



**THE INTERNATIONAL ADR
(ALTERNATIVE DISPUTE RESOLUTION)
MOOTING COMPETITION**

MOOT PROBLEM 2012

29 July – 4 August 2012

City University of Hong Kong, Hong Kong





Background information

Minuet is a very environmentally conscious country with a good road network. The country had enacted the UNIDROIT Principles 2010 as the law governing international contracts. They are a common law country and have also adopted the New York Convention and Minuet has also enshrined the UNCITRAL Model Law as part of their international arbitration law. Minuet has only one harbour. It called South but commonly referred to as Minuet South.

Cadenza is a manufacturing country with many deep sea ports. The main ports are Cadenza, Cantata and Piccolo. The country is named after their main town and most important harbour. Cadenza was originally a colony of Fugue a common law country and hence Cadenza has maintained common law practices. They have also adopted the UNIDROIT 2010 Principles, the New York Convention and the UNCITRAL Model Law.

Mr Longo normally deals with wind turbines, solar panels but intends to branch out into electric cars. They have done some research and hence have a rudimentary knowledge of electric cars. Mr Longo has at one stage attempted to develop a solar panel car but the project turned out to be too expensive and was abandoned.

Mr Chan has been in the automotive industry for the past 30 years and his company has developed an electric car which, according to the automotive journal of Cadenza, is economical and worth buying specifically for city travel. Chan Manufacturing does not advertise their electric cars as they mainly sell by word of mouth.



Exhibit 1

(By post)

Longo Imports

PO Box 234

Minuet

January 5, 2011

Chan Manufacturing

PO Box 111

Cadenza

Dear Sir,

We have been made aware that you are a manufacturer of new generation electric cars suitable for city people with very small parking lots.

We are an importer of small cars and are interested ordering approximate 1000 cars as a preliminary order. We anticipate that our yearly sales would be around 10,000 cars.

As you know this is a competitive market and we expect to be offered a very good price and of course the quality is also important.

Yours faithfully

Michael Longo

Longo Imports

For Terms and Conditions see <http://12345>



Exhibit 2

Relevant excerpt of the webpage only

Longo Imports

PO Box 234

Minuet

Clause 1

Any order of more than \$US10 m attract a discount of 2%

Clause 7

Shipment INCOTERMS 2010 CIF Minuet South

Clause 10

The seller is responsible for all costs of return of unsuitable goods.

Clause 11

Buyer is entitled to consequential damages including loss of profits.

Clause 12

All disputes must be referred to the China Trade Commission. And the following clause applies:

“All disputes arising out of or in connection with this contract, including any question regarding its existence, validity or termination shall be conciliated. If no agreement can be reached it must be referred to arbitration in Cadenza using the relevant rules. The seat shall be Beijing and the language English.



Exhibit 3

(By post)

Chan Manufacturing

PO Box 111

Cadenza

January 15, 2011

Longo Imports

PO Box 234

Minuet

Dear Sir

Thanks for the inquiry. We do manufacture three models of electric cars

De luxe model \$US14000

Gardeners model \$US 12000

Professional model \$US18000

You will find the relevant technical descriptions as well as our conditions on our webpage which you can Google under our company name.

Yours truly

Fred Chan

Chan Exports



Exhibit 4

Relevant excerpt of the webpage only

Chan Manufacturing

PO Box 111

Cadenza

Clause 4

FAS are the applicable INCOTERMS 2010

Clause 6

The usual prices apply as per pricelist and no discounts are given.

Clause

Under no circumstances will the seller be responsible for consequential damages including loss of profits

Clause 9

All disputes arising out of or in connection with this contract, including any question regarding its existence, validity or termination shall be referred to arbitration in Cadenza using the SIAC Rules

Or

All disputes arising out of or in connection with this contract, including any question regarding its existence, validity or termination shall be referred to arbitration in Hong Kong using the SIAC Rules

Clause 10

The UNIDROIT Principles 2010 shall be the governing Law

Clause 11

The purchaser is to nominate a ship which is able to load goods in the ports nominated by the seller



Exhibit 5

(By post)

Longo Imports

PO Box 234

Minuet

January 20, 2011

Chan Manufacturing

PO Box 111

Cadenza

We do not worry about specifications. As the technology is new we would like to see a sample first and do our own testing. As you are aware the SS Herminia is calling into port in Cadenza in about two months time which is on or about March 10 and has room for one car.

We prefer to have a look at the cheapest car as it will give us an indication how good the technology is. Once we receive the sample we will test it and unless we find it unsatisfactory we will expect the reminding cars to be sent by December 1, 2011.

Yours faithfully

Michael Longo

Longo Imports



Exhibit 6

(By post)

Chan Manufacturing

PO Box 111

Cadenza

January 30, 2011

Longo Imports

PO Box 234

Minuet

We do not send free samples out at all and would not be interested in a deal unless we have a firm sales contract in place. It is just not worth our while to do so. Sorry.

Yours truly

Fred Chan

Chan Exports



Exhibit 7

(By post)

Longo Imports

PO Box 234

Minuet

February 5, 2011

Chan Manufacturing

PO Box 111

Cadenza

We have no problems paying for the sample car and can simply reiterate that we will send you an order with the proviso that if the car does not come up to expectations we will not execute the order. If you are confident that the car will perform we see no problem for you agreeing to that.

What we are looking for in a car is that it can run 500 miles before it needs to be recharged and that the recharging costs less than using petrol.

Yours faithfully

Michael Longo

Longo Imports



Exhibit 8

(By post)

Longo Imports

PO Box 234

Minuet

February 5, 2011

Chan Manufacturing

PO Box 111

Cadenza

We confirm the phone call of yesterday and are happy to note that the performance requirements of the car which were explained to us over the phone are perfect and match our expectation. We also confirm that you agree to the criteria set out in our previous letter dated January 20. Attached please find our order form.

We like to copy into this letter our previous requirements which are:

“Once we receive the sample we will test it and unless we find it unsatisfactory will expect the reminding cars to be sent by December 1, 2011,”

Yours faithfully

Michael Longo

Longo Imports



Exhibit 9

ORDER FORM

Goods: electric cars

Model: Gardeners model

Price: \$US 12,000

Discount: any order of more than \$US10 m attract a discount of 2%

Quantity: 1000

Delivery Date: December 1, 2011

Payment: L/C made out to Cadenza City Bank

Shipment: CIF Minuet

Quality: any defects or unsatisfactory performance will be notified within one week of receipt of the sample car

Return of goods: the seller is responsible for all costs of return of unsuitable goods.



Exhibit 10

(By post)

Chan Manufacturing

PO Box 111

Cadenza

March 20, 2011

Longo Imports

PO Box 234

Minuet

Thank you for your order form. The ss Herminia has docked in Cadenza. We again refer you to our terms and conditions and advise that our terms are FAS. Also we would prefer to treat the shipment of the single car being separate from the order of 1000 cars and hence would like to be payed in advance. We would also like to point out again that the UNIDROIT principles 2010 are the governing law.

As time is of the essence we will send the car to the docks to be loaded. Trust we receive payment before sailing time.

Yours truly

Fred Chan

Chan Exports



Exhibit 11

(By post)

Chan Manufacturing

PO Box 111

Cadenza

March 25, 2011

Longo Imports

PO Box 234

Minuet

We have loaded the car on the ss Herminia pursuant to your phone instructions four days ago and thank you for your payment. Please note that we expect you to nominate a ship which can load out of the nominated ports which are Cadenza, Cantata and Piccolo.

We are positive that the car will meet your requirements and we will do our best to meet the deadline.

Yours truly

Fred Chan

Chan Exports



Exhibit 12

(By post)

Chan Manufacturing

PO Box 111

Cadenza

March 30, 2011

Longo Imports

PO Box 234

Minuet

There is one issue which needs to be sorted out namely if you do not wish to keep the car we will expect that you are paying for the return of the car. Alternatively you might sell the car but any shortcomings are to be borne by you.

Yours truly

Fred Chan

Chan Exports



Exhibit 13

(By post)

Longo Imports

PO Box 234

Minuet

June 10, 2011

Chan Manufacturing

PO Box 111

Cadenza

The car has arrived and we are currently testing it. As per your instructions we nominate the ss Herminia for further shipments. By the way we have no objection using the UNIDROIT Principles 2010 as the governing law we are very familiar with the CISG. Please note that time is of the essence. Also we urge you to note our terms and conditions. For Terms and Conditions see <http://12345>

Yours faithfully

Michael Longo

Longo Imports



Exhibit 14

(By post)

Longo Imports

PO Box 234

Minuet

August 10, 2011

Chan Manufacturing

PO Box 111

Cadenza

We are getting nervous. The SS Hermonia is nearing Cadenza and we have not heard anything re the docking instructions. As you know we are expecting the 999 cars to be loaded at a port nominated by you and as per our exchange of letter no problems emerged and hence the order has been enlivened. Please advise.

Yours faithfully

Michael Longo

Longo Imports



Exhibit 15

(By post)

Chan Manufacturing

PO Box 111

Cadenza

August 15, 2011

Longo Imports

PO Box 234

Minuet

We have been waiting for a confirmation of your order which has never arrived. We simply assumed that you do not wish to proceed with the purchase of the 999 cars. However we do have 100 cars available as we have sold the remaining cars. We cannot keep up with delivery due to the strong demand for the cars. Do you wish to purchase the 100 cars as proposed?

Yours truly

Fred Chan

Chan Exports



Exhibit 16

(By post)

Longo Imports

PO Box 234

Minuet

August 20, 2011

Chan Manufacturing

PO Box 111

Cadenza

We would like to point out that our terms and conditions make it clear that if we do not complain all is well and that we expect the contract of the sale to continue. Seeing that you only have 100 cars we are simply forced to accept that as we have forward orders. We will need to talk to our lawyer as you have breached the contract but the 100 cars will mitigate some of the losses. You are correct the car has become very popular and we could in fact sell 2000 cars. Please load the cars as per our order form and let us know which port the SS Herminia has to dock.

Yours faithfully

Michael Longo

Longo Imports



Exhibit 17

(By post)

Chan Manufacturing

PO Box 111

Cadenza

September 1, 2011

Longo Imports

PO Box 234

Minuet

We are sorry to point out that it is you who has breached the contract. We would like to point out that clause 11 of our general terms states:

“The purchaser is to nominate a ship which is able to load goods in the ports nominated by the seller.”

The SS Herminia can only dock in Cadenza but not in Piccolo where the 100 cars are currently in storage. We will not be able to load any cars and we point out therefore that you breached our term and therefore breached the contract of sale for 1000 cars. We will inform our lawyers accordingly. We suggest as a possible remedy that you wait another two months and we will enter into a contract for the sale of 400 cars at a discount rate of 2% as a GOOD WILL GESTURE.

Yours truly

Fred Chan

Chan Exports



Exhibit 18

(By post)

Longo Imports

PO Box 234

Minuet

September 10, 2011

Chan Manufacturing

PO Box 111

Cadenza

We simply cannot wait two months as by that time our competitor would have flooded the market. We note you sold him the cars which were ordered by us. Consequently we will notify our lawyers and we will commence arbitration as per our clause 12 which no doubt you have seen on our website.

Yours faithfully

Michael Longo

Longo Imports



Exhibit 19

(By post)

China International Economic and Trade Arbitration Commission

Address: 6/F CCOIC Building 2 Huapichang Hutong
Xicheng District, Beijing, 100035, P.R. China

e-mail : info@cietac.org

July 1, 2012

Claimant: Longo Imports
Arbitration Agent: Mr Longo

Dear Sir,

Re. Notice of Arbitration for Case No LC 111

This is to acknowledge receipt of your application for an arbitration based on the arbitration clause contained in your general terms and conditions as per webpage <http://12345>

We are sending a notice of arbitration to the Respondent enclosing your application and asking Chan Manufacturing for an appropriate response.



Exhibit 20

(By post)

China International Economic and Trade Arbitration Commission

Address: 6/F CCOIC Building 2 Huapichang Hutong
Xicheng District, Beijing, 100035, P.R. China

e-mail : info@cietac.org

July 20, 2012

Claimant: Longo Imports
Respondent: Chan Manufacturing

We would like to thank both parties for the attendance at the informal meeting. We can confirm that all timelines have been adhered to and both parties have nominated the relevant arbitrators.

The outstanding general issues to be settled by the tribunal are as follows.

1. Whether the claimant's arbitration clause is applicable or not.
2. Is there is a valid arbitration clause?
3. Which terms are applicable?
4. Whether there is a valid contract?
5. Whether Respondent is liable for damages for the breach of contract pursuant to Article 7.4.1.

The parties have also agreed to settle the question of the amount of damages (if applicable) at another hearing.

The parties will be informed in relation to the exact date of the arbitration