Dear Andreas,

In response to your email, dated June 29, 2022 and with the reference to the contract # 202598 dd. October 28, 2021, we would like to underline that MV Cargo and Neuero have agreed on a fixed price for the shiploader of EUR 3,099,000, including delivery and insurance. Our legal agreement confirmed that the contract makes explicitly clear that the price is final and not subject to any change. You also separately warranted us that you will comply with all agreed time and delivery schedules and milestones.

MV Cargo is a Ukrainian company and self-evidently very mindful of the war situation. It is clear, however, that the war in Ukraine does not constitute a force majeure event for Neuero – a German company. As you explicitly confirmed, the production of the shiploader is still possible and the project can still be performed. From our side we would like to confirm as well full commitment to our agreement and readiness to perform the contract on the agreed terms.

We are mindful that the cost of production of the shiploader could have changed since the contract was signed. However, the extra costs, if any, is a seller’s risk in a fixed price contract and therefore cannot be shifted to MV Cargo as per the agreed terms of our contract. Companies around the world are being constantly faced with price fluctuations due to a variety of reasons such as inflation, wars, sanctions, personnel shortages or pandemics, etc. and take due steps to hedge their price and other risks, where appropriate. For example, also in 2008, companies were faced with high price increases due to the financial crisis, and Dutch courts made repeatedly clear that these price increases did not justify changing existing business agreements.

You seem to suggest that you would be entitled to increase the purchase price based on the legal concept of unforeseen circumstances. We believe the Russian aggression towards Ukraine was not unforeseen when we entered into the agreement. The war had already sparked when Russia invaded and annexed Crimea in 2014, and Russian-backed separatists seized part of the Donbas region of south-eastern Ukraine and the military build-up started in spring 2021, followed by a second build-up in the fall 2021.

Even if the war would have been unforeseen, the hight threshold required for a change of a contract is not met. First of all, the contract contains a clear risk allocation, with guarantees regarding delivery and payment terms. Even if such risk allocation would be absent, Dutch courts exercise great restraint to grant a party’s request to change a contract in whole or in part because of unforeseen circumstances. It requires that the balance between the performances is “completely broken”, which is not the case for our agreement.

The concerns you expressed that you may not receive payments is unfounded. Despite the war, MV Cargo keeps operating, exporting Ukrainian grains, pay all of its obligations and is very far away from a position of default, bankruptcy or the like. We already prepaid an amount of 25%, we will pay another advance payment 40% before the shiploader will be transported and we are contractually required to issue a bank guarantee for the remaining 35% part of the purchase price.

MV Cargo is fulfilling all its contractual obligations without any delay and expects the same timely execution from Neuero.

We appreciate the existence of potential future uncertainties regarding transport and insurance of the shiploader. Although we agreed on a purchase price including costs for transportation and insurance on DAP terms, we expressed during our call that we are willing to assume the transportation risk and to accept transportation on FCA terms. As such, we are taking a very reasonable position, taking into account the legitimate interests of both parties.

We kindly ask you to confirm within 5 business days as of the date of this letter that you will fully comply to all your contractual obligations under the agreement.

If you expect any delay in the delivery of the shiploader, we ask you to provide us with a detailed substantiation of such delay (what is the cause of the delay, how does it affect which part of the production, how long the delay will be), with supporting documents. In such case, please also state your proposals on the best ways of continued contract execution.

Kind regards,