

2024 年浙江大学贸仲杯代表队选拔笔试题

FACTS:

The Parties to this Arbitration are **SensorX plc** (the “CLAIMANT”), based in Mediterraneo, and **Visionic Ltd** (the “RESPONDENT”), based in Equatoriana. CLAIMANT is a leading producer of sensors used in the automotive industry. Respondent is a leading producer of optical systems which are used by car manufacturers for their autonomous parking systems.

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| 7/6/2019 | CLAIMANT and RESPONDENT entered into a Framework Agreement (EXHIBIT 1) to regulate the future supply of RESPONDENT with CLAIMANT’s sensors. |
| Since 6/2019 to 1/2022 | RESPONDENT submitted 22 different purchase orders under the Framework Agreement and CLAIMANT delivered more than 5,000,000 sensors to RESPONDENT without any problems. |
| 4/1/2022 | The Parties concluded Order A-15604 (EXHIBIT 3), to be paid in two instalments. |
| 5/1/2022 | CLAIMANT suffered a cyberattack. |
| 17/1/2022 | RESPONDENT sent Order 9601(EXHIBIT 2), under which it ordered 1,200,000 sensors for delivery in two shipments for USD 32 per sensor. |
| 23/1/2022 | CLAIMANT discovered that it suffered a cyberattack, but did not notify RESPONDENT. CLAIMANT’s internal systems went down and had to be thoroughly investigated and sanitized from 15 May until 30 June 2022. |
| 16/2/2022 | Pursuant to Order A-15604, CLAIMANT delivered 200,000 L-1 sensors. |
| 18/3/2022 | Pursuant to Order A-15604, RESPONDENT made the first payment. |
| 27/3/2022 | Ms. Audi of CLAIMANT has been absent from work since this date, first on vacation for 10 days, then on sick leave. |
| 28/3/2022 | Mr. Royce of RESPONDENT received a forged email from cybercriminals, requesting a modification of bank account for Order 9601. Mr. Royce tried to contact Ms. Audi on her cell phone but failed. He then replied to the email asking for confirmation and received a return email stating that the changes met the written requirements. |

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| 3/4/2022 | CLAIMANT delivered the first 600,000 sensors according to Order 9601. |
| 4/4/2022 | RESPONDENT wrote an email informing CLAIMANT of the defective L-1 sensors and stating that payment for the second shipment would be withheld until CLAIMANT could come up with a proper solution. |
| 3/5/2022 | This date is the due date for payment of the first installment of Order 9601 in the amount of USD 19,200,000, which has not been paid by RESPONDENT. |
| 30/5/2022 | CLAIMANT delivered the second 600,000 sensors under Order 9601. |
| 30/6/2022 | This is the second payment due date for Order 9601 in the amount of USD 19,200,000, which has not been paid by RESPONDENT. |
| 25/8/2022 | CLAIMANT discovered that RESPONDENT had not paid in accordance with Order 9601. |
| 5/9/2022 | Mr. Durant of CLAIMANT sent an email to RESPONDENT, stating that payments for Order 9601 were not received. |
| 8/9/2022 | Mr. Toyoda of RESPONDENT stated in the email that payments for Order 9601 had been made to the new bank account and he would not make payments again to CLAIMANT's bank account. RESPONDENT attached the forged e-mail and the forged email address had the wrong suffix "semsorx.me" instead of "sensorx.me". |
| 28/11/2022 | RESPONDENT informed CLAIMANT that it would terminate the Framework Agreement on July 1, 2023. |
| 1/9/2023 | CLAIMANT realized that RESPONDENT had not paid the second installment under Order A-15604. RESPONDENT stated that RESPONDENT had informed CLAIMANT by telephone and email that no further payments would be made due to the defective nature of many L-1 sensors, but CLAIMANT did not locate the emails in the system. |
| 9/6/2023 | CLAIMANT filed an arbitration under ICC rules for the payment under Order 9601 and costs incurred in connection with it. |
| 11/9/2023 | With the present submission CLAIMANT raised an additional arbitration proceeding under Purchase Order A-15604 and requested the two arbitration proceedings to be consolidated. RESPONDENT rejected the request. |

EXHIBIT 1

FRAMEWORK AGREEMENT

To regulate the details of future co-operation, the following agreement (“Framework Agreement”) is concluded:

Article 1: PARTIES and SUBJECT MATTER

Seller: SensorX, plc, Atwood Lane 1784, Capital City, Mediterraneo

Buyer: Visionic Ltd, Optronic Avenida 3, Oceanside, Equatoriana

Collectively referred to as “the Parties”.

This Framework Agreement governs the contractual terms for all S4-25899 sensors and possibly other products (Contract Products) to be supplied by the SELLER to the BUYER or the group companies of BUYER which the Parties will agree upon in the respective individual contracts (referred to as "Individual Contract"). It applies to all the Individual Contracts agreed under this Framework Agreement and to the order and call-off plans drawn up in accordance therewith and to logistics concepts agreed in deviation therefrom.

Article 2: BASIS of AGREEMENT

The Terms and Conditions of Sale of SELLER apply to the supply of Contract Products, except as otherwise provided under the terms of this Framework Agreement. Project-specific provisions for delivery terms shall be agreed in the respective Individual Contracts. General business terms of the BUYER shall not be accepted. Any other general terms of the contract deviating from this Framework Agreement and the Terms and Conditions of Sale of the SELLER shall only become part of the contract if both parties explicitly agree in writing that they shall prevail over this Framework Agreement.

Article 3: SELLER’S OBLIGATIONS

1. The SELLER undertakes to deliver to the BUYER upon the latter’s orders
 - a. up to 2,500,000 sensors of the requested types per year;
 - b. up to 800,000 sensors of the requested types per quarter as long as the yearly quota is not exceeded.

Article 4: BUYERS OBLIGATION

1. The BUYER undertakes
 - a. to order from the SELLER a minimum of 1,500,000 sensors per year;

- b. to take delivery of such sensors;
- c. to pay the price for those sensors as determined for each order in accordance with the price fixing procedure in Article 6;

Article 5: PURCHASE ORDERS

The purchase orders and call-off plans are deemed respectively accepted by the SELLER if the SELLER does not object to them in writing within 2 (two) working days of receipt. Objection to purchase orders shall only be allowed if the legally binding order exceeds the previous non-binding previews of the BUYER by more than 15% or deviates in other material aspects from this Framework Agreement.

Individual Orders have to be made by the BUYER at least three months before the requested delivery.

They should specify

- . the exact product and the amount requested;
- . any special packaging required;
- . the place of delivery if deviating from the present agreement.

Article 6: PRICE

The price for the sensors shall be fixed by the Parties' Heads of Sales and Purchasing on a semiannual basis in meetings in December and June. The prices are then applicable for orders submitted within the following six months.

Article 7: PAYMENTS

1. All payments have to be made within 15 days upon confirmed delivery by bank transfer to one of the following accounts: [...]

Article 15: NOTICE OF DEFECTS

The Contract Products shall be examined within one week after delivery as to their conformity. The examination has to be documented and shall be conducted as to its scope and size according to the Rules of the Automotive Industry.

Any notice of defect shall be sent within a reasonable time on the form attached as Annex 3 to this Agreement to the SELLER'S Quality Department at the address given on the form.

Non-compliance with the examination and notice obligation results in the loss of any rights for the deficiency of the goods.

Article 40: AMENDMENTS

No amendment or waiver of any provision of this Agreement including this Article shall be valid unless the same is in writing and signed by the Parties.

Article 41: DISPUTE RESOLUTION

1. Disputes or disagreements arising under or in connection with this Framework Agreement shall be settled amicably either by negotiation between the Parties or mediation.
2. Arbitration. Any Dispute not finally resolved by any of the alternative dispute resolution procedures set forth in paragraph 1 shall be exclusively and definitively resolved through final and binding arbitration, it is the intention of the Parties that this is abroad form arbitration agreement designed to encompass all possible disputes arising in connection with the present agreement and the contracts concluded thereunder.
3. Rules. The arbitration shall be conducted in English in accordance with the following arbitration rules (as then in effect): Rules of Arbitration of the International Chamber of Commerce (ICC).
4. Number of Arbitrators. The arbitration shall be conducted by three arbitrators unless all parties to the Dispute agree to a sole arbitrator within thirty (30) Days after the filing of the arbitration. For greater certainty, for the purpose of this Article, the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other parties to the Dispute.
5. Consolidation. If the Parties initiate multiple arbitration proceedings in relation to several contracts concluded under this framework agreement, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, the Arbitral Tribunal of the first arbitration proceedings has the power to consolidate all such proceedings into a single arbitral proceeding.
6. The place of arbitration is Danubia and this Framework Agreement and all Individual Contracts concluded hereunder are governed by the law of Danubia.

Date: 7 June 2019

EXHIBIT 2

In line with the Framework Agreement concluded between the Parties, the provisions of which govern this order unless agreed otherwise, Visionic makes the following

PURCHASE ORDER

NO 9601

17 January 2022

1. Product(s): S4-25899 Radar Sensor
2. Quantity: 1,200,000 units
3. Delivery Dates:
First Installment of 600,000 units: 14th Calendar Week
Second Installment of 600,000 units: 22nd Calendar Week
4. Places of Delivery:
First Installment: DDP Optronic Avenida 3, Oceanside, Equatoriana
Second Installment: DDP Rue Laser, Mountainview, Equatoriana
5. Price: USD 32.00 per unit (on the basis of the price formula agreed between the Parties on 1 December 2021 for larger orders)
6. Payment Terms: 30 days after delivery
7. Dispute Resolution: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration is Vindabona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG.

Signed by Mr. William Toyoda
(Head of Purchasing)

EXHIBIT 3

Making use of the Additional Order Facility under the Framework Agreement concluded between Parties the provisions of which govern this order unless agreed otherwise Visionic makes the following

PURCHASE ORDER

NO A-15604

4 January 2022

1. Product(s): L-1 Sensor
2. Quantity: 200,000 units
3. Delivery Dates: 7th Calendar Week (14 – 18 February 2022)
4. Place of Delivery: DDP Optronica Avenida 3, Oceanside, Equatoria
5. Price: USD 24,000,000.00
6. Payment Terms:
 - . USD 12,000,000.00: 30 Days after delivery
 - . USD 12,000,000.00: 90 Days after delivery
7. Dispute Resolution: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Rules on Emergency Arbitration are explicitly excluded. The place of arbitration is Danubia and the arbitrators shall apply the CISG.

Signed by Mr. William Toyoda
(Head of Purchasing)

LEGAL EVALUATION OF THE BOTH PARTIES:

The argument of CLAIMANT: The Parties have provided the Arbitral Tribunal with the necessary powers for consolidation based on the Article 41(5) of the Framework Agreement. They have therefore transferred the power granted by Article 10 ICC Rules to the ICC Court to the Arbitral Tribunal. The requirements for consolidation under Article 10(a) are clearly met as the arbitration agreements are clearly compatible and there are joint legal questions.

The argument of RESPONDENT: As far as the requested consolidation is concerned, the Arbitral Tribunal lacks the power to do so. Article 10 of ICC Arbitration Rules vests the power to consolidate two ICC arbitrations to the Court and does not authorize the Parties to deviate from those rules. Thus, the authorization in the Parties' arbitration agreement is invalid. Furthermore, the above-mentioned practical considerations also apply to any consolidation. None of the requirements for consolidation are met whether one considers the requirements contractually agreed on to be relevant or those in the ICC Arbitration Rules.

ISSUE:

Please analyze: whether the Arbitral Tribunal **can** and **should** consolidate the arbitral proceedings, if the new claim has to be raised in a separate arbitration.

请就以上问题，任选 Claimant 或 Respondent 的角度，展开法律检索，撰写案例分析。

作答提示与要求：

1. 仔细阅读本案的事实和当事人给出的法律意见，围绕 2021 ICC Arbitration Rules 作答。
2. 至少检索到两个案例或者两篇文献（二者各一亦可）作为论证基础，并用脚注方式标明或在文末罗列。
3. 论述逻辑清晰、有理有据，需结合案件事实与相关证据，不得超出题述事实与争议焦点。
4. 字数、格式不作特殊要求（建议适当控制字数），作答语言为英语。
5. 可参考的数据库（包括但不限于）：

<http://www.kluwerarbitration.com>; <http://heinonline.org>; Google, Westlaw, Lexis...

若无法从网站直接登录，可从学校图书馆网站的数据库导航界面访问。