FOURTH ANNUAL

INTERNATIONAL ALTERNATIVE DISPUTE RESOLUTION

MOOTING COMPETITION

28TH JULY TO 3RD AUGUST

HONG KONG

MEMORANDUM

FOR

CLAIMANT

ON BEHALF OF:	**AGAINST:**
ENERGY PRO INC.	CFX LTD.
28 Ontario Drive	26 Amber Street
Aero Street	Circus Avenue
Syrus	Catalan
CLAIMANT	**RESPONDENT**

TEAM CODE - 590

TABLE OF CONTENT

TABLE OF ABBREVIATIONS

§	Article of UPICC
¶/¶¶	Paragraph/paragraphs of moot Problem
CIETAC	China International Economic and Trade Arbitration Commission
CISG	United Nations Convention on Contracts for the International Sale of Goods
Cl.	Claimant
Claimant	Energy Pro Inc.
Clause	Clause of the Agreement
Ex.	Exhibit
HKIAC	Hong Kong International Arbitration Centre
ICA	Indian Council of Arbitration
ICC	International Chamber of Commerce
NY Convention	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Off Cmt	Official Comment to the PICC (UNIDROIT, 2004)
p.no.	Page number
P.O	Procedural order

PC	Purchase contract
Respondent	CFX Ltd.
SOD	Statement of defence
Third Party	Future Energy Inc.
UML on arbitration	UNCITRAL Model Law on International Commercial Arbitration
UNCITRAL	United Nations Commission on International Trade Law
UPICC	UNIDROIT Principles of International Commercial Contracts of 2004

TABLE OF AUTHORITY

TREATIES, CONVENTIONS AND LAW

AAA/ABA Code of Ethics	American Arbitration Association/American Bar Association Code of Ethics for Arbitrators in Commercial Disputes
CIETAC ETHICAL RULES	Ethical Rules for arbitration of the China International Economic and Trade Arbitration Commission, 1994; Rules for evaluating the behavior of Arbitrators
CIETAC RULES	Arbitration Rules of the China International Economic and Trade Arbitration Commission
CISG	United Nations Convention on Contracts for the International Sale of Goods, Vienna 1980
ICC rules	International Chamber Of Commerce Rules of Arbitration (Revised on 1st January 2012)
MODEL LAW	UNCITRAL Model Law on International Commercial Arbitration, 1985 (with amendments as adopted in 2006)
NEW YORK CONVENTION	Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958
PRC Arbitration Law	The Republic of China Arbitration Law, (Articles 8, 54 and 56 are as amended and effective as of July 10, 2002)

UNIDROIT	UNIDROIT Principles of International Commercial Contracts of 2004
UNIDROIT commentary	UNIDROIT Principles of International Commercial Contracts of 2004, Commentary

BOOKS AND COMMENTARIES

Alan Redfern & martin hunter	Law and practice Of International Commercial Arbitration, (4th Edn. 2006) (Cited as *Hunte*r)	**7**
B. Ted Howes and Henry Litong Chen	Commercial Arbitration in China available at http://globalarbitrationreview.com/ (Cited as *Ted*)	**14**
Bockstiegel	Topic 8, "Preventing Delay or disruption of Arbitration", ICCA Congress Series No.5 (Kluwer, 1991) p. no. .271 274 (Cited as *Bockstiegel*)	**18**
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Ferrari	Fundamental Breach Under the UN Sales Convention	**35**

	:25 Years of Article 25 CISG,25 Journal of law and commerce (2005-06)489(498) (Cited as *Ferrari*)	
Fritz Enderlein & Dietrich Maskow	International Sales Law: United Nations Convention on Contracts for the International Sale of Goods Oceana Publication (1992) (Cited as: *Enderlein*)	**38**
Gary B. Born	International Arbitration and Forum Selection Agreement: Drafting and Enforcing (2nd ed.) Kluwer Law International Press 2006 (Cited as: *Gary B. Born*)	**1, 2, 7, 8, 13**
Honnold, John O.	Uniform Law for International Sales under the 1980 United Nations Convention Kluwer Law International, The Hague, 3 rd ed. 1999 (Cited as *Honnold*)	**25**
Julian D M Lew, Loukas A Mistelis, Stefan M Kroll	Comparative International Commercial Arbitration' Kluwer Law International Pg-629-670 (Cited as: *Julian/Loukas/Stefan*)	**12**
M. Mustill & S. Boyd	Commercial Arbitration 231 (2d ed. 1989)] (Cited as *Mustill*)	**12**
Nathalie Voser	Multi Party Disputes and Joinder of Third party,	**10**

	Kluwer International Law (Cited as *Nathalie*)	
Rechtbank van Koophandel Hasselt	(Belgium) 19 April 2006 (doors), CISG-online 1389(Pace) (Cited as *Rechtbank*)	**33**
Stefan Kroll, Loukas Mistelis, Pilar Perales Viscasillas	UN Convention on Contracts for the International Sale of Goods commentary C.H Beck/Hart/Nomos publishing 2011 (Cited as *Kroll/Mistelis/Perales*)	**23, 33**
Vogenauer, Stefan Kleinheisterkamp, Jan	Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC) OXFORD University Press 2009 (Cited as *Vogenauer*)	**35**

ARGUMENT ON JURISDICTION

I. CLAIMANT CAN BRING FUTURE ENERGY INC. INTO THE ARBITRATION PROCEEDINGS AS IT IS A THIRD PARTY

1.1 Third party involvement and implied consent of the RESPONDENT.

1. The involvement of Future Energy Inc. is critical in the formation, conclusion and performance of contractual liabilities and also the CLAIMANT and RESPONDENT had shown a common agreement to make the third party a party to the arbitration agreement. The concept of third party involvement can be dealt by way of two major theories (i) "undivided economic reality of the group of companies" and (ii) "implied consent of the parties" [*Gary B. Born p.no 657*].

(A) Involvement of Future Energy Inc. is fundamental.

2. When a non-signatory to an arbitration agreement plays an imperative role in the conclusion of the contract and the establishment of contractual relationship then considering in particular that the arbitration clause expressly accepted by certain companies of the group should bind the other companies by virtue of their role in the conclusion, performance or termination of the contracts containing the arbitration agreement [*ICC 4131; p.no. 657 Gary B. Born*]. The purchase contract was an express agreement of sale between the CLAIMANT, the RESPONDENT and Future Energy Inc. [*Clause 10.2, PC and P.O. 2 Answer 13*]. Thereby, Future Energy Inc. was an important party in the performance of the contractual liability and considering the recent novelties of the development of the "group of companies" doctrine where the element of "group entity" was abandoned and "undivided economic reality" was laid down, then Future Energy Inc. by virtue of the its participation in the negotiation and the

performance of the contract containing the arbitration clause, becomes an implied party to the arbitration [*Poudret*]

(B) Alternatively, Future Energy Inc. and CLAIMANT are co-obligors.

3. CLAIMANT under the purchase contract was one of the obligors on whom rested the obligation to provide to the obligee [RESPONDENT] with the gearboxes of the requisite qualifications.
4. By the agreement between CLAIMANT and the Future Energy Inc., transfer of obligation from the former to the latter takes place as regards checking whether the gearboxes are in compliance with the specifications mentioned in the Purchase contract. Thus there are two separate obligations on each of the two obligors. [*§11.1.1, (b)*] . Future Energy Inc. as one of the obligor had an obligation towards RESPONDENT to properly conduct the conformity test and then approve the gearboxes sent by CLAIMANT.
5. Moreover, RESPONDENT has given consent for such Transfer of obligation from CLAIMANT to Future Energy Inc. [*§9.2.3*].

(C) RESPONDENT's implied consent for the involvement of Future Energy Inc.

6. The RESPONDENT gave due consent for the involvement of Future Energy Inc. in the performance of the purchase contract. The wording of the Arbitration agreement shows a manifest intention of the parties to involve the third party in the arbitration proceedings as well.

C.1 Interpretation of the arbitration agreement.

7. When contracting parties have not reached an agreement on third-party intervention, the subject must be resolved with a view to the applicable national law [*Gary B. Born p.no.673*]. Thus, in the present case, we apply the Seat theory [*Hunter 84*] and the PRC Arbitration Law

does not recognise the contractual freedom of the parties to resolve their disputes, but to protect the "legitimate rights and interests of the parties." [*PRC arbitration law Art. 1*].

8. In interpretation of the words "*arising out of..*" or "*in connection with..*" the arbitration clause shall be read so as to encompass all disputes arising from the underlying contract or the relationship to which it refers [*Garry B. Born p.no 1104*; *Heyman*; *Overseas*]
9. While drafting the arbitration clause, the parties had given due importance to any dispute that might arise out of the contract with all three parties signatory to it. Thus, implied consent is evident from the conduct and wordings of the statements by the parties [*Art. 8 CISG*] and thus, arbitration clause rightly extends to the third party.

1.2 Alternatively, the CLAIMANT has right of recourse against Future Energy Inc.

10. In a claim for recourse, a party to a proceeding can include a third party in the same proceedings in order to raise claims against this party should it lose its case against the original counterparty [*Nathalie Voser]*.

(A) <u>The CLAIMANT has a right to recourse.</u>

11. If CLAIMANT and Future Energy Inc. are to be held jointly and severally liable to the Obligee (RESPONDENT), then CLAIMANT if imposed with penalty by the Tribunal, will have a recourse towards the co-obligor i.e. Future Energy Inc. to recompense the excess that the former paid to the extent of the latter's unperformed share [*§11.1.8(b) , §11.1.10*].. Thus, it shall be in the interest of the parties and the Tribunal itself, in avoiding a possible litigation against Future Energy Inc.

II. MS. ARBITRATOR 1 CAN RESIGN DURING THE ARBITRATION PROCEEDINGS

2.1 Ms. Arbitrator 1 is entitled to withdraw from the Arbitral Tribunal

(A) Ms. Arbitrator has voluntarily withdrawn from the Arbitral Tribunal

12. An Arbitrator who is prevented or fails to fulfil her functions in accordance with the requirements of the rules or within the time period specified, the Chairman of CIETAC has the power to replace her or such arbitrator may also voluntarily withdraw from her office [*Art. 31(1) CIETAC; UML on arbitration 13(2), 14(1); English Arbitration Act 1996 section 25*]. Ms. Arbitrator 1's intention to resign after the completion of oral hearings is clear but such final decision is to be taken by the Chairman [*SOD, 31(2)*]. It is not in the parties' interest to force such an arbitrator who wants to voluntarily tender her resignation, it is better to replace him with another more cooperative Arbitrator [*Julian/Loukas/Stefan, p .612.; Mustill*]

(B) It is part of the Arbitrator's duty to resolve the duty expeditiously

13. An arbitrator shall not accept nomination/appointment, if due to his work load, he cannot ensure enough time and energy to handle the case with necessary level of care [*Rules for Evaluating the Behavior of Arbitrators, Art. 6(3)*]. The issue of quantum might take three additional days due to the delay caused by Ms. Arbitrator 1 herself and it is her duty to afford timely resolution [*Gary B. Born*].

2.2 CLAIMANT not bound to pay the additional fees

14. CLAIMANT is not bound to pay additional fees to Ms. Arbitrator 1 as the arbitral tribunal has the power to determine in the arbitral award the arbitration fees and other expenses to be paid by the parties to CIETAC [*Art. 50(1) CIETAC*]. Any additional payable to Ms. Arbitrator 1 is payable to CIETAC and not the arbitrator herself. Moreover, CLAIMANT is not legally bound to pay the additional fee pursuant to the discussion that the issue of quantum is 'likely' to take 5 days [*¶ 2, SOD*]. The issue here is not the payment of fees as

that would have to be paid to the substitute arbitrator as well if appointed, but the fact that efficiency is compromised by the continuation of Ms. Arbitrator 1 as stated in submission 1 above. Moreover, Ms Arbitrator has agreed to the fees as well as the terms of her appointment and such fees has been paid.[P.O 2 ;Art. 12(3) CIETAC; Ted]

2.3 Moreover, CLAIMANT is entitled to replace Ms. Arbitrator 1 and appoint a substitute arbitrator for determination of issue of quantum

(A) Ms. Arbitrator 1 may can be validly replaced under CIETAC Rules.

15. The Chairman of CIETAC shall make a final decision on whether or not an arbitrator should be replaced with or without stating reasons [*Art. 31(2), CIETAC*]. In such an event a 'substitute arbitrator' shall be nominated according to the same procedure and time period that applied to the arbitrator replaced [*Art. 31(3), CIETAC; 13(1) UML on arbitration*]. CLAIMANT therefore, is entitled to not contest the resignation of Ms. Arbitrator 1 and nominate another 'substitute arbitrator' to decide the issue of quantum.

(B) No repetition of proceedings or 'Start over' necessary in case of replacement of arbitrator.

16. The Arbitral Tribunal , after the replacement of an arbitrator, has the power to decide whether and to what extent the previous proceedings may be repeated [*Art. 31(4), CIETAC*]. If and when Ms. Arbitrator 1 has resigned after completion of oral hearings, it would indicate that a substantial portion of the proceedings are done with. Courts have rejected the 'start over' rule in case of resignations due to the concern that such resignations might be 'strategic' [*Rush /Klemm p.35*;*INS*].
17. Panel continuing with two members, subject to an opportunity of the relevant party to appoint a replacement arbitrator, is appropriate to avoid wasted resources and a manipulation of the

process [*Zeiler*]. To deny party the party appointed arbitrator of its choice would deprive it of a basic expectation in entering the arbitration agreement, and even if such agreement is silent it does not vitiate the party's entitlement to this right [*IRB*; *Wellpoint*].

B.1 Alternatively, the tribunal can still continue as a truncated tribunal

18. The remaining arbitrators on a three member tribunal may request the Chairman CIETAC to replace the arbitrator pursuant to Art. 31 CIETAC or on his approval proceed to render the award [*Art. 32, 46(5), 46(6) CIETAC*]. The tribunal has the power to proceed irrespective of replacement by CLAIMANT and where the nominee of RESPONDENT is still intact [*Sedco; Uiterwiyk; Bockstiegel*]. There is, therefore, no question of any subsequent 'new appointment' resulting in loss of time and money whatsoever.

ARGUMENT ON MERITS

III. CLAIMANT VALIDLY TERMINATED THE CONTRACT UNDER CLAUSE 15 OF THE PURCHASE CONTRACT

3.1 Validity of the contract

(A) clause 17.1 is a valid merger clause

19. The 'entire agreement' or 'merger clause' cannot be contradicted or supplemented by evidence of prior agreements or statements and such statements may only be used to interpret the writing [*§2.1.17*]. Both CLAIMANT and RESPONDENT have consented to the JV agreement, which contains an 'Entire agreement' Clause, which ensures legal certainty during the performance of the contract [*Cl. Ex 1,Clause 17; www.Trans-Lex.org/928550*]. Following, the principle of Sanctity of contract and Pacta Sunt Servanda ,the agreements have to be duly followed [*www.Trans-Lex.org/919000*]

(B) Negotiations in accordance with good faith and fair dealing

20. Good faith and fair dealing is said to be one of the fundamental ideas underlying PICC [*Off cmt. §1 to 1.7 p.no 18*]. Moreover, Consent should be presumed when a reasonable man would believe that, from the other party's behaviour, he was assenting to the proposed terms [*Smith*]. CLAIMANT had approached respondent with a view to develop its business in Catalan and RESPONDENT had the license for the assembly of the I.5 MW wind turbines. This shows that RESPONDENT was not in a weaker position w.r.t. the pre contractual negotiations. Moreover, various instances in these agreements show that the negotiations were conducted in good faith [*Cl. Ex. 2, clause 10; Clause B of PC*]. Furthermore, if RESPONDENT was dissatisfied with the terms, it was free to raise objections/propose a counter offer but an omission to do this shows acceptance. [*filanto*].

3.2 CLAIMANT fulfilled all its contractual obligations

21. Art.30 explicitly instructs the seller to perform his obligations "as required by the contract" [*Art. 30 CISG*].

(A) CLAIMANT has met the quality standards

22. In determining the exact content of the seller's contractual obligation concerning the conformity of the goods, the parties' statement and conduct have to be interpreted in accordance with the principles set out in Art.8 [*Kroll/Mistelis/Perales*].

A.1 CLAIMANT has met the quality, technical and qualification requirements

23. The CLAIMANT had agreed to manufacture gearboxes in conformity with certain requirements [*Clause A, Purchase Contract*]. The 100 gearboxes produced by the JV were in conformity with Clause A [*P.O 2, Answer 8*].

A.2 CLAIMANT has obtained 'fit certificate' from Future Energy Inc.

24. CLAIMANT was required to obtain certified approval from Future Energy Inc. that the shipped gearboxes were in conformity with the standards required under the Purchase contract [*Cl. Ex 2, Clause 10*]. Therefore, there was not 'lack of approval' on the part on CLAIMANT as the 'fit certificate' for model GJ 2635 was duly obtained and only then were the goods shipped.

(B) CLAIMANT has conducted two manufacturing reviews

25. Two manufacturing reviews were duly conducted on 17th September 2011 and 16th January 2012 [*Annex 1, PC*]. Art. 8(1) CISG instructs tribunals to interpret contracts based on the subjective intention of a party, where the other party knew or could not have been unaware of

that intention [*Honnold 118*]. Satisfactory manufacturing reviews are not terms on which the buyer is 'desirous of purchasing the gearboxes' [*Clause (A) PC*] The gearboxes manufactured by the CLAIMANT met all the essentials which renders the results of these manufacturing reviews irrelevant since this was not a case of 'a sale by sample' [*Art. 35(2)(c) CISG*].

3.3 RESPONDENT'S did not fulfil its obligations

(A) RESPONDENT'S breach of clause 1.2 amounts to fundamental non performance

26. CLAIMANT has terminated the contract since in this case the failure of the RESPONDENT to perform the obligation amounts to fundamental non-performance [*§7.3.1(1)*]. A breach of contract is fundamental when the purpose of the contract is endangered so seriously that, for the concerned party to the contract, interest in the fulfillment of the contract ceases to exist as a consequence of the breach of contract [*Art. 25 CISG, OLG Frankfurt 17 September 1991*; *FCF*].

A.1 RESPONDENT suspended the contract without any default of CLAIMANT

A.1.1 Defective certification cannot be imputed to CLAIMANT

27. Future Energy Inc. did not perform its obligation that was meant to achieve a particular result [*§5.1.4*]. Furthermore, CLAIMANT is only liable to the extent of contribution made as the obligations of the obligors are separate [*§11.1.1(b)*]. The insertion of an independent certification company was to protect the interests of the RESPONDENT and CLAIMANT was lead to believe that they were acting as separate obligors. CLAIMANT reasonably relied and acted according to it but this worked to its detriment [*§1.8*].

A.2 The obligation not performed is of essence of the contract

28. The payment of goods delivered is an obligation that needs to be fulfilled by the RESPONDENT since it was 'committed to purchase' a specific quantity provided CLAIMANT met the quality standards, which as discussed above, it had [*Clause 1.2, PC; Art. 53, 54 CISG*].

A.3 RESPONDENT's suspension is intentional and reckless

29. In spite of CLAIMANT fulfilling its contractual obligations and providing for mitigation of harm [*§7.4.8*] by allowing RESPONDENT to nominate another certification company for approving gearboxes, the non performance of RESPONDENT and suspension of contractual obligation can only be said to intentional and reckless [*Cl. Ex. 6*].

A.4 CLAIMANT cannot in future rely on the RESPONDENT

30. An intentional breach can show that a party cannot be trusted [*§7.3.1, Off cmt 3(d)*]. Thus, suspension of its obligations under the contract and non payment of consecutive instalments [*Arbitral Award Hamburg*], which it failed to cure within the time provided [*§7.1.4*] under the contract is sufficient to conclude that it cannot be trusted to fulfil its obligations in future [*CAM*].
31. The buyer's refusal to accept an instalment may give the seller good grounds to expect that it will do the same in relation to future instalments [*Art 73 CIETAC; Arbitral award 1997/17*].

(B) <u>RESPONDENT did not act in the 'best interests' of the JV Company</u>

32. The primary objective of the Joint Venture Company was to carry on its business for the 'Catalan' market and in the best interests of the company [*Cl. Ex 1, Clause 1*]. RESPONDENT is also a stakeholder in the JV Company and its decision to suspend the contract without providing for a cure is detrimental to the interests of the company.

(C) Neglect by RESPONDENT of its obligation to examine the goods under clause 1.2 of the purchase contract

33. Gross negligence can be assumed in all cases where the lack of awareness results from the failure to undertake the necessary and possible examination of the goods [*Art. 35, Kroll/Mistelis/Perales; CISG commentary p.no. 532*]. A duty was cast on the RESPONDENT to examine if the goods are in conformity with the purchase contract and only then was it required to make payment [Cl. Ex. 2, Clause 1.2 (iii)]. Where the buyer does not rely on the seller's knowledge there is no need to protect the buyer [*Rechtbank*].

C.1 Alternatively, RESPONDENT was under an obligation to examine gearboxes and notify claimant in accordance with art 38 and 39 CISG

34. If the time for performance has passed but the obligee has failed to demand performance within a reasonable time, the obligor may be entitled to assume that the obligee will not insist upon performance [*§7.2.2 Off cmt;, Arbitral award 147/2005*]. Further Art 38(1) CISG requires a buyer to reasonably examine the goods "within as short a period as is practicable" [*OG May 97; OG Oldenburg Dec 2000; APC June 2000*].
35. RESPONDENT received 100 gearboxes on 13th March 2012 after which it made the payment. For a period of 64 days after delivery, RESPONDENT did not provide any notice, giving its first notice only on 16th May 2012 [*Cl. Ex. 4*]. Also, RESPONDENT ought to have carried out a diligent examination considering its non-reliance on the skill of the seller [*Ferrari p. no.192; LG Aug 1989; 'Flexible Approach' CISG-AC2 ¶39(3)*].

3.4 Alternatively, termination under clause 15 valid

36. The parties impliedly attach weight to certain obligations with the consequence that breach of clause 15 is regarded as fundamental [*7.1.4 PICC; Eberhard p.no 143*]. RESPONDENT was

given time to effectively remedy the non-payment of two instalments due after which a notice of default was issued [*Cl. Ex 7; Art. 59 CISG*]. The RESPONDENT failed to pay within additional period of time.[*Nachfrist;§ 7.1.5; Shenzhen; Cl.Ex 8*]. RESPONDENT also failed in its duty of good faith and cooperation by failing to examine goods. [*ICC 10346;§5.1.3; ICC 9593*]

IV. ENERGY PRO IS ENTITLED TO CLAIM TERMINATION PENALTY

4.1 The termination does not affect any provision of the contract which is to operate even after termination

37. As a general rule, contracts and arbitration clause in the contract are considered severable. Thus not only the rights and obligations which are ancillary to the avoidance of the contract, like a respective penalty but also those rights and obligations are protected which are of special importance that when the conflict aggravates so that the contract is terminated early [*Filanto*]. Thus termination is prospective and does not affect the validity of any contract provision governing rights and duties of the parties and this rule applies to penalty clauses.

A. Clause providing for damages is protected

38. Termination does not preclude a claim for damages for non-performance [*§7.3.5(2)*]. This claim for damages can be asserted apart from the legal consequences of the breach. [*Enderlein p.no 242*] and claims which have arisen due to buyer's violation of his primary obligation under the contract [*ICC 9978*]. Damages include penalties for delay and also damages which arise because of termination [*Arbitral Tribunal Hamburg,*].CLAIMANT therefore has retained the right to claim damages, arising out of termination and as provided under clause 15.2 of the purchase contract.

4.2 CLAIMANT is entitled to termination penalty as claimed

39. If it is provided in the contract that a party who fails to perform is to pay a specified sum for non performance, the aggrieved party is entitled to that sum irrespective of its actual harm [*§7.4.13*].

A. Agreed payment for non-performance is defined under the purchase agreement

40. Art. 7.4.13 gives an intentionally broad definition of agreements to pay a specified sum in case of non-performance, whether such agreements are intended to facilitate the recovery of damages or to operate as a deterrent against non-performance, or both. As in the case at hand there's a provision [*Clause 15.2*] under the Purchase contract which relates to the payment for non-performance and thus entitles the CLAIMANT to receive the amount as termination penalty.

B. Agreed payment for non-performance in principle valid

41. The view expressed in this Purchase agreement is supported by legal solutions found in regulations of International Contract Law pertaining to the institution of contractual penalties. Referring to Art. 7.4.13 in this context it has been stated that if a contract provides for the payment of penalty in case of default, then the other party shall have the right to claim the agreed amount, regardless of the scope of the incurred damage [*CZP 61/03*].

PRAYER FOR RELIEF

CLAIMANT respectfully requests that the Arbitral Tribunal find that:

1. Ms. Arbitrator 1 can validly resign during arbitration proceedings.
2. Future Energy Inc. can be brought by CLAIMANT as a third party to the arbitration proceedings
3. The CLAIMANT validly terminated the purchase contract

Consequently, CLAIMANT respectfully requests the Arbitral Tribunal to order RESPONDENT:-

4. To pay the termination penalty of USD 8,000,000 as damages.
5. To pay the costs of arbitration, including CLAIMANT expenses for legal representation, the arbitration fee paid to CIETAC and the additional expenses of the arbitration as set out in Article 50, CIETAC Arbitration Rules.
6. To pay interest on the amounts set forth in item 4 from the date those expenditures were made by CLAIMANT to the date of payment by RESPONDENT.