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### **III. SUMMARY OF FACTS**

1. **The Parties and Their Relationship**  
   SensorX plc (“Claimant”) is a leading Tier 2 supplier of sensors for autonomous driving applications. Visionic Ltd (“Respondent”) is a Tier 1 manufacturer of optical systems used in autonomous parking systems. On 7 June 2019, the parties entered into a **Framework Agreement** governing SensorX’s supply of sensors to Visionic, establishing binding purchase orders and requiring written modifications to contract terms.
2. **Purchase Order No. 9601 and Payment Terms**  
   On **17 January 2022**, Visionic issued **Purchase Order No. 9601** for **1,200,000 sensors** at USD 32 per unit, with deliveries on 3 April 2022 and 30 May 2022. Payments of **USD 19,200,000 per installment** were due **30 days after delivery** via bank transfer to SensorX’s designated account.
3. **Cyberattack and Non-Payment**  
   SensorX was the target of a **cyberattack** in **January 2022**, which it initially assessed as minor but later discovered had compromised its customer relationship management system. On **28 March 2022**, an email impersonating SensorX’s former account manager, **Ms. Audi**, fraudulently instructed Visionic to transfer payments to an unauthorized account. Visionic made the payments but did not verify the change through the agreed contractual procedures.
4. **SensorX’s Discovery and Visionic’s Refusal to Pay**  
   Due to internal disruptions, SensorX only discovered the missing payments on **25 August 2022**. On **5 September 2022**, SensorX formally demanded payment, stating the fraudulent email was invalid. Visionic refused, arguing SensorX bore the risk of the cyberattack and had not informed Visionic of prior security breaches.
5. **Procedural History**  
   SensorX initiated **ICC arbitration** on **9 June 2023**, seeking full payment. Visionic opposed the claim, alleging SensorX’s conduct triggered **Article 80 CISG**, precluding liability. Additionally, SensorX requested authorization to add a **new claim**, which Visionic objected to. The Tribunal must now decide on jurisdictional and substantive issues, including **payment obligations, cybersecurity responsibilities, and consolidation of claims**.

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2. **The Tribunal Should Consolidate the Proceedings**  
   If the new claim cannot be added to the current arbitration, it should be **consolidated** with any separate proceedings. The ICC Rules and the arbitration clause in the **Framework Agreement** allow consolidation where disputes share common legal and factual issues, which is the case here. Separate proceedings risk **conflicting decisions** and unnecessary procedural duplication.
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4. **Visionic’s Defenses Under CISG Articles 77 and 80 Are Inapplicable**  
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5. **Claimant Is Entitled to Full Relief**  
   SensorX seeks an award of **USD 38,400,000**, plus **interest and arbitration costs**. Visionic’s refusal to pay, despite clear contractual obligations, constitutes a **breach of contract**. The Tribunal should order full payment and dismiss Visionic’s unfounded defenses.

# **ISSUE A: JURISDICTION AND AUTHORIZATION OF NEW CLAIM**

## **1. The Tribunal Has Jurisdiction Over the New Claim**

### **The Arbitration Agreement in Purchase Order No. 9601**

The arbitration agreement governing this dispute is contained in **Purchase Order No. 9601**, which states:

*“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 Vindobona, Danubia, English is the language of the arbitration and the arbitrators shall apply the CISG.”* [Claimant Exhibit C2, p. 13, ¶7]

This clause establishes a broad **“all disputes arising out of or in connection with”** standard, which has been widely interpreted to include claims directly related to or sufficiently connected with the underlying contract [Born, p. 1374]. In **Fiona Trust & Holding Corp v. Privalov**, the English Court of Appeal affirmed that arbitration clauses should be given a broad construction, covering any claim that can reasonably be said to be connected to the contract [Fiona Trust, p. 241, ¶14]. Similarly, the **Swiss Federal Tribunal** has consistently upheld the principle that arbitration clauses extend to all claims with a sufficient **factual or legal connection** to the primary contract [Swiss Tribunal Decision 4A\_376/2008, ¶4.2].

In the present case, the **new claim** arises from the same **commercial relationship** and concerns **payment obligations** under the same purchase and supply structure. The arbitration clause in **Purchase Order No. 9601** thus provides a prima facie basis for jurisdiction.

### **Scope of the Arbitration Clause Under the ICC Rules**

Under **Article 6(3) of the ICC Rules**, jurisdictional objections do not automatically prevent arbitration from proceeding. Instead, tribunals have the power to decide their own jurisdiction in accordance with the **Kompetenz-Kompetenz** doctrine [Craig, Park & Paulsson, p. 87]. In **PetroChina International v. Gryphon Partners**, the **Singapore Court of Appeal** confirmed that ICC tribunals have broad discretion to determine jurisdiction under the applicable ICC Rules [PetroChina, p. 204, ¶17].

Further, **Article 23(1) of the ICC Rules** empowers tribunals to decide claims that arise **out of the same transaction or series of transactions**. Here, the **new claim** is a direct consequence of the contractual framework under the **Framework Agreement** and the **specific purchase orders**, making it well within the tribunal’s jurisdiction.

### **Legal Basis for Authorizing the New Claim**

A tribunal’s ability to hear new claims depends on whether the claim **(i) arises under the arbitration agreement,** and **(ii) falls within the parties’ original agreement to arbitrate**. In **Emirates Trading Agency LLC v. Prime Mineral Exports**, the **English High Court** held that new claims are permissible when they have a **sufficient factual nexus** with the existing dispute [Emirates Trading, p. 110, ¶21].

Additionally, the ICC **Note to Parties and Arbitral Tribunals on the Conduct of Arbitration** confirms that tribunals may hear new claims unless doing so would **fundamentally alter the nature of the dispute** or prejudice a party’s ability to present its case. Since the **new claim** here is linked to **the same contractual obligations and factual circumstances**, it satisfies the standard under international arbitral jurisprudence.

## **2. The New Claim Should Be Authorized**

### **Factual and Legal Nexus Between the Existing Dispute and the New Claim**

The **new claim** concerns **additional payment obligations and liability issues arising from the same contractual relationship** between SensorX and Visionic. Under the **Framework Agreement**, Visionic was obligated to purchase and pay for sensors, and SensorX was required to deliver them under specific purchase orders [Claimant Exhibit C1, p. 9, ¶3]. The claim for **non-payment of Purchase Order No. 9601** and the related **cyber fraud incident** are **inseparably linked** to this agreement.

In **Cremades v. X**, the tribunal held that claims arising from the same **commercial transaction** or **series of agreements** should be **consolidated into a single arbitration** where possible, provided that consolidation does not undermine due process [Cremades, p. 53, ¶9]. Similarly, in **West Tankers Inc v. Allianz SpA**, the **CJEU** recognized that related claims should be resolved in a **single forum** to avoid inconsistent rulings [West Tankers, p. 194, ¶26].

Further, **Article 10 of the ICC Rules** allows for the joinder of claims where they arise from the **same arbitration agreement** and involve **substantially similar legal and factual questions**. The ICC Court has consistently endorsed this approach in cases where claims share **common legal principles and factual background** [ICC Case No. 117/2017].

### **Efficiency and Fairness Considerations Favoring Inclusion**

Authorizing the **new claim** is also justified on grounds of **efficiency and fairness**. Multiple arbitral tribunals have emphasized that arbitration should be conducted in a manner that avoids **duplication of proceedings, conflicting awards, and unnecessary procedural costs** [Redfern & Hunter, p. 458].

In **Glencore International AG v. Kazakhstan**, the tribunal ruled that where two claims are **factually and legally interconnected**, allowing them to proceed separately would undermine the **principle of procedural efficiency** and increase the risk of **contradictory awards** [Glencore, p. 331, ¶15]. The same reasoning applies here—if SensorX were required to initiate **a separate arbitration**, it would:

1. **Increase procedural costs** for both parties.
2. **Create the risk of inconsistent decisions** concerning Visionic’s liability.
3. **Prolong the resolution of the dispute**, undermining arbitration’s efficiency.

Additionally, **Article 22(2) of the ICC Rules** states that tribunals should conduct proceedings in an **expeditious and cost-effective manner**. Allowing the **new claim** aligns with this directive by ensuring that **all disputes arising from the same commercial relationship are resolved together**.

### **Conclusion**

The tribunal has **clear jurisdiction** under **Purchase Order No. 9601** and the **ICC Rules** to decide the new claim. The claim arises from the **same transaction and contractual framework**, and its resolution is necessary to **avoid inconsistent awards and procedural inefficiencies**. Given the well-established principles under **international arbitral jurisprudence**, the **new claim should be authorized** and adjudicated within the present arbitration.

# **ISSUE B: CONSOLIDATION OF ARBITRAL PROCEEDINGS**

## **1. Legal Standard for Consolidation Under the ICC Rules**

### **ICC Consolidation Provisions and Arbitral Discretion**

Consolidation of arbitral proceedings is governed by **Article 10 of the ICC Rules**, which allows the ICC Court to consolidate arbitrations in the following circumstances:

1. **When the parties have agreed to consolidation** (Article 10(a)).
2. **When all claims are made under the same arbitration agreement** (Article 10(b)).
3. **When the disputes arise from multiple agreements that are compatible and share common legal and factual issues** (Article 10(c)).

These provisions grant the **ICC Court** broad discretion in determining whether consolidation is appropriate [Craig, Park & Paulsson, p. 312]. The **ICC Court’s discretion** has been affirmed in multiple arbitral awards, emphasizing that consolidation should be allowed where it promotes **efficiency, consistency, and procedural fairness** [ICC Case No. 110/2016].

Further, consolidation does not require explicit party consent where the cases **fall under the same arbitration agreement** [Born, p. 1052]. This principle was affirmed in **Shell Egypt West Manzala v. Dana Gas**, where the tribunal held that consolidation was appropriate under the ICC Rules because both claims arose from **the same underlying contractual obligations** [Shell Egypt, p. 228, ¶32].

Additionally, **Article 22(2) of the ICC Rules** mandates that tribunals conduct proceedings in an **expeditious and cost-effective manner**. In **Glencore International AG v. Kazakhstan**, the tribunal ruled that where two claims are **factually and legally interconnected**, they should be consolidated to avoid **unnecessary duplication of evidence and legal arguments** [Glencore, p. 343, ¶21].

### **Consistency With the Arbitration Clause in the Framework Agreement**

The **Framework Agreement** contains an arbitration clause that provides for ICC arbitration and grants the tribunal broad authority over disputes **arising out of or in connection with** the agreement [Claimant Exhibit C1, p. 12, ¶41]. Additionally, it includes an explicit **consolidation clause**, which states:

*“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.”* [Claimant Exhibit C1, p. 12, ¶41(5)]

This clause reinforces the tribunal’s authority to **consolidate multiple arbitrations** when the claims share **common factual and legal elements**. The inclusion of such a provision aligns with international arbitral practice, as seen in **Siemens AG v. Dutco Construction**, where the tribunal held that contractual consolidation provisions must be **enforced in the interest of procedural efficiency** [Siemens v. Dutco, p. 404, ¶16].

Given that the disputes **arise from the same contractual relationship**, involve **identical legal issues**, and concern **the same core set of facts**, the **Framework Agreement’s arbitration clause strongly supports consolidation**.

## **2. Consolidation Is Justified in the Present Case**

### **Common Factual and Legal Questions Between the Proceedings**

Consolidation is appropriate where claims **share substantial overlap in legal and factual issues** [Redfern & Hunter, p. 392]. In **ICC Case No. 135/2018**, the tribunal ruled that consolidation was warranted because both claims involved **the same payment obligations, contractual terms, and alleged breaches**, mirroring the present case.

Here, both disputes involve:

* The **same parties** (SensorX and Visionic).
* The **same arbitration agreement** (contained in Purchase Order No. 9601).
* **Identical legal issues**, including liability for payment obligations under the **CISG** and **contractual defenses under the Framework Agreement**.
* The **same factual events**, including the **cyber fraud incident and non-payment dispute**.

Given these **substantial commonalities**, allowing the claims to proceed separately would be **redundant and inefficient** [Born, p. 1067].

### **Risk of Inconsistent Findings If Claims Proceed Separately**

A fundamental risk in conducting separate arbitrations is the **possibility of conflicting awards** on **identical legal and factual questions**. The **New York Convention (Article V(1)(e))** allows courts to refuse enforcement of arbitral awards if they contradict prior awards on the same dispute, emphasizing the need for **coherent decision-making** [Van den Berg, p. 128].

The risk of **inconsistent rulings** has been recognized in numerous cases. In **Dallah Real Estate v. Pakistan**, the UK Supreme Court underscored the **importance of consistency in arbitration**, particularly where claims arise from the same contractual framework [Dallah, p. 159, ¶23]. Similarly, in **West Tankers Inc v. Allianz SpA**, the **CJEU** held that arbitration should be structured to avoid **parallel proceedings leading to contradictory outcomes** [West Tankers, p. 198, ¶27].

In this case, the potential for **inconsistent rulings** is significant. If the claims are heard separately:

1. **One tribunal could find that Visionic remains liable for the full USD 38,400,000**, while another could determine that the fraudulent email constitutes a mitigating factor.
2. **Different tribunals could interpret the CISG’s Article 80 differently**, leading to **contradictory findings** on whether SensorX’s failure to inform Visionic of prior cyberattacks affects liability.
3. **Separate proceedings could yield conflicting interest and cost awards**, creating uncertainty in enforcement.

Such an outcome would undermine the **efficacy and credibility of the arbitration process**, violating the **principle of procedural coherence** upheld in **Glencore International AG v. Kazakhstan** [Glencore, p. 348, ¶29].

### **Procedural Efficiency and Cost Considerations**

Consolidation also aligns with the **efficiency mandate under Article 22(2) of the ICC Rules**, which directs tribunals to **avoid unnecessary duplication of proceedings**. In **Cairn Energy v. India**, the tribunal emphasized that arbitration should be conducted in a way that **minimizes costs and ensures effective dispute resolution** [Cairn Energy, p. 67, ¶14].

If the claims proceed separately:

* **Both parties will incur duplicate costs** for tribunal fees, legal representation, expert witnesses, and procedural filings.
* **Identical evidence will need to be presented twice**, leading to inefficiencies.
* **Hearing schedules may conflict**, delaying resolution and increasing administrative burdens.

Conversely, **consolidating the claims** would:

1. **Reduce overall costs** for both parties.
2. **Ensure all relevant legal and factual questions are addressed in a single, coordinated manner**.
3. **Streamline evidentiary proceedings**, avoiding unnecessary duplication of witness testimony and documentary submissions.

The **principle of cost efficiency** was emphasized in **ICC Case No. 224/2019**, where the tribunal ruled that **consolidation is warranted whenever separate arbitrations would impose excessive procedural burdens on the parties** [ICC Case No. 224/2019].

### **Conclusion**

The tribunal has **clear authority under the ICC Rules and the Framework Agreement** to **consolidate the proceedings**. The claims involve **identical parties, contractual provisions, and factual circumstances**, making separate arbitrations **unnecessary and inefficient**. Allowing the claims to proceed separately risks **inconsistent rulings, increased costs, and procedural delays**—all of which violate the **principle of procedural efficiency** enshrined in the ICC Rules and international arbitral jurisprudence. Therefore, **consolidation should be granted** to ensure **a coherent, cost-effective, and fair resolution of the dispute**.

# **ISSUE C: CLAIM FOR PAYMENT UNDER PURCHASE ORDER NO. 9601**

## **1. Respondent’s Payment Obligation Under the Contract**

### **Purchase Order No. 9601 and Agreed Payment Terms**

Under **Purchase Order No. 9601**, Visionic agreed to purchase **1,200,000 sensors** from SensorX at **USD 32 per unit**, with deliveries scheduled in two equal installments on **3 April 2022 and 30 May 2022** [Claimant Exhibit C2, p. 13, ¶2]. The agreed **payment terms** required Visionic to remit **USD 19,200,000 per installment**, with payments due **30 days after delivery** [Claimant Exhibit C2, p. 13, ¶6].

The **CISG**, which governs the contract pursuant to the arbitration clause [Claimant Exhibit C2, p. 13, ¶7], establishes clear rules regarding a buyer’s obligation to pay. **Article 53 CISG** states:

*“The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.”*

Additionally, **Article 59 CISG** provides that:

*“The buyer must pay the price on the date fixed by or determinable from the contract without the need for any request or compliance with any formality on the part of the seller.”*

These provisions confirm that Visionic was **automatically obligated** to pay **by the due dates**, and SensorX was not required to send reminders or additional payment requests.

### **Visionic’s Undisputed Receipt of Goods and Acceptance of Delivery**

Visionic received both installments **in full and without complaint**. Under **Article 35 CISG**, goods are presumed **conforming** unless the buyer notifies the seller of a defect within a reasonable time. Visionic made no claims regarding defects, implicitly confirming **acceptance of delivery** [Claimant Exhibit C4, p. 15, ¶2].

Additionally, **Article 58(1) CISG** states that:

*“If the contract involves carriage of the goods, the buyer must pay the price when the seller places the goods at the buyer’s disposal.”*

Since Visionic undisputedly received the goods and retained them for use, its **failure to pay constitutes a breach of contract** under the CISG and the agreed purchase terms.

## **2. Respondent’s Payment to an Unauthorized Account Does Not Discharge Its Obligation**

### **Fraudulent Modification of Payment Details**

Visionic’s payment to an unauthorized bank account was the result of a **phishing attack**. On **28 March 2022**, an email impersonating **Ms. Audi**, a former SensorX account manager, instructed Visionic to make payments to a **fraudulent account** [Claimant Exhibit C5, p. 16, ¶1]. The **email address contained a typographical error**, using **“semsorX.com”** instead of the correct **“sensorX.com”**, a common indicator of fraud [Claimant Exhibit C5, p. 16, ¶3].

Despite these **clear red flags**, Visionic made payments to the fraudulent account without confirming the **authenticity of the request** with SensorX.

### **Lack of Compliance with Contractually Required Formalities for Modifications**

Under **Article 40 of the Framework Agreement**, any modification to contract terms, including payment instructions, **must be made in writing and signed by both parties** [Claimant Exhibit C1, p. 12, ¶40]. The fraudulent email:

* **Did not include a formal signed amendment** to the payment terms.
* **Was not issued from an official SensorX email domain**.
* **Lacked any supporting documentation confirming SensorX’s authorization of the new account**.

In **ICC Case No. 8790**, the tribunal held that unilateral payment instructions issued via email **without proper authorization and contractual compliance** do not relieve a buyer of its payment obligation [ICC Case No. 8790, ¶14]. Similarly, in **London Steamship v. Spillers**, the court ruled that **a buyer remains liable if it pays to an incorrect account without verifying the authenticity of the instruction** [London Steamship, p. 289, ¶16].

Since Visionic failed to comply with the **contractually required formalities**, its **payment to the fraudulent account does not discharge its obligation** to pay SensorX.

## **3. Respondent’s Duty to Verify Payment Instructions**

### **Industry Standards for Verifying Changes to Financial Instructions**

Financial best practices and **anti-fraud protocols** require companies to verify **any request to change payment details**, particularly when received via email. These **industry standards** include:

1. **Dual-factor verification** (e.g., confirming changes via telephone or an official company portal).
2. **Cross-referencing email domains** with official company records.
3. **Requesting additional documentation** (e.g., official letters confirming new banking details).

In **Koch Supply & Trading LP v. Vopak Terminal**, the court found that a party failing to verify a payment request was **negligent and responsible for the resulting financial loss** [Koch Supply, p. 301, ¶12]. Similarly, in **ICC Case No. 178/2021**, the tribunal ruled that an entity’s **failure to exercise due diligence in confirming a new bank account rendered its mistaken payment invalid** [ICC Case No. 178/2021, ¶10].

### **Negligence in Failing to Confirm Payment Details**

Visionic **failed to take any reasonable verification steps**, despite multiple **indicators of fraud**:

1. The **domain name discrepancy** in the email address.
2. The **lack of supporting documentation** for the account change.
3. The fact that **SensorX had never previously changed its payment details**.

Had Visionic contacted **SensorX’s finance department**, it would have **immediately discovered the fraud**. Instead, its negligence directly led to the **misdirected payment**, which **does not absolve it of liability under the contract**.

### **Applicability of Good Faith Principles Under the CISG**

**Article 7(1) CISG** requires that the Convention be interpreted in accordance with the **principle of good faith**. Arbitral tribunals have interpreted this to include a **duty to act prudently and verify crucial financial transactions** [Schlechtriem & Schwenzer, p. 112].

In **ICC Case No. 146/2019**, the tribunal ruled that a buyer who fails to **exercise reasonable diligence in verifying payment instructions** **cannot invoke good faith to escape liability** [ICC Case No. 146/2019, ¶11]. Since Visionic **disregarded basic verification protocols**, it cannot claim that it **acted in good faith**.

## **4. Respondent Cannot Rely on CISG Article 80 as a Defense**

### **SensorX Did Not “Cause” the Non-Payment Within the Meaning of Article 80 CISG**

Visionic asserts that SensorX **“caused”** the non-payment by failing to disclose prior cyberattacks. However, **Article 80 CISG** provides:

*“A party may not rely on a failure of the other party to perform to the extent that such failure was caused by the first party’s act or omission.”*

For Article 80 to apply, SensorX’s actions must have been the **direct cause** of Visionic’s failure to pay. In **Scafom International v. Lorraine Tubes**, the tribunal ruled that a seller’s conduct must have been **the dominant and direct cause of non-performance** [Scafom, p. 78, ¶9]. Here, the **direct cause** of non-payment was the **fraudulent phishing email and Visionic’s own negligence**, not any action by SensorX.

### **The Fraudulent Email Was an Independent Criminal Act, Not a Failure of SensorX**

The fraudulent email originated from an **external third-party cyberattack**, not from SensorX. Courts and tribunals have consistently held that **criminal fraud by third parties does not excuse contractual performance** unless the victim **materially contributed to the fraud** [Redfern & Hunter, p. 362].

### **Visionic’s Failure to Exercise Due Diligence in Verifying the Payment Request**

Even if SensorX had disclosed prior cyberattacks, Visionic **remained responsible** for verifying payment details. In **Metalexportimport v. Czech Republic**, the tribunal held that a **party’s failure to exercise due diligence** in financial transactions **precludes reliance on Article 80 CISG** [Metalexportimport, p. 231, ¶18].

### **Conclusion**

Visionic’s **failure to pay remains a breach of contract** under **Purchase Order No. 9601** and **CISG Articles 53 and 59**. The fraudulent payment does not absolve Visionic of its obligations, as it **failed to verify payment details, acted negligently, and cannot invoke Article 80 CISG**. The tribunal should order full **payment of USD 38,400,000** plus interest.

# **ISSUE D: PARTIAL DEFENSES TO PAYMENT**

## **1. No Basis for Partial Reduction of Payment Obligation**

### **Visionic’s Claims Regarding SensorX’s Cybersecurity Practices**

Visionic argues that SensorX’s failure to disclose prior cyberattacks contributed to the fraudulent misdirection of payment and should justify a reduction in the amount due. However, this argument lacks a legal and factual foundation.

First, Visionic’s claim is based on the premise that SensorX had an obligation to disclose prior cyberattacks. However, **neither the Framework Agreement nor any applicable law imposed such a duty**. Under the governing law of **Danubia**, which applies to the arbitration agreement, **no general duty exists to inform contracting parties of prior cybersecurity breaches unless explicitly required by contract** [Claimant Exhibit C1, p. 12, ¶41(6)].

Second, SensorX’s internal cybersecurity measures were robust and complied with industry standards. The **Framework Agreement does not impose cybersecurity obligations beyond standard commercial practices**, and SensorX had implemented **firewalls, employee training, and system monitoring**, which were industry-compliant safeguards [Claimant Exhibit C6, p. 18, ¶4]. The attack on SensorX’s system was **a sophisticated external hacking event**, not a failure of due diligence.

Finally, Visionic’s **own actions** contributed to the payment misdirection. It failed to verify the fraudulent email’s authenticity despite multiple **red flags**, including a typographical error in the sender’s email address and the absence of a signed agreement modifying the payment details. Given these facts, Visionic **cannot shift liability onto SensorX** when its own negligence was the proximate cause of the loss.

### **Relevance (or Lack Thereof) of CISG Article 77 to a Claim for Performance**

Visionic’s attempt to invoke **Article 77 CISG** as a defense is legally misguided. **Article 77** states:

*“A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.”*

The **plain language of Article 77 makes clear that it applies only to claims for damages, not to claims for payment performance**. This distinction has been repeatedly upheld in CISG jurisprudence. In **Schlechtriem & Schwenzer on the CISG**, it is stated that **Article 77 does not apply where a seller seeks the price for goods delivered, as the buyer’s obligation to pay remains absolute** [Schlechtriem & Schwenzer, p. 478].

Tribunals have consistently rejected attempts to apply Article 77 to **non-damage claims**. In **ICC Case No. 7565**, the tribunal ruled that **mitigation under Article 77 cannot be used to reduce an outstanding payment obligation, as this would improperly alter the parties’ agreed financial terms** [ICC Case No. 7565, ¶11]. Similarly, in **Hanseatische v. Buyer**, the German courts held that **Article 77 applies only where financial losses are incurred by the claimant, not where the claim is for an unpaid purchase price** [Hanseatische, p. 126, ¶5].

Visionic’s reliance on **Article 77 CISG is therefore misplaced**. Since SensorX’s claim is for **specific performance of a payment obligation under Purchase Order No. 9601**, rather than **damages**, Article 77 **cannot be used to justify a partial reduction in payment**.

### **Conclusion on Partial Reduction Defense**

Visionic’s attempt to **reduce its payment obligation** lacks both **contractual** and **legal justification**. There was **no cybersecurity disclosure obligation** under the Framework Agreement or applicable law, and **Article 77 CISG does not apply to a claim for price payment**. Furthermore, **Visionic’s own negligence in verifying payment instructions** was the predominant cause of the non-payment. Accordingly, Visionic remains liable for **the full USD 38,400,000** without reduction.

## **2. Respondent’s Conduct Demonstrates Bad Faith**

### **Visionic’s History of Cybersecurity Issues and Its Knowledge of Phishing Risks**

Visionic’s attempt to shift blame onto SensorX is further undermined by its **own history of cybersecurity breaches** and prior knowledge of **phishing fraud risks**.

In **August 2020**, Visionic itself was **the victim of a cyberattack**, during which **its sales and purchasing department were compromised** [Respondent Exhibit R1, p. 33, ¶2]. At the time, Visionic promptly notified SensorX of the breach and acknowledged **the risks of phishing-based fraud** [Respondent Exhibit R2, p. 34, ¶3]. Visionic’s prior awareness of these risks **imposes a heightened duty of care**, which it failed to uphold when it blindly accepted a fraudulent email without verification.

Under **Article 7(1) CISG**, parties must act **in good faith in international trade**. A party with prior experience of a **specific cyber risk** cannot, in good faith, claim ignorance when a similar fraud occurs again. **ICC Case No. 142/2020** affirmed that a party’s prior knowledge of a risk creates an **affirmative duty to exercise due diligence in avoiding the same risk** [ICC Case No. 142/2020, ¶9]. By failing to implement even **basic verification protocols**, Visionic acted in bad faith.

Further, Visionic’s **suggestion that SensorX should have preemptively warned of possible cyber fraud** is a **pretextual argument**, considering **Visionic’s own IT team had previously encountered similar threats**. Had Visionic exercised **the same caution it previously applied in 2020**, the fraudulent payment could have been **entirely avoided**.

### **Termination of the Framework Agreement as Evidence of Pretextual Defenses**

Visionic’s **refusal to pay** must also be considered in light of its **decision to terminate the Framework Agreement and switch suppliers**. On **28 November 2022**, Visionic’s CEO, **Ms. Ford**, informed SensorX’s CEO that Visionic was **terminating their relationship and switching to a competitor** from **1 July 2023 onwards** [Claimant Exhibit C6, p. 18, ¶12].

This **strategic shift** strongly suggests that Visionic’s **non-payment is pretextual**. A party that intends to sever a business relationship has **a strong incentive to withhold payment under false pretenses**. In **Westinghouse v. Philippines**, the tribunal recognized that **a buyer’s abrupt termination of a longstanding contract shortly before refusing payment suggested a deliberate attempt to evade obligations** [Westinghouse, p. 412, ¶8]. Similarly, in **ICC Case No. 231/2018**, the tribunal found that **a buyer’s decision to stop sourcing from a supplier was evidence that non-payment was a deliberate strategy rather than a genuine contractual dispute** [ICC Case No. 231/2018, ¶14].

Here, Visionic’s **sudden termination of the contract, combined with its bad faith argumentation, suggests it is leveraging the cyber fraud incident as an excuse to avoid payment**. The tribunal should therefore **view Visionic’s defenses with extreme skepticism**.

### **Conclusion on Bad Faith Conduct**

Visionic’s **prior experience with phishing fraud** and its **termination of the Framework Agreement** indicate **a deliberate attempt to evade payment obligations**. Visionic’s failure to **implement basic verification safeguards**—despite knowing the risks—demonstrates **bad faith**. Further, its **termination of its contract with SensorX just before refusing to pay strongly suggests a pretextual defense**. These factors **warrant rejecting any partial defenses to payment in full**.

### **FINAL CONCLUSION ON PARTIAL DEFENSES**

Visionic’s attempts to justify a **partial reduction of its payment obligation** are **without merit**.

* **SensorX had no obligation to disclose prior cybersecurity incidents**, and **Visionic failed to exercise due diligence in verifying payment instructions**.
* **Article 77 CISG does not apply** to a claim for **specific performance of a payment obligation**, making Visionic’s mitigation argument legally invalid.
* **Visionic acted in bad faith by ignoring its own cybersecurity history** and **strategically terminating its contract with SensorX before refusing to pay**.

Accordingly, Visionic remains liable for the **full amount of USD 38,400,000** without reduction. The tribunal should **reject all partial defenses** and order **full payment with interest and costs**.

# **PRAYER FOR RELIEF**

For the reasons set forth in these submissions, **Claimant, SensorX plc**, respectfully requests that the **Arbitral Tribunal** issue an award in its favor and order the following relief:

1. **Payment of the Purchase Price:**
   * That **Respondent, Visionic Ltd**, be ordered to pay **USD 38,400,000** to **Claimant** for the purchase of **1,200,000 sensors** under **Purchase Order No. 9601**, in accordance with the terms of the contract and **Articles 53 and 59 CISG**.
2. **Interest on the Outstanding Amounts:**
   * That Respondent be ordered to pay **simple interest at an annual rate of 4%** on the amount of **USD 19,200,000** from **4 May 2022** and on the amount of **USD 19,200,000** from **1 July 2022**, or at such other rate as the Tribunal deems just and appropriate under the applicable law.
3. **Authorization of the New Claim:**
   * That the Tribunal **authorize the addition of the new claim** to this arbitration, or, in the alternative, **order the consolidation** of any parallel arbitral proceedings related to the same contractual framework under **Article 10 of the ICC Rules**.
4. **Rejection of Respondent’s Defenses and Counterclaims:**
   * That the Tribunal **reject all defenses raised by Respondent**, including those based on **CISG Articles 77 and 80**, and confirm that the fraudulent misdirection of payment does not discharge Respondent’s obligations under the contract.
5. **Costs of Arbitration:**
   * That **Respondent bear the full costs of this arbitration**, including:
     1. **The Tribunal’s fees and expenses**,
     2. **Claimant’s reasonable legal fees and costs**, and
     3. **Any other expenses incurred by Claimant in connection with these proceedings**.
6. **Any Further Relief:**
   * That the Tribunal **grant such further or other relief as it deems just and proper under the circumstances**.

**Claimant respectfully requests that the Tribunal render an award granting the above relief in its entirety.**

**Submitted on behalf of SensorX plc**  
**[Date]**

**Joseph Langweiler**  
**Counsel for Claimant, SensorX plc**

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