6500101

**By Email and Registered Post**

**NOTICE OF DEMAND – CONTRACT BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD AND  
MALACA INTERNATIONAL SHIPPING PTE LTD**

Dear Sirs and Madams:

We write to inform you that TCALP have been confirmed by Kalinga International Commodities Pvt Ltd (our Client) to be its legal representatives. We refer to the above matter and contract between our Client and Malaca International Shipping Pte Ltd dated 15 November 2019.

We request the Respondent to confirm if it intends to perform the Contract, and please proceed with the delivery of the remaining shipments to the Claimant, as previously agreed upon.

Please note, that the Respondent is in breach of contract towards the delivery of the first two shipments pursuant to the terms of the Contract.

We have received no response to our earlier correspondences in the matter, and request you to resolve this matter at the earliest.

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**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

*LS Partners*

Your Ref: TCALP/Oct/2020-001  
Our Ref: LSP/2020/001-MISPL  
Date: 14<sup>th</sup> October 2020  
Direct Line: +65 5656565 6565/6557  
[Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg)  
Darius Menon, Managing Partner

**TC ASIA LAW PARTNERSHIP**

Unit A2/12, Lotus Road,  
Zingapore  
By Email

**RESPONSE TO NOTICE OF DEMAND**

Dear Sirs & Madams:

We refer to your Letter dated 5<sup>th</sup> October 2020 served on our client (Malaca International Shipping Pte Ltd, hereinafter referred to as MISPL) on 7<sup>th</sup> October 2020. Please address all future correspondence relating to the Notice of Demand to our firm.

On the instructions of our client, we deny the entire contents of your Notice of Demand.

We bring it to your attention that your client has failed to make payment to date towards the 1<sup>st</sup> Shipment delivered under the Contract dated 15<sup>th</sup> November 2019. The invoices for the first two shipments were issued on 1 January 2020 and 2 March 2020 respectively. We have sent three reminders on 14 February 2020, 2 March 2020 and 17 March 2020 towards the 1<sup>st</sup> Shipment, and three reminders on 30 April 2020, 15 May 2020 and 5 June 2020 towards the 2<sup>nd</sup> Shipment. Kindly expedite the payments at the earliest.

We also deny paragraph 3 of the Notice of Demand, as the 2nd shipment was delivered by the Respondent as per the terms of the Contract, however, your client wrongfully refused to take the delivery of the shipment resulting in damages to our client.

Given the pending payment towards the first two shipments and the prevailing circumstances, the Client has confirmed that it will not make any further shipments until the pending claims are cleared because the Client was under no obligation to do so.

Our client reserves its right to bring necessary claims against your client towards the non-payment for the first two shipments and any other damages suffered.

Solicitors for the MISPL

*DM*

**LS Partners**

Darius Menon, Managing Partner

This Response to Notice of Demand is filed by LS Partners, Solicitors for MISPL and whose address for service is at Unit Z1/11, Orchid Road, Zingapore.

Date: 14<sup>th</sup> October 2020

Direct Line: +65 5656565 6565/6557

[Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg)

Your Ref: TCALP/Oct/2020-001

Our Ref: LSP/2020/001-MISPL

**TCALP**

**TC ASIA LAW PARTNERSHIP**

Our Ref: TCALP/Oct/2020-001

Date: 15 October 2020

Direct Line: +65 656565 5656/5657

[Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

Thomas Chan, Partner

**To:**

LS Partners

Unit Z1/11, Orchid Road, Zingapore

**By Email and Registered Post**

**NOTICE OF TERMINATION – CONTRACT BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD  
AND MALACA INTERNATIONAL SHIPPING PTE LTD**

Dear Sirs and Madams:

We refer to our Letter of Demand dated 5<sup>th</sup> October 2020, and your Response to Letter of Demand dated 14<sup>th</sup> October 2020.

We are surprised to notice that your Client is seeking payment for 1<sup>st</sup> Shipment which did not meet the required quantity for each shipment under the Contract, and further seeking payment and damages for the 2<sup>nd</sup> Shipment which did not meet the contractual standards *i.e. the quality of the iron pellets have been significantly reduced due to over-exposure to sea*, and accordingly, our client rightfully refused delivery of 2<sup>nd</sup> Shipment.

In light of the above circumstances, our Client hereby gives the Notice of Termination under the Contract.

We intend to seek resolution of the dispute pursuant to the Contract.

---

**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

**Correspondences via Email**

**From:** Claimant's Representatives [Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)  
**To:** Respondent's Representatives; [Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg)

**Date:** 15<sup>th</sup> October 2020

**Subject Line:** Request for Dispute Resolution Pursuant to Clause 13 of Contract

Dear Sirs and Madams:

**CONTRACT BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD AND MALACA INTERNATIONAL SHIPPING PTE LTD**

We request you to appoint a Senior Management officer by 22 October 2020.

We hereby appoint Mr Ram Singh as our representative officer to negotiate the dispute.

Your response on this matter at the earliest will be appreciated.

Thank you.

---

**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

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**Correspondences via Email**

**From:** Claimant's Representatives [Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)  
**To:** Respondent's Representatives; [Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg); [malacaresourcessdnbhd.director@mrsb.zg](mailto:malacaresourcessdnbhd.director@mrsb.zg)

**Date:** 26<sup>th</sup> October 2020

**Subject Line:** Re: Request for Dispute Resolution Pursuant to Clause 13 of Contract

Dear Sirs and Madams:

**CONTRACT BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD AND MALACA INTERNATIONAL SHIPPING PTE LTD**

We received no response from Respondent Representatives regarding the appointment of a Senior Management officer by 22 October 2020. We request you to kindly update us on the appointment within the next 7 days.

We previously appointed Mr Ram Singh as our representative officer to negotiate the dispute.

Your response on this matter at the earliest will be appreciated.

Thank you.

---

**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

**Correspondences via Email**

**From:** Claimant's Representatives [Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

**To:** Respondent's Representatives; [Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg); [malacaresourcessdnbhd.director@mrsb.zg](mailto:malacaresourcessdnbhd.director@mrsb.zg)

**Date:** 6<sup>th</sup> November 2020

**Subject Line:** Re: Request for Dispute Resolution Pursuant to Clause 13 of Contract

Dear Sirs and Madams:

**CONTRACT BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD AND MALACA INTERNATIONAL SHIPPING PTE LTD**

We received no response from Respondent Representatives regarding the appointment of a Senior Management officer by Respondent. We request you to proceed with mediation in the above matter.

Kindly provide your list of proposed mediators for joint confirmation of the mediator to be appointed. Alternatively, we request your confirmation, if we can proceed under institutional mediation.

Your response on this matter at the earliest will be appreciated.

Thank you.

---

**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

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**Correspondences via Email**

**From:** Claimant's Representatives

**To:** Respondent's Representatives; [malacaresourcessdnbhd.director@mrsb.zg](mailto:malacaresourcessdnbhd.director@mrsb.zg)

**Date:** 19<sup>th</sup> February 2021

**Subject Line:** Mediation - Dispute Resolution Pursuant to Clause 13 of Contract

Dear Sirs and Madams:

**CONTRACT BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD AND MALACA INTERNATIONAL SHIPPING PTE LTD**

We have received no response on the appointment of a mutual mediator to be agreed between the Parties, and neither did the Respondent agreed to mediation under an Arbitral Institution.

In these circumstances, we reserve our rights and we will proceed with legal proceedings pursuant to the Contract.

Thank you.

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**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

**TCALP**

**TC ASIA LAW PARTNERSHIP**

Our Ref: TCALP/Nov/2020-001

Date: 2<sup>nd</sup> November 2021

Direct Line: +65 656565 5656/5657

[Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

Thomas Chan, Partner

**To:**

**The Gujarat International Maritime Arbitration Centre**

Gujarat Maritime University,  
Transitory campus GNLU,  
Knowledge Corridor, Attalika Avenue,  
Koba, Gandhinagar, India - 382426

By Email and Registered Post

FOR THE ATTENTION OF THE CHAIRMAN OF THE GIMAC  
([chairman@gimac.org.in](mailto:chairman@gimac.org.in))

**Cc to:**

LS Partners  
Unit Z1/11, Orchid Road, Zingapore

**By Email and Registered Post**

**COMMENCEMENT REQUEST – GIMAC ARBITRATION UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE (2021) BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

Dear Sirs and Madams:

We refer to our Notice of Arbitration dated 1<sup>st</sup> November 2021 which was served on GIMAC on 1<sup>st</sup> November 2021, by hand & email.

Pursuant to Rule 3.3 of the GIMAC Arbitration Rules, kindly confirm the commencement date for the arbitration. We are in the midst of confirming the party nominated arbitrators.

In case, both parties / nominated arbitrators cannot agree on the Presiding Arbitrator, then the Parties shall request the Chairman of the GIMAC Council to appoint the Presiding Arbitrator pursuant to Rule 11.3 of the GIMAC Arbitration Rules.

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**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

[ADD LOGO]

**The Gujarat International Maritime Arbitration Centre**

Gujarat Maritime University,  
Transitory campus GNLU,  
Knowledge Corridor, Attalika Avenue,  
Koba, Gandhinagar, India - 382426

Our Ref: **GIMAC CASE REF NO. 1001-2021**  
Your Ref: TCALP/Nov/2020-001

Date: 3<sup>rd</sup> November 2021

**To:**

TC ASIA LAW PARTNERSHIP  
Unit A2/12, Lotus Road, Zingapore

LS Partners  
Unit Z1/11, Orchid Road, Zingapore

**COMMENCEMENT DATE**

**IN THE GIMAC ARBITRATION (CASE REF NO. 1001-2021) UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

Dear Sirs and Madams:

We acknowledge receipt of the Notice of Arbitration dated 1<sup>st</sup> November 2021.

We are pleased to confirm that the above-mentioned GIMAC Arbitration commenced on 1<sup>st</sup> November 2021 pursuant to Rule 3.3 of the GIMAC Arbitration Rules.

For all future communications in the above matter, please send correspondence to the GIMAC Secretariat.

Thank you.

---

**Dr. S. Shanthakumar**  
CHAIRMAN OF THE GIMAC  
([Chairman@gimac.org.in](mailto:Chairman@gimac.org.in))

Your Ref: TCALP/Dec/2021-001  
Our Ref: LSP/2021/001-R  
Date: 29<sup>th</sup> November 2021  
Direct Line: +65 5656565 6565/6557  
[Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg)  
Darius Menon, Managing Partner

**The Gujarat International Maritime Arbitration Centre**

Gujarat Maritime University,  
Transitory campus GNLU,  
Knowledge Corridor, Attalika Avenue,  
Koba, Gandhinagar, India - 382007

By Email and Registered Post

FOR THE ATTENTION OF THE CHAIRMAN OF THE GIMAC  
([chairman@gimac.org.in](mailto:chairman@gimac.org.in))

**RESPONSE TO NOTICE OF ARBITRATION**

Dear Sirs:

**IN THE MATTER OF AN ARBITRATION UNDER GIMAC ARBITRATION RULES 2021 BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT)**

**INTRODUCTION**

1. This Response to the Notice of Arbitration (“the Response”) is submitted on behalf of the Respondent, Malaca International Shipping Pte Ltd (“MISPL”), in response to the Claimant’s Notice of Arbitration dated 01.11.2021 (“the Notice of Arbitration”).
2. In this Response:-
  - 2.1 MISPL adopts the definitions and/or abbreviations used in the Claimant’s Notice of Arbitration dated 01.11.2021 (“the Notice of Arbitration”).
  - 2.2 Unless expressly admitted, each paragraph of the Notice of Arbitration is denied by MISPL.

**B. DETAILS OF THE RESPONDENT**

3. Malaca International Shipping Pte Ltd (“MISPL”) is a company incorporated in Zingapore. The address and contact details of MISPL are as follows:-

Respondent’s name: Malaca International Shipping Pte Ltd

Address: #1-2, Corporate Headquarters, Raffles Street, Zingapore, 6500101

**C. RESPONSE TO THE NOTICE OF ARBITRATION**

4. As to paragraphs 5 to 13, and 16 of the Notice of Arbitration, MISPL responds as follows:

- 4.1 It is admitted that the documents as identified and set out therein are the relevant contractual documents and/or legal instruments;
- 4.2 MISPL however takes issue with the interpretation and emphasis employed by the Claimant ("KICPL") in describing these documents and/or legal instruments, which are inaccurate and/or paints an incomplete picture;
- 4.3 In the circumstances, MISPL reserves the right to put forward in its written submission, its own interpretation and narrative pertaining to the contractual documents and/or legal instruments identified at paragraphs 10 to 12 of the Notice of Arbitration.
5. MISPL will further add as follows:-
- 5.1 Clause 13 of the Contract provides that:-
- Clause 13 - Dispute Resolution
- "The Parties hereby agree that any disputes arising under this Contract will be resolved in accordance with the dispute resolution mechanism provided in this Contract. Either party can appoint a Senior Management officer to negotiate the dispute notified, and both parties shall mutually negotiate. If both parties fail to negotiate within 14 days, then either Party may proceed with mediation. If the mediation fails within 30 days, then either may subsequently proceed with arbitration."*
6. For the avoidance of doubt, MISPL invokes the said arbitration agreement, with the objection that the arbitration was incorrectly commenced before the GIMAC. Only limited disputes & claims between two parties i.e. the **MISPL and KICPL** arising under and in connection with the Contract can be referred to this arbitration. Therefore, Malaca Resources Sdn Bhd ("**MRSB**") is not a party to the Contract between the Claimant and the Respondent.

## **(II) Response to Matters Raised in The Notice of Arbitration**

7. Paragraphs 7 to 19 of the Notice of Arbitration are denied.
8. The Respondent further states that the delayed delivery of the 2<sup>nd</sup> Shipment was due to Enhanced Movement Control Order in Malaysia between 27<sup>th</sup> March 2020 and 14<sup>th</sup> May 2020, as well as Circuit Breaker in Singapore between 7<sup>th</sup> April 2020 and 2<sup>nd</sup> May 2020. The Respondent further asserts that the ship faced quarantine in the Zindian east-coast port of Baradip due to the Zindian state policy on the quarantining of ships.
9. Further, during the period of quarantine in the Zindian sea territory due to unprecedented rains and thunderstorms for 9 continuous days, the cargo-carrying the shipments faced excessive rain which was not foreseen by the Respondents.

## **(III) RELIEF AND REMEDY SOUGHT**

10. MISPL respectfully requests the Arbitral Tribunal to dismiss KICPL's claims in their entirety, with costs to MISPL.
11. MISPL further seeks, inter alia, the following relief and remedies in the Arbitration:-

- 11.1 An award and/or order for KICPL to pay MISPL for non-payment towards deliveries, and compensation for loss and damage suffered as a result of KICPL's breaches, currently unquantified, subject to further revision and assessment.
- 11.2 An award and/or order for KICPL to pay MISPL all costs of the Arbitration, including MISPL's representatives' costs and the Arbitral Tribunal's fees and expenses, on a solicitor-client basis;
- 11.3 Pre-Award and Post-award interest on any sums to be paid by KICPL to MISPL; and
- 11.4 Such further and/or other relief as the Arbitral Tribunal deems fit and/or appropriate.

**(IV) CONSTITUTION OF ARBITRAL TRIBUNAL, LANGUAGE AND PLACE OF ARBITRATION AND OTHER PROPOSALS**

12. The arbitration proceedings shall be conducted in accordance with the GIMAC Rules.
13. The dispute shall be referred to Three-member Tribunal; and
14. The Seat of Arbitration shall be "Zingapore".
15. For the avoidance of doubt, the Arbitration shall be held in GIFT City at GIMAC.
16. Given the complexity of the arbitration, the Arbitration shall proceed by way of substantive oral-hearing in person only.

**(V) CONSTITUTION OF ARBITRAL TRIBUNAL, LANGUAGE AND PLACE OF ARBITRATION AND OTHER PROPOSALS**

15. MISPL is presently agreeable with the choice of KICPL's nominated Arbitrator, Mr. Rahul Rastogi.
16. MISPL nominates Dr. Elon Axelrod as its nominated arbitrator to be appointed.

**(VI) RESERVATION OF RIGHTS**

17. MISPL reserves its right to amend, supplement, abandon, further develop and/or otherwise add to the matters, claims and reliefs stated and made herein.

Dated this 29th day of November 2021.

Solicitors for the Respondent

*DM*

**LS Partners**

Darius Menon, Managing Partner

This RESPONSE TO THE NOTICE OF ARBITRATION is filed by LS Partners, Solicitors for the Respondent and whose address for service is at Unit Z1/11, Orchid Road, Singapore.

Date: 1st December 2021

Direct Line: +65 5656565 6565/6557

[Darius.Menon@lsp.zg](mailto:Darius.Menon@lsp.zg)

Your Ref: TCALP/Dec/2021-001

Our Ref: LSP/2021/001-R

**TCALP**

**TC ASIA LAW PARTNERSHIP**

Our Ref: TCALP/Dec/2020-001

Date: 10<sup>th</sup> December 2021

Direct Line: +65 656565 5656/5657

[Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

Thomas Chan, Partner

**To:**

**The Gujarat International Maritime Arbitration Centre**

Gujarat Maritime University,  
Transitory campus GNLU,  
Knowledge Corridor, Attalika Avenue,  
Koba, Gandhinagar, India - 382426

By Email and Registered Post

FOR THE ATTENTION OF THE CHAIRMAN OF THE GIMAC  
([chairman@gimac.org.in](mailto:chairman@gimac.org.in))

**Cc to:**

LS Partners  
Unit Z1/11, Orchid Road, Zingapore

**By Email and Registered Post**

**APPOINTMENT OF PRESIDING ARBITRATOR**

**IN THE GIMAC ARBITRATION UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE (2021) BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

Dear Sirs and Madams:

We are pleased to confirm that both Parties and the two party nominated arbitrators are in agreement that the Presiding Arbitrator is to be appointed by GIMAC.

Accordingly, the Parties request the Chairman of the GIMAC Council to appoint the Presiding Arbitrator pursuant to Rule 11.3 of the GIMAC Arbitration Rules.

Please see below details of the Party Nominated Arbitrators:

First Arbitrator (Nominated by the Claimant): Mr. Rahul Rastogi

Second Arbitrator (Nominated by the Respondent): Dr. Elon Axelrod

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**Thomas Chan, Partner**  
**Claimant's Representative**

**Unit A2/12, Lotus Road, Zingapore**

[ADD LOGO]

**The Gujarat International Maritime Arbitration Centre**

Gujarat Maritime University,  
Transitory campus GNLU,  
Knowledge Corridor, Attalika Avenue,  
Koba, Gandhinagar, India - 382426

Our Ref: **GIMAC CASE REF NO. 1001-2021**

Your Ref: TCALP/Dec/2020-001

Date: 15<sup>th</sup> December 2021

**To:**

TC ASIA LAW PARTNERSHIP  
Unit A2/12, Lotus Road, Zingapore

LS Partners  
Unit Z1/11, Orchid Road, Zingapore

Ms. Lucy Chang QC, Presiding Arbitrator

Mr. Rahul Rastogi, First Arbitrator

Dr. Elon Axelrod, Second Arbitrator

**APPOINTMENT OF ARBITRAL TRIBUNAL  
IN THE GIMAC ARBITRATION (CASE REF NO. 1001-2021) UNDER THE ARBITRATION RULES OF GUJARAT  
INTERNATIONAL ARBITRATION CENTRE BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD  
(CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES  
SDN BHD (RESPONDENT 2)**

Dear Sirs and Madams:

We acknowledge receipt of the Claimant's Appointment Request dated 10<sup>th</sup> December 2021.

I confirm the appointment of the Arbitral Tribunal as Chairman of the GIMAC Council as follows:

- Ms. Lucy Chang QC, Presiding Arbitrator
- Mr. Rahul Rastogi, First Arbitrator
- Dr. Elon Axelrod, Second Arbitrator

The constitution of the Arbitral Tribunal is confirmed on 15<sup>th</sup> December 2021.

For all future communications in the above matter, please send correspondence to the Arbitral Tribunal and the GIMAC Secretariat.

Thank you.

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**Dr. S. Shanthakumar**  
CHAIRMAN OF THE GIMAC  
(Chairman@gimac.org.in)

**IN THE GIMAC ARBITRATION (CASE REF NO. 1001-2021) UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

- I. Following the receipt of the file from the Gujarat International Maritime Arbitration Centre and the Parties' additional submissions of 24<sup>th</sup> December 2021, the Arbitral Tribunal held a telephone conference with both Parties on 26<sup>th</sup> December 2021 discussing the further conduct of the proceedings.
- II. The Arbitral Tribunal takes note of the fact that in the telephone conference of 26<sup>th</sup> December 2021 both Parties agreed:
  - o to conduct the proceedings on the basis of the GIMAC Arbitration Rules;
  - o that, to facilitate planning and to discuss the procedural questions raised, i.e. whether Malaca Resources Sdn Bhd ("**MRSB**") should be joined and evidence may be taken remotely, a Virtual Hearing is scheduled for the time between **09 April 2022 to 10 April 2022**
  - o Respondent No. 1's Legal Representative, i.e., LS Partners has confirmed that it will be representing Respondent No. 2 in the present proceedings.
  - o that the Virtual Hearing will be limited to the legal questions listed below;
  - o that the examination of any witnesses or experts, in case it is considered to be necessary for deciding the case, will take place in a separate hearing scheduled for 09 April 2022 to 10 April 2022;
  - o that the hearing scheduled for April is in principle to take place in person, unless the Arbitral Tribunal decides differently;
  - o that, in case a hearing in person will not be possible, depending on the decision of the Arbitral Tribunal, the hearing will either take place remotely or will be postponed to a date to be fixed later.
- III. In light of these agreements and considerations, the Arbitral Tribunal hereby makes the following orders:
  1. Does the Arbitral Tribunal have the jurisdiction to proceed with the Arbitration?
  2. Should MRSB be joined as a Respondent to the GIMAC Arbitration Proceedings?
  3. Has the Claimant breached its payment obligations towards the 1<sup>st</sup> Shipment made by Respondent No. 1?
  4. Has Respondent No.1 breached its contractual obligations due to non-delivery of iron pellets shipments according to the Contract and are the Respondents liable for the defective quality of the 2<sup>nd</sup> shipment?

In their next submissions and at the Virtual Hearing **the Parties are required** to address the following issues:

- The Parties are free to decide in which order they address the various issues.
- No further questions going to the merits of the claims should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.

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(Ms. Lucy Chang QC, Presiding Arbitrator)

FOR AND ON BEHALF OF THE ARBITRAL TRIBUNAL

**c.c. : Via Email:**

- Claimant's Representatives
- Respondent's Representatives
- Mr. Rahul Rastogi, First Arbitrator
- Dr. Elon Axelrod, Second Arbitrator
- The Gujarat International Maritime Arbitration Centre, Chairman

**TCALP**

**TC ASIA LAW PARTNERSHIP**

Our Ref: TCALP/Dec/2021-001

Date: 11<sup>th</sup> January 2022

Direct Line: +65 656565 5656/5657

[Thomas.Chan@tcalp.zg](mailto:Thomas.Chan@tcalp.zg)

Thomas Chan, Partner

**DR. ELON AXELROD**

AXELROD PARTNERSHIP LLC

Business Suite 07-01,

Rosette Road, Zingapore

**LS PARTNERS**

Unit Z1/11, Orchid Road, Zingapore

**GUJARAT INTERNATIONAL MARITIME ARBITRATION CENTRE**

FOR THE ATTENTION OF THE CHAIRMAN OF THE GIMAC

([chairman@gimac.org.in](mailto:chairman@gimac.org.in))

**NOTICE OF CHALLENGE TO ARBITRATOR NO. 2 – DR. ELON AXELROD**

Dear Sirs and Madams:

**IN THE MATTER OF A GIMAC ARBITRATION UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE (2021) BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

We refer to the above matter wherein we act for the Claimant. We also refer to the following documents for challenge:

1. GIMAC's Acknowledgement Letter of Dr. Elon Axelrod (Partner, Axelrod Partnership LLC and Chair of Ethics, ZMU, Zingapore) appointment as the Second Arbitrator as well as his declaration stating no conflict.
2. With regards to Dr. Axelrod's appointment as the Second Arbitrator for the above-mentioned Arbitration, we have the Claimant's instructions, to lodge a challenge to the appointment of Dr. Axelrod as the second arbitrator.
3. The reasons for the challenge are as follows:
  - a. Dr. Axelrod's Firm had acted for 2<sup>nd</sup> Respondent MRSB, in a proceeding before the Zindian International Commercial Court on 10<sup>th</sup> November 2018, in a separate contract.
  - b. Dr. Axelrod's Firm's, Retired Partner, Mr. Adrian Furla was involved as a legal representative in 2019 as a lead counsel.
  - c. Due to the relationship between Dr. Axelrod and Mr. Darius Menon. It has come to our attention that both were speakers at various arbitral institutional conferences. One of the conferences was organised by the Gujarat Maritime University in 2020, and both were speakers at the same session. During one of the visits, Dr. Axelrod also delivered a lecture on the topic of "Ethics in International Arbitration". We also note, that both Dr. Axelrod and Mr. Menon are connected via LinkedIn and have each "liked" and commented on each other's posts.
  - d. Dr. Axelrod was a sole arbitrator for Disputes Capital Holdings based in the Republic of Britannia, which is a parent company for Disputes Capital Funding based in Zingapore that is acting as the

third-party funder for the Respondents in this arbitration, as disclosed in an email to the Tribunal and the Parties by the Respondents after issuance of Procedural Order No. 1.

- e. Due to the above non-disclosure of the information by Dr. Axelrod in the previous Declaration during the appointment stage have given rise to reasonable and justifiable doubts to the Claimant, as the Claimant has been deprived of its rights to make any enquiries as to Dr. Axelrod's impartiality due to the above non-disclosures of information.
4. Based on General Standard – Part I: General Standards Regarding Impartiality, Independence and Disclosure, Explanation to Standard 6(a) and 6(b) of the IBA Guidelines as well as Part III: Practical Application of the General Standards of the IBA Guidelines, the Claimant confirms to challenge the appointment of Dr. Axelrod and request for Dr. Axelrod to voluntarily recuse himself from being a member of the Arbitral Tribunal in this matter.

**TC**

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**Thomas Chan, Partner**  
**Claimant's Representative**

## Correspondences via Email

**From:** Dr. Elon Axelrod ([elon.axelrod@eaxelrod.com](mailto:elon.axelrod@eaxelrod.com))

**To:** Claimant's Representatives; Respondent's Representatives; Mr. Rahul Rastogi, First Arbitrator; Ms. Lucy Chang QC, Presiding Arbitrator, The Gujarat International Maritime Arbitration Centre, Chairman

Date: 18<sup>th</sup> January 2022

### **RESPONSE TO NOTICE OF CHALLENGE TO ARBITRATOR NO. 2 – DR. ELON AXELROD**

Dear Sirs and Madams:

**IN THE MATTER OF A GIMAC ARBITRATION UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

In respect of the Notice of Challenge dated 20<sup>th</sup> January 2022 by the Claimant, I would make the following observations:

1. MRSB – I did not act for MRSB, and it involved another unrelated project many years ago, and does not give any rise to any conflict or duty of disclosure.
2. Mr. Furla – My former partner who retired and has started his own law firm acted in the matter, which was a joint venture company. My firm has not acted in the matter subsequently, as the client was moved to Mr. Furla's firm after his retirement.
3. My relationship with Mr. Menon does not give rise to any conflict or warrant disclosure.
4. My prior relationship with the parent company Disputes Capital Holdings is unrelated in this matter and the Award was rendered on 12<sup>th</sup> August 2015.
5. In this regard, I remain fully aware of my obligation to conduct this matter independently and impartially.

Thank you.

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Dr. Elon Axelrod.

**IN THE GIMAC ARBITRATION (CASE REF NO. 1001-2021) UNDER THE ARBITRATION RULES OF GUJARAT INTERNATIONAL ARBITRATION CENTRE BETWEEN KALINGA INTERNATIONAL COMMODITIES PVT LTD (CLAIMANT) VS MALACA INTERNATIONAL SHIPPING PTE LTD (RESPONDENT 1) AND MALACA RESOURCES SDN BHD (RESPONDENT 2)**

- I. Following the correspondence of the Parties, and the Arbitral Tribunal between 11<sup>th</sup> January 2022 and 8<sup>th</sup> February 2022, the Arbitral Tribunal after deliberation shall clarify the further conduct of the proceedings.

In light of the recent challenge against a member of the Arbitral Tribunal, Parties agreements and considerations, the Arbitral Tribunal hereby makes the following orders:

Neither Party challenges the jurisdiction of this Arbitral Tribunal in principle but Respondents contests the power of the Arbitral Tribunal to decide upon the challenge of Dr. Elon Axelrod. Both Parties agree that to speed up proceedings in case the challenge of Dr. Axelrod should be successful, the Respondents appoints already now Ms. Gayatri Martinaz as a potential replacement of Dr. Axelrod. All submissions will be made available to her and she will be present at the oral hearing to be able to replace Dr. Axelrod should the challenge be successful either before this Arbitral Tribunal or the GIMAC.

The Parties are in agreement that in light of that arrangement and the issues in dispute, the Parties will bifurcate the proceedings. The first part of the proceedings, i.e. the next round of submissions as well as the first oral hearing, will be devoted to the challenge of Dr. Axelrod as well as to the question of proper commencement of Arbitration by the CLAIMANT based on the contractual agreement between the parties. Both issues will be presented jointly at the oral hearing at which Ms. Martinaz is allowed to participate as a potential replacement arbitrator.

The costs for the involvement of Ms. Martinaz will provisionally be borne by the Respondent. In its final award on costs, the Arbitral Tribunal will decide upon such costs, taking into account the outcome of the challenge.

- II. In light of the above agreements and considerations, the Arbitral Tribunal hereby makes the following orders:
1. Can the Second Arbitrator, Dr. Elon Axelrod, be challenged as an Arbitrator? If yes, can the arbitration proceedings continue and does the Arbitral Tribunal have the jurisdiction to proceed with the Arbitration?
  2. Should MRSB be joined as a Second Respondent to the GIMAC Arbitration Proceedings?
  3. Has the Claimant breached its payment obligations towards the 1<sup>st</sup> Shipment made by Respondent No. 1? Is the Claimant's non-acceptance of 2<sup>nd</sup> Shipment valid?
  4. Has Respondent No.1 breached its contractual obligations due to non-delivery of iron pellets shipments according to the Contract and are the Respondents liable for the defective quality of the 2<sup>nd</sup> shipment?

In their next submissions and at the Virtual Hearing **the Parties are required** to address the following issues:

- The Parties are free to decide in which order they address the various issues.
- No further questions going to the merits of the claims should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.

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(Ms. Lucy Chang QC, Presiding Arbitrator)

FOR AND ON BEHALF OF THE ARBITRAL TRIBUNAL

**c.c. : Via Email:**

- Claimant's Representatives
- Respondent's Representatives
- Mr. Rahul Rastogi, First Arbitrator
- Dr. Elon Axelrod, Second Arbitrator
- The Gujarat International Maritime Arbitration Centre, Chairman
- Ms. Gayatri Martinaz, Potential Replacement Arbitrator

**KALINGA INTERNATIONAL COMMODITIES PVT LTD [Add a Logo]**

**Extracts From the Long-Term Contract**

**Buyer's Ref: KICPL/MISPL/LTC/2019/1511**

**Date: 15<sup>th</sup> November 2019**

**BUYER:**

**KALINGA INTERNATIONAL COMMODITIES PVT LTD**

Kalinga Plaza, Tower 4,  
SCB Street, New Zumbai,  
Utkalisha, Zindia  
751099

(Hereinafter called "Buyer")

**SELLER:**

**MALACA INTERNATIONAL SHIPPING PTE LTD**

#1-2, Corporate Headquarters,  
Raffles Street, Zingapore  
6500101

(Hereinafter called "Seller" individually and "Sellers" collectively)

This contract is made by and between the Buyer and the Sellers whereby the Buyer agrees to buy and the Sellers agrees to sell the under mentioned goods on the terms and conditions as stated below.

**CLAUSE 1: COMMODITY**

Commodity Name: Iron Ore Pellets

Country of Origin: Zalaysia

Manufacturer: Malaca Resources Sdn Bhd, Suite 1, Floor 110, Twin Plaza, Jalan Zukit Bintang, Zalaysia (Zalaysian Pellets) / Email Address: [malacaresourcesdnbhd.director@mrsb.zy](mailto:malacaresourcesdnbhd.director@mrsb.zy)

Seller: Malaca International Shipping Pte Ltd

**CLAUSE 2: QUANTITY AND DELIVERY PERIOD**

Contract Period : January 2020 to December 2023

Number of Shipments : Total 24 shipments (Minimum 6 Shipments per year, with 1 Shipment every 2 months)  
(Both parties shall mutually agree the shipments on additional shipment request, if any)

Sellers :

Quantity Per Shipment : 100,000 WMT ± 5% at Seller's Option

Port of Loading : Plang Port, Zalaysia

Port of Discharge : Baradip Port, Zindia at Buyer's discretion.

Shipment Laycan : 15<sup>th</sup> to 30<sup>th</sup> day of every month

Latest Shipment Date (LSD) : Last day of Laycan + 15 Days

**CLAUSE 3: SPECIFICATIONS OF ZALAYSIAN IRON ORE PELLETS**

**Chemical (Dry Basis)**

|   |   |
|---|---|
| Fe                                      | Guaranteed %<br>68.0% basis, 68.0% Min. |
| SiO <sub>2</sub>                        | 5.0% Max                                |
| Al <sub>2</sub> O <sub>3</sub>          | 5.0% Max                                |
| CaO                                     | 0.95% Min                               |
| MgO                                     | 0.06% Min                               |
| S                                       | 0.012% Max                              |
| P                                       | 0.08% Max                               |
| Moisture: Fair weather season (Oct-May) | 5.0% Max                                |
| Monsoon Season (Jun-Sept)               | 9.0% Max                                |

**Physical composition (On Natural Basis)**

Between 5-18mm  
Above 18mm  
Below 5mm

Guaranteed %

75% Min  
15% Max  
10% Max

**Physical composition (On Dry Basis @105°C)**

Tumble Index (+6.3mm)  
Abrasion Index (-0.5mm)  
Porosity

Guaranteed %  
Min 95%  
Max 3%  
24.0 +/-2

**CLAUSE 4: PRICE**

The Final Price for every shipment is US\$ 3,000,000.

**CLAUSE 6: PAYMENT**

The Buyer shall open an irrevocable, workable and non-transferable letter of credit (L/C) payable at sight, from an International bank in favor of the Seller indicating beneficiary, as the case may be, for an amount in US Dollars (USD) sufficient to cover 100% (Hundred Percent) of the shipment value to be made for payment, with tolerance of +/-10% in L/C amount.

L/C to be established through the Bank as acceptable to the Seller and in the format acceptable by the Seller.

If Seller's final invoice value for every shipment is not paid by the date of delivery, then the buyer by telegraphic transfer, within 15 days shall execute the payment.

**CLAUSE 7: SAMPLING AND ANALYSIS AND WEIGHING**

7.1 At the Loading Port, the Seller at Seller's expenses shall appoint a qualified independent surveyor, to take a representative sample of each shipment of Pellet and analyse such sample for chemical and physical properties and for free moisture loss and provide a certificate (Certificate of Quality) showing details of the determination which shall be the basis for the Seller's Provisional Invoice for 100% payment through L/C defined in Clause 6. The Buyer may, at Buyer's option and expenses, appoint an independent surveyor at the load port for witnessing the sampling.

7.2 At the Discharge Port, the Buyer shall at Buyer's expenses shall appoint a qualified independent surveyor to take sample during unloading of cargo and analyze such sample for chemical and physical properties and for free moisture loss and provide a certificate of Inspection (Certificate of Quality). However, Seller can appoint independent surveyor at their own expense to witness the Analysis with independent surveyor appointed by the buyer.

7.3 Should there be a difference of 0.8% or more in the Iron (Fe) and moisture content analysis, or if there is a significant difference of 0.8% or more between the Load Port and Discharging port analysis for other chemical elements (which are in excess of the maximum content allowed in the Specifications) for such samples, the Parties will consult in a mutual effort to reconcile such differences.

7.5 At the Loading Port, the Seller at Seller's expenses shall appoint a qualified independent surveyor to determine the weight of the shipment of pellet and provide a certificate (Certificate of Weight). The Buyer may, at Buyer's option and expenses, appoint an independent surveyor at the load port to determine the weight of the shipment of pellet in a similar manner for their reference and verification purpose.

.....

7.8 Should there be a difference of wet quantity out turn over 0.8%, or if there is a significant difference of 0.8% or more between the Load Port and Discharging port weight, the Parties will consult in a mutual effort to reconcile such differences.

**CLAUSE 8: SHIPMENT AND DISCHARGING TERMS**

The Seller will ... pursuant to the Contract. The Parties agree that the Seller shall use standard PVC tarpaulin during the shipment.

## **CLAUSE 11: FORCE MAJEURE**

11.1 Neither Party is liable for delay or failure in performing all or any part of this Contract to the extent that its performance has been prevented, delayed or hindered due to an event beyond the reasonable control of the affected Party, which could not have been reasonably foreseen on the effective date of this Contract, nor can reasonably be avoided, including but not limited to general strikes, strikes, lockouts and labour disturbances, epidemics, war, revolution or any unlawful act against public order or authority, embargo, restriction on export to a specific country or countries sabotage and civil commotion, non-availability or shortage of fuel, electricity, raw materials, or currency, breakdown or failure of plant, machinery or equipment, transportation difficulties including congestion at load ports due to natural calamities or otherwise, any act of God including but not limited to natural calamities such as typhoons, cyclones, tidal waves, fires, droughts, floods, earthquakes or ice, accidents, acts of a public enemy, war or war-like events (or threats thereof, whether war is declared or not), acts of any change in law or regulations on Export Licensing by local, national or supranational authority, government or state including of a port authority or other similar or dissimilar circumstances or force majeure events (collectively "Force Majeure Event").

11.2 If upon the nomination or arrival of the vessel for loading or unloading of cargo change in law of the country of loading/unloading make it illegal to export or import from or to the specific countries, Parties may deem the same as Force Majeure and parties will be relieved from their specific obligation under the agreement. The parties based on discussion arrive at a method to resolve the issue.

11.3 If a Party anticipates or declares a Force Majeure Event, that Party must submit a written notice of it to the other Party, with evidence and an explanation that its performance has been or may be prevented or delayed, and as far as possible an estimate of the force majeure event's duration. Such written notice with evidence and explanation must be submitted as promptly as practicable and, in any event, not later than 15 (fifteen) days after occurrence of such Force Majeure Event.

11.4 Pending resumption of performance of the affected Party for causes exempted by this Clause, the other Party may suspend its own performance, with the exception of payment obligations for prior performance.

11.5 Should the effects of a Force Majeure Event last 30 (thirty) days or less, tonnage outstanding owing to such Force Majeure Event will be delivered and accepted over a period to be mutually agreed by the Parties in accordance with their capabilities after the cause of such Force Majeure Event has ceased to exist. Buyer will make reasonable commercial efforts to accept, and Seller will make reasonable commercial efforts to ship, said tonnage outstanding in the same contract year as of the Force Majeure Event. If, for any reason, no such agreement is reached, tonnage outstanding owing to a Force Majeure Event will be (i) cancelled by the Buyer or (ii) carried over to the end of this Contract and will be invoiced at the prevailing rate for the relevant contract year in which such tonnage is effectively delivered.

## **CLAUSE 12: TITLE AND RISK**

The Title with respect to each shipment shall pass to Buyer from Seller upon Seller's receipt of provisional payment against the goods.

All Risk of loss, harm, damage, or destruction respecting the Pellet delivered shall pass to Buyer's at the time of loading of the ore from the loading devices into the vessel at the loading port.

Seller warrants that at the time of delivery it will have good title to the product and will deliver the product to Buyer free and clear of all liens, claims, and encumbrances arising prior to the transfer of title to Buyer.

## **CLAUSE 13: DISPUTE RESOLUTION**

The Parties hereby agree that any disputes arising under this Contract will be resolved in accordance with the dispute resolution mechanism provided in this Contract. Either party can appoint a Senior Management officer to negotiate the dispute notified, and both parties shall mutually negotiate. If both parties fail to negotiate within 14 days, then either Party may proceed with mediation. If the mediation fails within 30 days, then either may subsequently proceed with arbitration.

## **CLAUSE 14: ARBITRATION**

Any dispute arising out of or in connection with this contract shall be referred to and finally resolved by arbitration administered by the Gujarat International Arbitration and Mediation Centre ("GIMAC") in accordance with the Arbitration Rules of the GIMAC for the time being in force, at the date of the commencement which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Zingapore and the place of the arbitration shall be GIFT City. The Tribunal shall consist of three arbitrators, where each party shall appoint an arbitrator and both the nominated arbitrators shall appoint the presiding arbitrator. The language of the arbitration shall be English.

#### **CLAUSE 15: GOVERNING LAW**

This contract shall be governed by and construed in accordance with English law.

#### **CLAUSE 16: LOSS OF CARGO**

In the event of partial loss of cargo, the Bill of Lading weight and the analysis carried out by Buyer on the cargo discharged shall be treated as final and shall form the basis of final invoicing and payment. In the event of total loss of cargo, the analysis and the weight as determined at the Loading port shall be treated as final and shall be used for final invoicing and payment.

#### **CLAUSE 17: AMENDMENT TO THE CONTRACT'**

The contracting parties shall make in writing and subject to confirmation any amendment or modification to this contract. Any amendment to the contract has to be mutually agreed upon by the contracting parties in writing. A modification, variation or amendment of this contract will not be effective unless it is in writing with fully executed addendum to the contract. This agreement is signed by the Parties' authorized representatives and comes into force on the signature date.

#### **CLAUSE 19: DEFAULT AND TERMINATION**

19.1 If a Party commits a breach of agreement, the Party not in breach may require the defaulting Party to remedy the breach by notice to that effect.

19.2 If the defaulting Party fails to comply with a notice issued under clause 18.1 within 10 working days of receipt, the other Party may terminate the Agreement by further notice having immediate effect, or to claim specific performance, in either event without prejudice to any other rights it may have.

19.3 If a Party suffers an Insolvency Event, or if its breach of a material obligation in the Agreement is not capable of remedy, the other Party may terminate the Agreement by notice having immediate effect.

19.4 Termination or expiry of the Agreement does not affect the Parties' rights to pursue claims for breaches occurring before termination or expiry. In case of claim, the Seller or the Buyer shall be liable to pay the opposite party for all actual damages & expenses or additional charges borne by the Seller to place contracted cargo at port of shipment or actual damages & expenses or additional charges borne by the Buyer to make arrangements for shipment of such cargo against sufficient proof of having borne such expenses, unless expressly waived off by the other party for this contract.

19.5 The provisions of this article will survive termination of the Agreement, for whatever reason, indefinitely.

19.6 Either of the party can terminate the contract giving three months' notice without stating reason whatsoever.

#### **CLAUSE 20: NOTICES**

All communications referred to in this contract shall be in writing and will be sent by registered post and/or by E-Mail, cable, fax, on the address as follows.

#### **BUYER : KALINGA INTERNATIONAL COMMODITIES PVT LTD**

Kalinga Plaza, Tower 4,  
SCB Street, New Zumbai,

Utkalisha, Zindia  
751099  
[director@kicpl.com](mailto:director@kicpl.com)

**SELLER : MALACA INTERNATIONAL SHIPPING PTE LTD**

#1-2, Corporate Headquarters,  
Raffles Street, Zingapore  
6500101  
[sales@mispl.zg](mailto:sales@mispl.zg); [malacaresourcessdnbhd.director@mrsb.zy](mailto:malacaresourcessdnbhd.director@mrsb.zy)

In witness whereof this contract is made in duplicate in India on this 15<sup>th</sup> day of November 2019 and the duly authorized representatives of the Seller and the Buyer having signed on this day and retained one copy each.

|  |   |
|--|---|
| <b>SELLER</b><br><br>For,<br>KALINGA INTERNATIONAL COMMODITIES PVT LTD<br><br><b>Sign</b><br><hr/> | <b>BUYER</b><br><br>For,<br>MALACA INTERNATIONAL SHIPPING PTE LTD<br><br><b>Sign</b><br><hr/> |
| DATE: 15 November 2019   | DATE: 15 November 2019  |

**Information for the Participants:**

- Geographic and legal condition of Zindia is pari materia to India,
- Geographic and legal condition of Zingapore is pari materia to Singapore,
- Geographic and legal condition of Zalaysia is pari materia to Malaysia,
- Geographic location and Policies of Baradip Port is pari materia to Paradip Port.

**DISCLAIMER**

The facts stated in the present moot problem are fictitious and have been drafted solely for the purposes of the competition. The Facts, names, locations and dates bear no resemblance to any person, event or happening whether dead or alive. Any resemblance, if any found is purely coincidental.