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# SUMMARY OF FACTS

Claimant, SensorX plc (“SensorX”), a Mediterraneo-based manufacturer of sensors for the automotive industry, and Respondent, Visionic Ltd (“Visionic”), an Equatoriana-based producer of optical systems, entered into a Framework Agreement on 7 June 2019 (Claimant Exhibit C 1, “Framework Agreement”). This agreement governed the supply of sensors from SensorX to Visionic, establishing terms for pricing, ordering, and dispute resolution. The Framework Agreement required any changes to be made in writing, signed by both parties (Framework Agreement, Art. 40).

Between June 2019 and January 2022, Visionic submitted numerous purchase orders, and SensorX delivered over 5,000,000 sensors without issue. On 17 January 2022, Visionic placed Purchase Order No. 9601 (Claimant Exhibit C 2, “PO 9601”) for 1,200,000 S4-25899 radar sensors, with deliveries scheduled for April and May 2022. The agreed price was USD 32 per unit, payable 30 days after delivery.

On 28 March 2022, Visionic received an email, seemingly from SensorX’s account manager, Ms. Telsa Audi, requesting payment for PO 9601 to be made to a new bank account in Danubia (Claimant Exhibit C 5). This email was fraudulent, originating from a domain (“semsorX.com”) subtly different from SensorX’s actual domain (“sensorX.com”). Visionic, without verifying the change in writing as required by the Framework Agreement, made two payments totaling USD 38,400,000 to the fraudulent account.

SensorX, having not received payment, contacted Visionic on 5 September 2022 (Claimant Exhibit C 3). Visionic asserted it had fulfilled its obligation by paying the fraudulent account (Claimant Exhibit C 4), citing a prior cyberattack on SensorX in early 2022, which SensorX had not disclosed to Visionic. Sensorx did not notify Visionic as it was initially of the belief that the cyberattack was of only minor relevance. (Claimant Exhibit C6). It became apparent only on 15 May 2022 that the earlier cyberattack was more severe than expected.

On 4 January 2022, Visionic also placed Purchase Order A-15604 for 200,000 L-1 LIDAR sensors for an agreed total amount of USD 24,000,000, payable in two installments. (Claimant Exhibit C 7). The first installment was paid. Visionic alleges they notified SensorX of defects in the L-1 sensors via a phone call and an email on 4 April 2022, (Respondent Exhibit 5), though Sensorx denies having received the email. (Claimant Exhibit C8).

On 9 June 2023, SensorX initiated arbitration under the ICC Rules, seeking payment for PO 9601. On 11 September 2023, SensorX requested to add a claim for USD 12,000,000 related to the unpaid second installment under Purchase Order A-15604, or alternatively, for a new arbitration to be consolidated with the existing one.

# SUMMARY OF ARGUMENT

Claimant, SensorX, is entitled to full payment of USD 38,400,000 under Purchase Order No. 9601 (“PO 9601”) and USD 12,000,000 under Purchase Order A-15604.

**Regarding PO 9601:** Respondent, Visionic, failed to fulfill its payment obligation by transferring funds to a fraudulent bank account. The email instructing this change was demonstrably fraudulent, originating from an incorrect domain and lacking the written, signed confirmation required by the Framework Agreement. Visionic’s purported reliance on this email and its failure to verify the bank account change, as contractually obligated, does not discharge its payment obligation to SensorX. Neither contractual principles nor the CISG relieves Visionic of its responsibility. No duty, contractual or statutory, obliged SensorX to inform Visionic of a prior, unrelated cyberattack, particularly one initially deemed of minor consequence. Visionic’s payment to the wrong account was a direct result of its own negligence and breach of contract.

**Regarding Purchase Order A-15604:** This new claim for USD 12,000,000 should be included in the current arbitration. It arises from the same Framework Agreement and involves similar legal and factual issues, promoting efficiency and avoiding inconsistent results. Article 23(4) of the ICC Rules permits the addition of new claims, and the current, early stage of the proceedings allows for this inclusion without prejudice to Visionic.

**Alternatively, consolidation:** If the new claim cannot be added, the Arbitral Tribunal should consolidate any separate arbitration concerning Purchase Order A-15604 with the pending proceedings. The Framework Agreement, in Article 41(5), explicitly grants the Arbitral Tribunal the power to consolidate related arbitrations. The arbitration agreements are compatible, and the disputes share common questions of law and fact, making consolidation appropriate.

SensorX acted in good faith throughout its dealings with Visionic. Visionic’s failure to adhere to clear contractual terms and its subsequent attempt to avoid payment obligations based on misplaced reliance on non-existent duties and inapplicable legal provisions should not be countenanced. SensorX respectfully requests the Arbitral Tribunal to order full payment of the amounts owed under both purchase orders.

# A. THE ARBITRAL TRIBUNAL SHOULD AUTHORIZE THE ADDITION OF CLAIMANT’S NEW CLAIM TO THE PENDING ARBITRATION PURSUANT TO ARTICLE 23(4) OF THE ICC RULES.

Article 23(4) of the ICC Rules of Arbitration provides the governing framework for the addition of new claims. It states that, “[a]fter the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.” [ICC Rules of Arbitration, p. 23, Art. 23(4)]. This provision grants the Arbitral Tribunal broad discretion, guided by the considerations outlined, to manage the scope of the arbitration. The overriding principle embedded within Article 23(4), and indeed the ICC Rules as a whole, is to promote procedural efficiency and fairness. [Lew et al., p. 554, ¶23-4]. The circumstances of this case strongly favor the inclusion of Claimant’s new claim.

## 1. *The Nature of the New Claim Favors Its Inclusion.*

The “nature of such new claims” is a primary consideration under Article 23(4). [Derains & Schwartz, p. 264, ¶385]. Here, the nature of the new claim weighs heavily in favor of its inclusion. This encompasses examining the connection of the new claim to those in the extant Terms of Reference. The closer the relationship, the stronger the argument for admission. [Blackaby et al., p. 226, ¶4.147].

### a. The new claim arises from the same commercial relationship and Framework Agreement.

The issue is whether the shared origin of both claims, within the same ongoing commercial relationship and overarching Framework Agreement, supports the inclusion of the new claim.

The legal rule requires analysis of the contractual genesis of the dispute. The core principle is that claims stemming from the same legal and factual matrix are more appropriately joined. [Moses, p. 155].

The initial claim under Purchase Order No. 9601 and the new claim under Purchase Order A-15604 both originate directly from the Framework Agreement signed between SensorX and Visionic on 7 June 2019. (Framework Agreement, p. 9). Purchase Order A-15604 explicitly states it is “[m]aking use of the Additional Order Facility under the Framework Agreement” (Claimant Exhibit C 7, p. 48). and that the Framework Agreement governs “unless agreed otherwise”. Witness Statement of Ms. Durant confirms the parties’ intent that the Framework Agreement would govern Purchase Order A-15604 “in all respects not specifically regulated differently by the Parties”. (Claimant Exhibit C 8, p. 49, ¶3). This demonstrates a clear and undeniable contractual link between the two purchase orders and, crucially, the overarching Framework Agreement that governs the commercial relationship between the parties. The new claim, just like the original claim, is a dispute “arising under or in connection with” the Framework Agreement (Framework Agreement, p. 11, Art. 41).

Therefore, the common origin of both claims within the same Framework Agreement strongly indicates their inherent relatedness and supports the authorization of the new claim.

### b. The new claim involves substantially similar legal and factual issues.

The issue is whether the legal and factual issues are sufficiently linked to permit the inclusion of the new claim.

The legal rule applicable is that considerable overlap in legal and factual questions favors joinder. [Redfern & Hunter, p. 283, ¶6.54]. The efficiency gains of dealing with common issues in a single proceeding are a significant consideration.

Both the original claim and the new claim involve the application of the CISG, which governs both Purchase Order No. 9601 (Purchase Order No. 9601, p. 13) and Purchase Order A-15604 (Purchase Order A-15604, p. 48). Both purchase orders are stated to fall under Danubia. [Purchase Order No. 9601, p. 13; Purchase Order A-15604, p. 48]. Both claims center on Visionic’s failure to make full payment for sensors delivered by SensorX. While the specific defenses raised by Visionic differ – one relating to a fraudulent payment instruction and the other to alleged defects – both defenses necessitate an inquiry into Visionic’s conduct and its compliance with the contractual requirements and the applicable law. Furthermore, the interpretation of the Framework Agreement, particularly Articles 15 (notice of defects) and 40 (written amendments), will likely be relevant to both claims. The factual inquiry will overlap significantly, potentially requiring testimony from the same witnesses (e.g., Ms. Durant, Mr. Toyoda) and examination of the same documentary evidence (e.g., emails, internal communications).

Therefore, the shared legal basis (the CISG and the Framework Agreement) and the considerable overlap in factual issues demonstrate a strong connection between the claims, favoring the new claim’s inclusion.

## 2. *The Stage of the Arbitration Permits Efficient Inclusion of the New Claim.*

The “stage of the arbitration” is a critical factor, with earlier stages generally favoring the addition of new claims. [Derains & Schwartz, p. 265, ¶387]. Undue delay and disruption to the proceedings are key concerns to be avoided. [Born, p. 2756].

### a. The arbitration is at an early stage, minimizing any potential delay.

The issue is whether the arbitration has progressed to the stage that the addition of the new claim would cause impermissible delay.

The legal rule requires an assessment of the procedural progress. The earlier the stage, the less likely the addition will be deemed prejudicial. [Gaillard & Savage, p. 592, ¶1185].

The Terms of Reference were signed on 30 August 2023. (Procedural Order No. 1, p. 58, ¶1). The request to add the new claim was made on 11 September 2023 (Request for authorization of new claim, p. 46), a mere twelve days later. No substantive hearings have occurred. The parties have not yet submitted their main memorials. The procedural timetable is, in its initial form, still amenable to adjustment to accommodate the new claim without significant disruption. The present case is a far cry from situations where new claims are introduced late in the proceedings, after extensive document production, witness statements, and expert reports.

Thus, the early stage of the arbitration minimizes any potential for delay and strongly supports the inclusion of the new claim.

### b. Adding the new claim will not prejudice the Respondent.

The issue is whether the inclusion of the new claim would be prejudicial to the Respondent.

The legal rule requires a demonstration of prejudice, for example being deprived of a fair opportunity to present its defence. [Paulsson, p. 186]. Prejudice requires demonstrable harm, beyond mere inconvenience.

Visionic cannot credibly claim prejudice. The new claim arises from a transaction (Purchase Order A-15604) that Visionic was fully aware of, and indeed, initiated. Visionic has already, in its rejection of the request (Rejection of Request by Respondent, p. 54) implicitly acknowledged its awareness of the factual basis of the claim, arguing that it had already notified SensorX of defects and withheld payment. This demonstrates that Visionic is already prepared, or can readily prepare, to address the merits of the new claim. The addition of the claim simply brings a related dispute into the existing framework, allowing for a comprehensive resolution. Any additional procedural steps required, such as document production or witness statements related to Purchase Order A-15604, can be efficiently integrated into the existing timetable.

Therefore, the absence of any demonstrable prejudice to Visionic supports the authorization of the new claim.

## 3. *Other Relevant Circumstances Support the Authorization of the New Claim.*

Beyond the nature of the claim and the stage of the arbitration, “other relevant circumstances” can be considered. [ICC Rules of Arbitration, p. 23, Art. 23(4)]. These circumstances often revolve around the interests of justice and procedural economy. [Weigand, p. 315, ¶23.17].

### a. Inclusion promotes judicial economy and avoids inconsistent results.

The issue is whether the inclusion of the new claim serves judicial economy, and prevents the possibility of inconsistent outcomes.

The relevant rule to be applied is that judicial economy, meaning the efficient use of arbitral and party resources, and the avoidance of conflicting decisions, are relevant factors favoring joinder. [Hanotiau, p. 324, ¶610].

Hearing both claims together avoids duplicative proceedings. This saves time and costs for both parties and the Arbitral Tribunal. Two separate arbitrations would necessitate two sets of submissions, two sets of hearings, and potentially two sets of awards. This duplication is particularly wasteful given the significant factual and legal overlap between the claims. Furthermore, separate proceedings create the risk of inconsistent findings. One tribunal might find the Framework Agreement’s written modification requirement applicable, while another might not. One tribunal might find Visionic’s notice of defects sufficient, while another might not. Such inconsistencies would undermine the finality and effectiveness of the arbitral process and damage confidence in the system.

Therefore, considerations of judicial economy and the need to avoid inconsistent results strongly support the authorization of the new claim.

### b. The arbitration clauses in both Purchase Orders, and the Framework Agreement itself are compatible.

The issue concerns whether the arbitration clauses are reconcilable.

The rule requires assessment of compatibility in terms of scope and procedure. [Dimolitsa, p. 181]. Inconsistencies that would prevent joint adjudication would weigh against admission.

Respondent argues that the arbitration clauses in the two Purchase Orders are different and this difference is a barrier for inclusion. (Rejection of Request by Respondent, p. 55, ¶5). However, this argument holds no merit, because the governing arbitration agreement is found in the Framework Agreement. (Request for Arbitration, p. 7, ¶23). The request for arbitration explicitly invokes Article 41 of the Framework Agreement. The Terms of Reference also make reference to the Framework Agreement, as well as the arbitration agreement found in PO9601.

Article 41 provides a broad arbitration clause, covering “[d]isputes or disagreements arising under or in connection with this Framework Agreement” Framework Agreement, p.11, Art. 41). It is difficult to conceive of a clause with broader scope. The clause in PO 9601 uses identical language. The slight variation in PO A-15604, which excludes the Emergency Arbitrator provisions, does not create incompatibility. The core agreement to arbitrate under the ICC Rules remains consistent. The exclusion of Emergency Arbitrator provisions simply reflects a specific procedural choice, not a fundamental difference in the parties’ intent to arbitrate their disputes.

Therefore, the compatibility of the arbitration clauses removes any obstacle to the inclusion of the new claim.

In conclusion, all relevant factors – the nature of the new claim, the stage of the proceedings, and other relevant circumstances – overwhelmingly support the Arbitral Tribunal authorizing the addition of SensorX’s new claim under Purchase Order A-15604 to the pending arbitration. This approach promotes efficiency, avoids prejudice, and ensures a comprehensive resolution of the disputes arising from the parties’ commercial relationship.

# B. ALTERNATIVELY, THE ARBITRAL TRIBUNAL SHOULD CONSOLIDATE ANY NEWLY INITIATED ARBITRATION WITH THE PENDING PROCEEDINGS PURSUANT TO THE FRAMEWORK AGREEMENT.

Should the Arbitral Tribunal decline to authorize the addition of the new claim under Article 23(4) of the ICC Rules, SensorX respectfully requests, in the alternative, that the Tribunal consolidate any newly initiated arbitration concerning Purchase Order A-15604 with the pending proceedings. This request is grounded in the express agreement of the parties within the Framework Agreement, which grants the Tribunal the necessary power to order consolidation.

## 1. *The Parties Granted the Arbitral Tribunal Consolidation Powers.*

The power of an arbitral tribunal to consolidate proceedings derives primarily from the consent of the parties. [Born, p. 1847]. Absent such consent, tribunals generally lack inherent authority to consolidate, even if related disputes exist. [Hanotiau, p. 315]. In this instance, the parties explicitly provided for consolidation in their Framework Agreement.

### a. Article 41(5) of the Framework Agreement explicitly provides for consolidation.

The issue is whether Article 41(5) constitutes a clear grant of authority for the tribunal to consolidate proceedings.

The applicable rule is that the parties’ agreement is paramount in arbitration. [Redfern & Hunter, p. 54, ¶2.06]. An unambiguous contractual provision granting consolidation powers is enforceable.

Article 41(5) of the Framework Agreement unequivocally 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.*” (Framework Agreement, p. 12, Art. 41(5), emphasis added). This language is clear, direct, and leaves no room for doubt: the parties expressly agreed that the tribunal in the “first arbitration proceedings” (which is undoubtedly the present proceeding) possesses the power to consolidate related arbitrations. The wording employs mandatory terms (“has the power”), indicating a deliberate conferral of authority.

Therefore, Article 41(5) constitutes an explicit and binding grant of consolidation power to this Arbitral Tribunal.

### b. Article 41(5) supersedes any limitations on the power in the ICC rules.

The issue concerns whether the Parties’ agreement in their contract overrides default provisions of the chosen arbitral rules.

The legal rule is that party autonomy allows for modification of institutional rules, unless those rules are deemed mandatory and non-derogable. [Lew et al., p. 165, ¶7-42]. While Article 10 of the ICC Rules addresses consolidation, it vests the power in the ICC Court, not the tribunal. [ICC Rules of Arbitration, p. 15, Art. 10]. However, Article 10 is not a mandatory provision that cannot be modified by the parties’ agreement. It serves as a default mechanism in the *absence* of a specific agreement on consolidation.

The Framework Agreement, as the foundational contract governing the parties’ relationship, reflects their specific intent regarding dispute resolution. Their explicit grant of consolidation power to the tribunal in Article 41(5) demonstrates a clear intention to depart from the default mechanism of Article 10. The parties’ choice to vest this power in the tribunal, rather than the ICC Court, must be respected. This interpretation aligns with the fundamental principle of party autonomy, which underpins international commercial arbitration. [Born, p. 129].

Therefore, the specific agreement in Article 41(5) of the Framework Agreement takes precedence over the general provisions of Article 10 of the ICC Rules, empowering this Arbitral Tribunal to order consolidation.

## 2. *The Requirements for Consolidation are Met.*

Even with the express grant of consolidation power, the Arbitral Tribunal must still be satisfied that consolidation is appropriate under the circumstances. Article 41(5) itself sets out the conditions: multiple proceedings, related contracts under the Framework Agreement, common questions of law or fact, and the risk of conflicting awards or obligations. These conditions mirror generally accepted principles governing consolidation. [Moses, p. 158].

### a. The claims are made under compatible arbitration agreements.

The issue here is whether the arbitration clauses across agreements are sufficiently alike to be consolidated.

The applicable legal rule is that arbitration agreements are “compatible” if they do not contain conflicting provisions that would prevent the efficient and fair conduct of a consolidated proceeding. [Dimolitsa, p. 181]. Minor differences that do not affect the core agreement to arbitrate are generally not considered impediments to consolidation.

As discussed previously (Section A.3.b), the arbitration clauses in the Framework Agreement and the two Purchase Orders are compatible. The overarching agreement to arbitrate under the ICC Rules is consistent across all documents. The minor difference concerning Emergency Arbitrator provisions in Purchase Order A-15604 does not create any conflict that would preclude consolidation. It simply means that emergency relief would not be available within the consolidated proceeding, a procedural aspect that does not undermine the fundamental agreement to resolve disputes through arbitration.

Therefore, the arbitration agreements are compatible, satisfying this requirement for consolidation.

### b. The arbitration proceedings involve common questions of law and fact.

The issue is if there are common questions of law and fact in the arbitration proceedings.

The applicable rule is that consolidation is favored when disputes involve overlapping factual and legal issues, as this promotes efficiency and consistency. [Hanotiau, p. 324, ¶610].

As previously analyzed (Section A.1.b), the original claim and the potential new claim (if initiated in a separate arbitration) share significant common questions of law and fact. Both arise from the same Framework Agreement and involve the application of the CISG. Both center on Visionic’s failure to make full payment for sensors delivered by SensorX. Both will likely require interpretation of key provisions of the Framework Agreement. The factual inquiries will necessarily overlap, involving the same witnesses and documents.

Therefore, the existence of common questions of law and fact strongly supports consolidation.

### c. Consolidation is the most efficient and appropriate course of action.

The issue is whether joining separate arbitrations into one is the most efficient.

The rule is that consolidation is favored when it provides the most efficient and judicially economic method for resolving related disputes. [Derains & Schwartz, p. 129, ¶221]. This includes considering the avoidance of duplicative proceedings and the risk of inconsistent outcomes.

Consolidating the potential new arbitration with the pending proceedings is undoubtedly the most efficient and appropriate course of action. It avoids the significant duplication of effort and expense inherent in two separate arbitrations. It eliminates the risk of conflicting findings on common issues, which could undermine the finality and enforceability of the awards. It allows for a single, comprehensive resolution of all disputes arising from the parties’ dealings under the Framework Agreement. Given the early stage of the current proceedings, consolidation will not cause undue delay or prejudice to either party.

Therefore, considerations of efficiency, consistency, and fairness overwhelmingly support consolidation.

In conclusion, the Arbitral Tribunal possesses the power to consolidate any newly initiated arbitration concerning Purchase Order A-15604 with the pending proceedings, based on the explicit agreement of the parties in Article 41(5) of the Framework Agreement. All the requirements for consolidation are met, and this approach represents the most efficient, consistent, and just resolution of the disputes between SensorX and Visionic.

# C. CLAIMANT IS ENTITLED TO FULL PAYMENT UNDER PURCHASE ORDER NO. 9601.

SensorX is entitled to full payment of USD 38,400,000 under Purchase Order No. 9601 (“PO 9601”). Visionic’s payment to a fraudulent bank account, induced by a phishing email, does not discharge its contractual obligation to pay SensorX. Visionic’s attempts to avoid payment based on alleged breaches of duty by SensorX or provisions of the CISG are without merit.

## 1. *Respondent’s Purported Payment to a Fraudulent Account Does Not Discharge Its Obligation.*

The fundamental principle of contract law is *pacta sunt servanda* – agreements must be kept. [Radbruch, p. 78]. Visionic agreed to pay SensorX for the sensors delivered under PO 9601. That obligation remains, regardless of Visionic’s mistaken payment to a third-party fraudster.

### a. The Framework Agreement required written modification, which was not met.

The issue is whether a valid change of the payment terms occurred, given the requirements of the Framework Agreement.

The governing rule is that contractual modification clauses are generally enforceable. [Treitel, p. 194, ¶6-051]. When a contract requires modifications to be in writing and signed by both parties, an oral or otherwise informal agreement is typically insufficient to alter the contractual terms.

Article 40 of the Framework Agreement is unambiguous: “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.” (Framework Agreement, p. 11, Art. 40). This “no oral modification” clause is a common and generally enforceable provision in commercial contracts. [Farnsworth, p. 476, §7.6]. Its purpose is to ensure certainty and prevent disputes arising from alleged oral agreements. The purported change of the bank account for payment was a significant modification of the contract. Article 7 of the Framework Agreement specifies the accounts to which payments must be made. (Framework Agreement, p. 10, Art. 7). Any alteration to this fundamental term falls squarely within the scope of Article 40.

The email from “telsa.audi@semsorx.me” (Claimant Exhibit C 5, p. 16) does *not* meet the requirements of Article 40. It is not a signed, written document originating from both parties. At best, it is a unilateral communication, and a fraudulent one at that. Respondent claims that Ms. Audi, in her email response confirmed that Claimant would “consider the exchange of emails to be sufficient to fulfil the writing requirement” (Respondent Exhibit R 4, p.36). However, Ms. Audi had no authority to unilaterally waive a fundamental provision of the contract.

Therefore, because the Framework Agreement’s requirement for written, signed modifications was not met, the change of the bank account was invalid, and Visionic’s payment obligation to SensorX remains.

### b. The email directing payment to a different account was demonstrably fraudulent.

The issue here is whether, regardless of any formal requirements, the email was genuine.

The applicable rule is that a party cannot rely on a communication that is demonstrably false or fraudulent to justify its breach of contract. [McKendrick, p. 246, ¶10-011]. The principle of good faith requires parties to act honestly and with reasonable diligence.

The email directing payment to a new account in Danubia (Claimant Exhibit C 5, p. 16) bears clear hallmarks of a phishing attack. It originates from the domain “semsorX.com,” not SensorX’s legitimate domain, “sensorX.com.” This subtle difference is a common tactic used by fraudsters to deceive recipients. The email creates a false sense of urgency, claiming that delivery could only be authorized after confirmation of the bank account change. It also attempts to discourage direct communication with Ms. Audi, stating that “the best way to reach me during the next days is via reply email as I am working from home due to health problems and the mobile connection is bad.” These are classic red flags of a phishing scam. [James, p. 87].

Visionic, as a sophisticated commercial entity operating in an industry known to be targeted by cyberattacks (Respondent Exhibit R 3, p. 35), should have exercised greater caution. It was obligated to undertake due diligence. It failed to take even the most basic steps to verify the authenticity of the email, such as contacting Ms. Audi through a known, reliable channel or confirming the bank account change in writing, as required by the Framework Agreement.

Therefore, Visionic’s reliance on a demonstrably fraudulent email cannot excuse its failure to pay SensorX.

## 2. *Respondent Cannot Invoke a Violation of a Contractual or Statutory Duty to Avoid Payment.*

Visionic attempts to shift responsibility for its non-payment by claiming that SensorX breached a duty to inform it of a prior cyberattack. This argument fails both legally and factually.

### a. No duty to inform existed under the applicable law of Danubia or Mediterraneo.

The issue here is whether SensorX was obligated to inform Visionic of the earlier cyberattack.

The relevant rules are that the governing law is Danubian law, as chosen in both Purchase Orders. [Purchase Order No. 9601, p. 13; Procedural Order No. 2, p. 62, ¶11]. And that neither Danubian nor Mediterranean law imposes a general duty on companies to inform their contractual partners of cyberattacks.

The contract giving rise to the arbitration provides that the seat of arbitration is Vindobona, Danubia. [Purchase Order No. 9601, p.13]. Therefore, Danubian law governs the arbitration. There is no provision within the Framework Agreement that imposes a general duty to inform the other party of cyberattacks. The contract is silent on this issue. Furthermore, neither Danubian nor Mediterranean law (the law of SensorX’s location) imposes such a duty. As confirmed by the Clarifications, in Danubia “the general contract law […] is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts” and there is no explicit law concerning notification duties in the event of a cyberattack. [Procedural Order No. 1, p. 59, ¶4, 5]. In Mediterraneo, a legislative initiative to create data protection and notification duties was specifically rejected. (Claimant Exhibit C 6, p. 17, ¶7; Procedural Order No. 1, p. 59, ¶5). Respondent’s assertion that principles of “good data governance” required notification (Claimant Exhibit C 4, p. 15) is a legally baseless attempt to impose a duty that does not exist under the applicable law.

Therefore, SensorX had no legal obligation, contractual or statutory, to inform Visionic of the January 2022 cyberattack.

### b. Even if a duty existed, Respondent’s loss was caused by its own negligence.

The issue is whether, if any such duty were to be found, the damage suffered by Visionic was caused by SensorX’s breach of it.

The relevant legal rule is that causation is a necessary element for liability. [Zweigert & Kötz, p. 601]. A party cannot be held responsible for damages that were not directly and proximately caused by its actions or omissions. Even *if,* *arguendo*, SensorX had a duty to inform Visionic, Visionic’s loss was not caused by a breach of that duty. The proximate cause of Visionic’s loss was its own negligence in failing to verify the fraudulent email.

Visionic received a suspicious email from an unfamiliar domain, requesting a significant change to payment terms. It disregarded the clear requirement of the Framework Agreement for written, signed modifications. It failed to take any reasonable steps to verify the email’s authenticity. This negligence was the direct and intervening cause of its loss, breaking any potential chain of causation stemming from SensorX’s alleged failure to inform. It is well-established that a party’s own negligence can supersede any prior breach by another party. [Hart & Honoré, p. 218].

Therefore, even if a duty to inform were found to exist, Visionic’s own negligence prevents it from holding SensorX liable for its loss.

## 3. *The CISG Does Not Relieve Respondent of Its Payment Obligation.*

Visionic’s attempts to rely on Articles 77 and 80 of the CISG are misplaced and demonstrate a fundamental misunderstanding of these provisions.

### a. Article 80 is not applicable.

The Issue here is whether Article 80 of the CISG is applicable.

The applicable rule is that Article 80 of the CISG states: “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.” [CISG, Art. 80]. This provision applies when one party’s actions *prevent* the other party from performing its obligations.

Article 80 is fundamentally inapplicable to the present case. SensorX’s alleged failure to inform Visionic of a prior cyberattack did not *prevent* Visionic from fulfilling its payment obligation. Visionic was perfectly capable of paying the correct amount to the correct bank account, as specified in the Framework Agreement. Its failure to do so was due to its own decision to comply with a fraudulent instruction, not any act or omission by SensorX. Article 80 is designed to address situations where performance is rendered impossible or significantly hindered by the other party’s conduct, not situations where a party simply chooses to perform incorrectly. [Schlechtriem & Schwenzer, p. 1066, ¶5].

Therefore, Article 80 of the CISG has no relevance to this case.

### b. Article 77 is not applicable.

The issue concerns whether Article 77 of the CISG is applicable.

The applicable rule is that Article 77 of the CISG 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.” [CISG, Art. 77]. This provision addresses mitigation of *damages*, not avoidance of primary contractual obligations.

Article 77 is also inapplicable. SensorX is not claiming damages for breach of contract. It is seeking *performance* of Visionic’s primary obligation: payment for the sensors delivered. Article 77 deals with the mitigation of consequential losses arising from a breach, not with the core obligation to pay the agreed price. [Honnold, p. 552, §420]. Visionic’s argument appears to be a convoluted attempt to transform a duty to mitigate damages into a justification for avoiding payment altogether. This is a misapplication of the provision.

Therefore, Article 77 of the CISG does not provide Visionic with a defense.

### c. Respondent’s reliance on CISG Articles is misplaced and contrary to good faith.

The general issue is whether the reliance of Visionic on the aforementioned CISG provisions constitutes bad faith.

The applicable rule is that under the CISG, the principle of good faith in international trade is a fundamental tenet. [CISG, Art. 7(1)]. Parties are expected to act honestly and fairly in their dealings. [Enderlein & Maskow, p. 56].

Visionic’s strained interpretations of Articles 77 and 80, twisting them to avoid a clear contractual obligation, demonstrate a lack of good faith. Visionic’s attempt to exploit a cyberattack on SensorX to justify its own failure to comply with the contract is opportunistic and inequitable. The CISG should not be used as a tool to evade legitimate obligations.

Therefore, Visionic’s reliance on these CISG provisions is not only legally incorrect but also violates the principle of good faith. In Conclusion, Claimant is entitled to the payment.

# VI. RELIEF REQUESTED

For the foregoing reasons, Claimant, SensorX plc, respectfully requests that the Arbitral Tribunal:

Authorize the addition of Claimant’s new claim for USD 12,000,000, arising from Purchase Order A-15604, to the present arbitration proceedings;

Alternatively, if the new claim is not added, consolidate any newly initiated arbitration proceedings concerning Purchase Order A-15604 with the present proceedings;

Order Respondent, Visionic Ltd, to pay Claimant the full amount of USD 38,400,000 due under Purchase Order No. 9601, with interest at the annual rate of 4% on the amount of USD 19,200,000 from 4 May 2022 onwards, and on the amount of USD 19,200,000 from 1 July 2022 onwards;

Order Respondent to pay the full amount of USD 12,000,000, should that amount be brought within the jurisdiction of this Tribunal either by way of consolidation or inclusion;

Order Respondent to pay the costs of this arbitration, including Claimant’s legal fees and expenses.

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