SIXTH INTERNATIONAL

ALTERNATIVE DISPUTE RESOLUTION

MOOTING COMPETITION

5 JULY - 9 JULY 2015

HONG KONG

ON BEHALF OF CLAIMANT	AGAINST RESPONDENT
Albas Watchstraps Mfg. Co. Ltd.	Gamma Celltech Co. Ltd.
241 Nathan Drive, Yanyu City, Yanyu	17 Rodeo Lane, Mulaba, Wulaba

MEMORANDUM FOR CLAIMANT

Team No. 204 C

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List of Abbreviations

RULES AND LAWS

CISG	United Nations Convention on Contracts for the International Sales of Goods, Vienna, 1 April 1980
ICC Rules	ICC Arbitration Rules, Paris, 1 January 2012

Abbreviations	Contents
¶	Paragraph
AfA	Application for Arbitration
Art.	Article
CE	Claimant's Exhibit
CIETAC	China International Economic and Trade Arbitration Commission
CIETAC Rules	China International Economic and Trade Arbitration Commission Arbitration Rules

Abbreviations	Contents
CISG	Convention of International Sale of Goods
CLAIMANT	Albas Watchstraps Mfg. Co. Ltd.
DDP	Delivery Duty Paid
e.g.	exempli gratia (for example)
INCOTERMS	International Commercial Terms
LLC	Limited Liability Company
No.	Number
p.	Page
PARTIES	Albas Watchstraps Mfg. Co. Ltd. and Gamma Celltech Co. Ltd.

Abbreviations	Contents
RE	Respondent's Exhibit
RESPONDENT	Gamma Celltech Co. Ltd.
SoD	Statement of Defense
SPA	Sale and Purchase Agreement,
v.	Versus

Table of Authorities

BOOKS

Cited As	Content	Citing Paragraph
Author in Honsell	Heinrich Honsell, Kommentar Zum UN-Kaufrecht. übereinkommen der Vereinten Nationen über Verträge über den Internationalen Warenkauf (CISG) Springer, Berlin et al., (1997)	35
Author in Schlectriem 1998	Peter Schlechtriem, Commentary On The UN Convention On The International Sale of Goods (CISG), Second Edition, Oxford University Press, (1998)	32
Author in Schlectriem & Schwenzer	Peter Schlechtriem and Ingeborg Schwenzer, Commentary on the UN-Convention on the International Sale of Goods (CISG) C. H. Beck, München, 2nd ed., (2005)	37
Born & Scekic	Gary Born and Marija Šćekić, Pre-Arbitration Procedural Requirements 'A Dismal Swamp' (2015)	9

Cited As	Content	Citing Paragraph
CISG-AC2	"CISG-AC Opinion no 2, Examination of the Goods and Notice of Non-Conformity: Articles 38 and 39" Rapporteur: Professor Eric E. Bergsten, Emeritus, Pace University School of Law, New York 2004	32
Digest of Case Law on CISG	UNCITRAL, Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (2012)	15
DiMatteo	Larry A. DiMatteo et.al., The Interpretative Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence, Northwestern Journal Of International Law and Business, (2004)	31
Emerson	Robert W. Emerson, Business Law, Fifth Edition, Barron's Educational Series, Inc.(2009).	10, 17
Honnold	John O. Honnold, Uniform Law for International Sales Under The 1980 United Nations Convention, Third Edition, Kluwer Law International, (1999)	32

Cited As	Content	Citing Paragraph
Jolles	Alexander Jolles, Consequences of Multi-tier Arbitraion Clauses: Issues of Enforcement, 72 Arbitration 329(2006)	3
Liu	Chengwei Liu, Remedies for Non-Performance: Perspectives from CISG, UNIDROIT Principles & PECL Law School of Renmin University of China, Beijing, (2003)	36
Neumayer & Ming	Karl H. Neumayer, Chaterine Ming, Convention de Vienne sur les Contrats de Vente Internationale de Marchandises – Commentaire Litec Lausanne, (1993)	37
Saidov	Djakhongir Saidov, Methods of Limiting Damages under the Vienna Convention on Contracts for the International Sale of Goods Pace International Law Review, (2001)	36, 37
Schlechtriem/Schwenzer 2010	Peter Schlechtriem and Ingeborg Schwenzer (eds.), Commentary On The UN Convention On	31

Cited As	Content	Citing Paragraph
	The International Sale of Goods (CISG), Third Edition, Oxford University Press, (2010)	

CASES

Cited As	Content	Citing Paragraph
	Germany	
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Clothes Case	Landgericht Oldenburg 12 O 2541/95 27 March 1996	17
Frozen Pork Case	CLOUT Case No. 774, Bundesgerichtshof VIII ZR 67/04	19

Cited As	Content	Citing Paragraph
	2 March 2005	
Plants Case	Landgericht Oldenburg 22 O 38/06, 12 December 2006	19
Surface Protective Film Case	LG Heidelberg [LG = Landericht = District Court] O 37/96 KfH II 2 October 1996	35
	United Kingdom	
Hadley v. Baxendale	England and Wales High Court (Exchequer Court) 9 Ex Ch 341 23 February 1854	35

Cited As	Content	Citing Paragraph
Halifax Financial Ltd. v. Intuitive Systems Ltd.	Halifax Financial Services Ltd. V. Intuitive Systems Ltd. [1998] 1997 H. No. 614	7
United States		
Asante v. PMC-Sierra	Asante Technologies, Inc. v. PMC-Sierra, Inc. U.S. District Court, N.D., California, C 01-20230 JW. 27 July 2001	13
Him v. Devito	Him Portland, LLC. V. Devito Builders, Inc. ,317 F.3d 41 United States Court of Appeals, First Circuit No. 02-1955. Heard Dec. 4, 2002. Decided Jan. 17, 2003.	3

Cited As	Content	Citing Paragraph
Supermicro Computer Inc. v. Digitechnic	Supermicro Computer Inc. v. Digitechnic, S.A. and Carri Systems, d/b/a Digitechnic United States 30 January 2001 Federal District Court [California] C-00-02214-CAL	12
ICC		
Electrical Appliances Case	Court of Arbitration of the International Chamber of Commerce 8769 December 1996	35
SCC (Stockholm Chamber of Commerce)		
Licensor v. Manufacturer	Licensor and buyer v. Manufacturer Interim Award and Final Award 17 July, 1992	3

INTERNET RESOURCE

Cited As	Content	Citing Paragraph
Rauscher, Morgan	Morgan Rauscher, *Machine-made v. Hand-mad* available at : http://morganrauscher.com/morgan-rauscher/2013/12/02/machine-made-vs-hand-made/	24

Argument

I. TRIBUNAL HAS JURISDICTION OVER THE PAYMENT CLAIM

1. Although **RESPONDENT** objects to the jurisdiction on the basis that there was no consensus for arbitration [*p.16,SoD,¶3*], **CLAIMANT** submits that Tribunal has jurisdiction for the following reasons: [**A**] The pre-arbitral procedure is not mandatory [**B**] **CLAIMANT** has the right to directly proceed to arbitration.

A. THE PRE-ARBITRAL PROCEDURE IS NOT MANDATORY

2. The pre-arbitral procedure is not mandatory, thus cannot exclude arbitral jurisdiction. *Art.*19(a) of *SPA* allows parties to resort to amicable resolution before proceeding to arbitration [*p.7,CE No.2*]. **RESPONDENT** argued that this provision is an obligatory provision.

3. However, **CLAIMANT** submits there must be explicit terms in the Agreement to provide the pre-arbitration procedure [*Jolles,p.335*]. If the **PARTIES**' common intention had been to resort to arbitration contingent upon the fulfilment of more specific conditions, they should have stated it explicitly [*Licensor v. Manufacturer*]. Further, the terms expressed should be as specific as, "*be subject to mediation as a condition precedent to arbitration* […]" [*Him v. Devito*].

4. In the present case, **PARTIES** did not have the intention to set pre-conditions to arbitration, since no such express provisions exist, *Art.*19(a) of *SPA* should be read only as an encouragement for resolving the disputes concerning payments amicably and not an obligation. Thus, the pre-arbitral procedure is not mandatory and cannot exclude arbitral jurisdiction.

B. CLAIMANT HAS THE RIGHT TO DIRECTLY PROCEED TO ARBITRATION

5. **CLAIMANT** has the right to directly proceed to arbitration since [**i**] Both **PARTIES** had failed to resort to amicable resolution [**ii**] **RESPONDENT** had no intention to resolve the dispute amicably.

i. BOTH PARTIES HAD FAILED TO RESORT TO AMICABLE RESOLUTION

6. **CLAIMANT** had tried to contact **RESPONDENT** by email on 27th February 2015 when the dispute arose, however, until 14 days had passed, **RESPONDENT** did not reply the last email on 27th February 2015 at 11.20 a.m [*p.13,CE No.7*].

7. Courts have refused to oblige disputing parties to initiate an amicable pre-arbitral tier because it cannot be considered reasonable to force the parties into fruitless settlement proceedings that merely increase the expense and delay the resolution of the issue [*Halifax Financial Ltd. v. Intuitive Systems Ltd.*].

8. Since **RESPONDENT** did not try to contact within 14 days, **CLAIMANT** submits that it is not reasonable to resolve the dispute through amicable resolution that would increase the delay of the resolution of the issue. Therefore, both **PARTIES** had failed to resort to amicable resolution.

ii. RESPONDENT HAD NO INTENTION TO RESOLVE THE DISPUTE AMICABLY

9. RESPONDENT had no intention to resolve the dispute amicably due to its silence. Amicable resolution requires participation by **PARTIES** in other procedural steps prior to the initiation of an arbitration [*Born&Scekic, p.227*].

10. Here, **RESPONDENT**'s silence towards **CLAIMANT'**s email on 27th February 2015 at 11.20 a.m. must be deemed as an absence of intention in amicable resolution prior to arbitration. If one party says nothing or silent to the offer given by another party, it would constitute as acceptance to the offer [*Emerson,p.93*]. Therefore, 14 days have passed without any response from **RESPONDENT, CLAIMANT** was justified in submitting the dispute to arbitration on 18th November 2015 [*p.1,AfA*].

II. CISG GOVERNS THE CLAIMS ARISING UNDER THE *SPA* 1 & 2

11. CISG governs the claims arising under the *SPA* 1&2 between **PARTIES** since [**A**] The appointment of Wulaba's law refers to the application of *CISG*, [**B**] The application of *CISG* had not been opted out.

A. THE APPOINTMENT OF WULABA'S LAW REFERS TO THE APPLICATION OF CISG

12. *Art.*20 of *SPA* appoints Wulaba's law to govern the *SPA*. The convention applies to contracts of sale of goods between **PARTIES** whose places of business are in different States when the States are contracting States [*CISG Art.1(1)(a)*]. If parties to a contract are Contracting States, then their contract is governed by *CISG* [*Supermicro Computer Inc. v. Digitechnic, S.A.*]. In the present case, **CLAIMANT** and **RESPONDENT** have their place of business in Yanyu and Wulaba respectively, in which Wulaba is a Contracting State of *CISG* [*p.4,Facts,¶15*]. Therefore, the appointment of national law of Wulaba refers to the application of *CISG*.

B. THE APPLICATION OF CISG HAD NOT BEEN OPTED OUT

13. The application of *CISG* had not been opted out by the **PARTIES** because *Art.*20 of *SPA* is deemed insufficient to exclude *CISG*. **CLAIMANT** asserts that merely choosing the law of a jurisdiction without express exclusion of *CISG* is insufficient to opt out of *CISG* [*Asante. v. PMC-Sierra*]. Even if the selection of national law of Wulaba could amount to implied exclusion of *CISG*, the choice of law

clause here does not evince a clear intent to opt out of *CISG*, because Wulaba is a Contracting State to *CISG*. Since the application of *CISG* had not been opted out, *CISG* is applicable to *SPA* 1&2.

III. THERE WAS NO LACK OF INSURANCE COVERAGE IN THE FIRST TRANSACTION

14. There was no lack of insurance coverage in the first transaction because [**A**] **CLAIMANT** is not bound to affect insurance and [**B**] *DDP* burdened upon **CLAIMANT** does not cover insurance.

A. CLAIMANT IS NOT BOUND TO AFFECT INSURANCE

15. **CLAIMANT** is not bound by the *SPA* to affect insurance. *Art.*32(3) of *CISG* stipulates, "*If the seller is not bound to effect insurance in respect of the carriage of the goods*, *he must, at the buyer's request, provide him with all available information necessary to enable him to affect such insurance."* Hence, seller only has an obligation, at the buyer's request, to provide buyer with all available information on the goods, for buyer to affect insurance [*Digest of Case Law on CISG*]. In fact, there was no request from **RESPONDENT** to provide information regarding insurance and **CLAIMANT** is not bound by the *SPA* to affect insurance.

B. DDP BURDENED UPON CLAIMANT DOES NOT COVER INSURANCE

16. *DDP* burdened upon **CLAIMANT** does not cover insurance because *DDP* only covers all applicable tax and duties paid, specifically VAT and GST. **CLAIMANT** had agreed to bear all related costs under *DDP INCOTERMS* 2010 in which it does not include insurance [*p.3,Facts,¶10*]. **CLAIMANT** only bears the risks for loss and damages until the loading of the cargo on the ship in the port of departure is completed. **CLAIMANT** is not obliged to provide any insurance [*Art.A.3.b of DDP INCOTERMS 2010*]. Therefore, it is evident that *DDP* does not cover insurance.

IV. CLAIMANT HAD NOT BREACHED ITS OBLIGATION RELATED TO THE DELIVERY TIME OF THE PROTOTYPE

17. **CLAIMANT** had fulfilled its obligation under *Art.*5 of *SPA* by delivering the prototypes within 14 days after receiving deposit from **RESPONDENT**. Courts have held that buyers are not required to be able to possess the goods on the date of delivery [*Clothes Case*]. **CLAIMANT** received the deposit on 31st July 2014 and delivered the prototypes on 14th August 2014 [*p.3,AfA,¶.7;p.8,CE No.3,¶.8*] which is the fourteenth days after. Moreover, **RESPONDENT's** silence when receiving the prototypes [*p.9,CE No.4*] means there is no breach since silence constitutes acceptance if the buyer says nothing [*Emerson,p.93*]. Therefore, **CLAIMANT** did not breach its obligation related to the receipt of the prototypes by **RESPONDENT** on 15th August 2015 since it has been sent on 14th August 2015.

V. NO LACK OF CONFORMITY IN THE GOODS DELIVERED BY CLAIMANT

18. The watchstraps are conform with *Art.*35(2) *CISG* because the watchstraps are [**A**] fit for their ordinary use; [**B**] fit for their particular use; and [**C**] they posses the qualities of the prototypes.

A. THE GOODS FIT FOR THE PURPOSE OF ORDINARY USE

19. The goods are fit the ordinary use as stipulated in *Art.*35(2)(a) *CISG*. The standard of ordinary use requires goods to be of average quality [*Frozen Pork Case*] which means that the goods must comply with the expectations of an average user [*Plants Case*]. The alleged non-conformity regarding the size and the stitching does not render the goods useless, since it did not affect its form of usual straps and can be used as straps in general. Therefore, the goods are fit for the purpose as the ordinary straps.

B. THE GOODS ARE FIT FOR THE PARTICULAR PURPOSE

20. The goods are fit for the purpose, which **RESPONDENT** had made **CLAIMANT** known since the conclusion of the contract. The goods comply with the contract if the goods are fit for purpose expressly or impliedly informed to **CLAIMANT**, unless the buyer did not rely on **CLAIMANT**'s skill and judgment [*CISG Art.35(2)(b)*]. **RESPOND-**

ENT's silence regarding the size of the prototypes constitutes acceptance [*Emmerson, p.93*], therefore the size has complied to the contract since it was deemed fit to the Cherry Watchcase [*p.11 SPA No.2 Art.2*]. It is impossible for **CLAIMANT** to check it one by one since **RESPONDENT** only sent one watchcase and asked **CLAIMANT** to take cautious care of it [*p.13,CE No.7,¶3;p.17,RE No.1,¶2*]. Therefore, as long as the goods possess the quality of the prototype, the goods were deemed fit to the particular purpose as the straps for Cherry Watchcase [*p.5,CE No.1,¶1*].

21. Moreover, it is unreasonable for **RESPONDENT** to rely on **CLAIMANT**'s skill and judgment since **CLAIMANT** had never produced a similar watchstraps for the Cherry watch. Further, Cherry watch is a brand new watch [*p.5*,*CE No.1,¶1*] and there is no previous leather watchstraps [*p.3,Facts,¶4*]. Therefore, **RESPONDENT** could not rely on **CLAIMANT**'s skill and judgement.

C. THE GOODS POSSESS THE QUALITY OF THE PROTOTYPES

23.RESPONDENT submits that the goods have different quality with the prototypes because of the different method of production and stitching. However, **CLAIMANT** submits that [**i**] the different method of production does not affect its quality and [**ii**] the different stitching does not render the goods to be different quality.

i. THE MACHINERY PRODUCTION WOULD NOT AFFECT THE QUALITY OF THE GOODS

24. **CLAIMANT** made a handmade prototype since the tooling would only be invested after receiving **RESPONDENT**'s approval [*p.13,CE No.7,¶2*]. **CLAIMANT** used machines for the mass production because tools increase the effectiveness by giving more strength, speed, and accuracy rather than the human body [*Rauscher,Morgan*] and there are no problems in the recent twenty years [*p.5,Clarifications,¶26*]. Moreover, *Art.*9(2) *CISG* states, *"the parties are considered to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known […]"*. By understanding **CLAIMANT**'s history and reputation [*p.5,CE No.1,¶2*], **RESPONDENT** should have known that **CLAIMANT**'s main production method is through machine [*p.13,CE No.7,¶2*], therefore, the machinery production could be used under *Art.*9(2) *CISG*. Moreover, there was no request from **RESPONDENT** for **CLAIMANT** to make a handmade watchstraps [*p.6,SPA No. 2,Art.2*]. Thus, the usage of machinery production does not affect the quality of the goods.

ii. THE DIFFERENT STITCHING DOES NOT RENDER

THE GOODS TO BE DIFFERENT QUALITY

25. The different stitching does not render the goods to be different quality. A distinction between sampling and mass production is common to be happened in the industry, especially when it deals with leather watchstraps [*p.5,Clarifications,¶26*], even when the leather used are the same [*p.1,Clarifications,¶4*]. Referring to the aforementioned argument, common usage is applied between the parties, therefore, the different stitching which is common to be happened does not render the goods to be different quality.

VI. RESPONDENT IS OBLIGED TO PAY THE BALANCE PAYMENT

26. **RESPONDENT** is obliged to pay the balance payment because [**A**] **CLAIMANT** had fulfilled its obligation and [**B**] Even if there is a lack of conformity of the goods, **RESPONDENT** is still obliged to pay.

A. RESPONDENT IS OBLIGED TO PAY SINCE IT HAS RECEIVED THE GOODS

27. **RESPONDENT** has the obligation to pay the balance payment since it has received the goods. **RESPONDENT** must pay no more than 12th February 2015 after receiving the goods on 29th January 2015 to comply with the *SPA* [*p.16,SoD,¶9;p.11,SPA,Art.4*]. Thus, **RESPONDENT** is obliged to pay after receiving the goods.

B. EVEN IF THERE IS A LACK OF CONFORMITY OF THE GOODS, RESPONDENT IS STILL OBLIGED TO PAY

28. Even if there is a lack of conformity of the goods, it does not exclude **RESPONDENT**'s obligation to pay since [**i**] **CLAIMANT** is not liable on the alleged non-conformity; [**ii**] Even if **CLAIMANT** is not excluded from the lack of conformity, **RESPONDENT** cannot rely on the alleged non-conformity.

i. EVEN IF THERE IS A LACK OF CONFORMITY OF THE GOODS, ART.35(3) EXCLUDES CLAIMANT'S LIABILITY

29. Although there is a lack of conformity of the goods, **CLAIMANT** is not liable, as seller is not liable for non-conformities "*if at the time of conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity*" [*CISG Art.35(3)*]. Therefore, if **RESPONDENT** submits that the machinery production has defected the quality of the goods since it does not look handmade [*p.18,RE No.2,¶9*], referring to the aforementioned argument, **RESPONDENT** considered to have understood **CLAIMANT**'s common usage on the production method at the time of the conclusion of the contract. Hence, **CLAIMANT** is excluded from the liability over the alleged non-conformity.

ii. RESPONDENT CANNOT RELY ON THE ALLEGED NON-CONFORMITY

30. Even if there is a lack of conformity of the goods, **RESPONDENT** failed to notify **CLAIMANT** with proper notice under *Art.*39(1) *CISG*. In the present case, the notice fails to comply with *Art.*39(1)

CISG since [**1)**] **RESPONDENT** did not specify the nature of the non-conformity; and [**2)**] it was not in the reasonable time. Consequently, **RESPONDENT** has lost its right to rely on the alleged non-conformity.

1) RESPONDENT DID NOT SPECIFY SUFFICIENT DETAIL

31. **RESPONDENT** did not specifically stipulate the nature of the alleged non-conformity to **CLAIMANT**. Buyer is required to notify seller specifying the nature of the non-conformity […] [*CISG Art. 39(1)*] which contains sufficient detail for **CLAIMANT** to know what needs to be done to cure the non-conformity [*Honied p.279; Di-Matteo p.368; Schwenzer in Schlechiem/Schwenzer 2010 p.609*]. The sentences *"the goods do not correspond with the prototypes*" and "*the ends of the watchstraps do not fit into Cherry watchcases*" were not enough to make **CLAIMANT** understand what needs to be done to cure the alleged non-conformity [*p.18,RE No.2,¶3-4*], since the problem regarding the softness could be caused by many factors e.g. the size could be too big or too small, the unfitness could be caused by the buckle, the plastic tubes, or even the edge. Based on the notice, it is hard for **CLAIMANT** to know what needs to be done to cure the alleged non-conformity, whether to reship the goods with different materials, minimise or maximise the straps, change material or size

of the ends or the edge. Therefore, **CLAIMANT** submits that the notice by **RESPONDENT** did not specify the necessary details required under *Art.*39 *CISG*.

2) RESPONDENT'S NOTICE WAS NOT WITHIN REASONABLE TIME

32. **RESPONDENT**'s notice on 27th February 2015 was not within a reasonable time under *Art.*39(1) *CISG*. *"Buyer is required to notify seller [...] within a reasonable time after it knew or ought to have known of the non-conformity"* [*CISG Art.39(1)*], if otherwise, buyer will lose its right regarding remedies relating to the non-conformity [*Honnold p.259; Schwenzer in Schlectricm 1998 p.319*]. **RESPONDENT** had checked the goods and found the alleged non-conformity on 29th January 2015 and give the notice 29 days after, which is 27th February 2015 [*p.4,Clarifications,¶19; p.16,SoD,¶9;p.18,RE No.2*]. Regarding the reasonable time under *Art.*39(1) *CISG*, it could be determined based on the nature of the goods, defect, the situation of the parties, and the relevant trade usages [*CISG-AC2 ¶39(3)*], therefore there is no benefits to delay the notice considering the nature of the defect since the alleged non-conformity cannot be cured by the time, and it was intended to be immediately traded [*p.5,CE No.1,¶3*]. Furthermore, there is no fact that indicates **RESPONDENT** was in a condition which prevented it from notifying **CLAIMANT** immediately. Therefore, **RESPONDENT**'s notice on 27th February 2015 was not within the reasonable time under *CISG Art.*39(1).

VII. RESPONDENT IS NOT ENTITLED TO COMPENSATIONS

33. **RESPONDENT** is not entitled to compensations since [**A**] **CLAIMANT** did not breach its obligations. [**B**] Even if **CLAIMANT** breach its obligations, the requested compensations is not permissible.

A. THERE WAS NO BREACH OF OBLIGATIONS BY CLAIMANT

34. Based on *Art.*45(1)(b) *CISG*, **RESPONDENT** is entitled to compensation only if **CLAIMANT** has breached its obligations. According to the aforementioned argument, **CLAIMANT** has fulfilled its obligations to deliver the proper goods in accordance with the *SPA* on time. Even if there is a lack of conformity, **CLAIMANT** is not liable. Therefore, **RESPONDENT** is not entitled to ask for compensation.

B. EVEN IF CLAIMANT BREACHES ITS OBLIGATIONS, THE REQUESTED COMPENSATION IS LACK OF CAUSALITY TOWARDS THE ALLEGED BREACH

35. Even if **CLAIMANT** has breached its obligations, **RESPONDENT** may not ask the requested compensation. The compensation must be the consequence of the breach [*CISG Art.74*] and it must either arise naturally from the breach or it must be foreseeable [*Hadley v. Baxendale*], which is determined by what the party in alleged breach knew or ought to have known at the time of conclusion of the

contract [*Butter Case; Surface Protective Film Case; ICC Case Electrical Appliances Case*].

36. Furthermore, *Art.*74 *CISG* requires causality and objective connection between the breach and the damage suffered [*Schönle in Honsell,¶20; Liu,¶14.2.5; Saidov,¶II.3*]. The website cost is not a consequence of the breach since it has no objective connection with the alleged non-conformity. Moreover, it is unforeseeable by **CLAIMANT** since it received no notice regarding the website cost in the contract conclusion [*p.5,CE No.1*].

37. Regarding the loss of profits, Tribunal needs to be "*convinced that the profits would actually have been made had the contract been properly performed*" [*Neumayer & Ming,¶1; Stoll & Gruber in Schlechtriem & Schwenzer,¶22*]. However, the absence of orders for the goods makes difficulties to state with precision that the alleged profits would have been earned [*Saidov,p.17*]. There is neither a contract between **RESPONDENT** and its customers regarding the watchstraps, nor the price of the goods [*p.4,Clarifications,¶21*]. Therefore, the amount of the loss profits is too speculative to be granted [*p.16,SoD,¶10*]. Hence, the website cost and the speculated loss of profits are not entitled to **RESPONDENT**.

Request of Relief

CLAIMANT hereby submits that the Tribunal render in favor of **CLAIMANT:**

1. **Tribunal Has Jurisdiction Over The Payment Claim**
2. **CLAIMANT Has The Right To Directly Proceed To Arbitration**
3. **There was No Lack Of Insurance Coverage in The First Transaction**
4. **CLAIMANT Had Not Breached Its Obligation Related To The Delivery Time of The Prototype**
5. **No Lack of Conformity in the Goods Delivered by CLAIMANT**
6. **RESPONDENT is Obliged to Pay The Balance Payment**
7. **RESPONDENT is Not Entitled to Compensations**