

**THIRTEENTH ANNUAL**

**WILLEM C. VIS  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Vienna, Austria  
April 7 to 13, 2006

Organized by:

**Institute of International Commercial Law  
Pace University School of Law**  
78 North Broadway  
White Plains, NY 10603  
USA

and

**THIRD ANNUAL**

**WILLEM C. VIS (EAST)  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Hong Kong

27 March - 2 April 2006

Organized by:

**The Chartered Institute of Arbitrators (East Asia Branch)**  
Hong Kong International Arbitration Centre  
38/F, Two Exchange Square  
Central, Hong Kong SAR

**THE PROBLEM**

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James Stewart  
Lawyer and Adjuster  
14 Court Street  
Magreton  
00178 Oceania

27 June 2005

Peter V. Baugher, President  
Chicago International Dispute Resolution Association  
200 World Trade Center, Suite 1540 The Merchandise Mart  
Chicago, IL USA 60654  
USA

Dear Mr. Baugher:

I represent Oceania Printers S.A. which, pursuant to Article 3 of the Arbitration Rules of the Chicago International Dispute Resolution Association, hereby submits its statement of claim against the McHinery Equipment Suppliers Pty in five copies. I enclose a copy of my power of attorney to represent Oceania Printers S.A. in this arbitration.

In accordance with Rule 3.1 a copy of the statement of claim has been sent to the respondent. A copy of the receipt from the courier service is attached.

A bank draft drawn on a Chicago bank for \$7,000 for the administrative fee is enclosed.

Oceania Printers S.A. nominates Ms. Arbitrator 1 as arbitrator in this dispute. Her curriculum vitae is attached.

Sincerely yours,

(Signed)  
James Stewart

Encl. Statement of claim  
Power of attorney  
Receipt from courier service  
Bank draft  
Arbitrator 1 curriculum vitae

Chicago International Dispute Resolution Association

Oceania Printers S.A.  
Claimant

v.

McHinery Equipment Suppliers Pty  
Respondent

NOTICE OF ARBITRATION

The Claimant, Oceania Printers S.A., hereby requests that the dispute between it and the Respondent, McHinery Equipment Suppliers Pty, that is set forth below be submitted to arbitration under the CIDRA Arbitration Rules, as provided in the contract between them.

STATEMENT OF CLAIM

I. Parties

1. Oceania Printers S.A. is a corporation organized under the laws of Oceania. It has its principal office at Tea Trader House, Old Times Square, Magreton, 00178 Oceania. The telephone number is (0) 555-7356 and the fax number is (0) 555-7359. Oceania Printers S.A. is a printing firm.

2. McHinery Equipment Suppliers Pty is a corporation organized under the laws of Mediterraneo. It has its principal office at Westeria City, 1423 Mediterraneo. The telephone number is (0) 487-1616 and the fax number is (0) 487-1620. McHinery Equipment Suppliers Pty is a seller of new and used industrial equipment.

II. Facts

3. On 17 April 2002 Mr. Roland Butter, owner and President of Oceania Printers S.A. wrote Mr N E McHinery, President of McHinery Equipment Suppliers Pty, and referred to McHinery's website on which refurbished flexoprint machines were offered for sale. Mr. Butter indicated an interest in purchasing such a machine. He wrote that they were interested in printing coated and uncoated papers for wrapping, polyester and also metallic foils for use in the confectionery market and similar fields. The foil might be of 8 micrometer thickness. There was no other flexoprint operator in Oceania and purchase of such a machine would enable them to develop a commanding lead. Claimant's Exhibit No. 1.

4. Mr. Norman McHinery, of McHinery Equipment Suppliers Pty, replied by letter dated 25 April 2002 that they had a second hand 7 stand Magiprint Flexometix Mark 8 machine “for your task” available for sale. It had been recently acquired from the previous user in Athens, Greece and had not yet been dismantled for transit to McHinery’s works for refurbishment. McHinery suggested that Mr. Butter might wish to inspect the machine at the works of the former owner. The price quoted was \$44,500 cif Port Magreton, Oceania. Claimant’s Exhibit No. 2.

5. Mr. Butter and Mr. McHinery inspected the machine together in Athens, Greece on 6 and 7 May 2002. On 10 May 2002 Mr. Butter wrote Mr. McHinery to say that it was imperative to move fast on the purchase of the machine. A contract had been signed with Oceania Confectionaries which they had to be able to service by 15 July 2002. Moreover, another printing firm in Oceania, Reliable Printers, was considering the purchase of a flexoprint machine, which Mr. Butter did not think they would do if Oceania Printers had their machine in place and producing. He continued that “the market in Oceania is very small and it is only the Oceania Confectionaries account that makes the flexoprint machine worthwhile.” Claimant’s Exhibit No. 3.

6. Mr. McHinery replied on 16 May 2002 that they would ship the machine directly from the location of its previous owner in Athens. The refurbishing would be done in Oceania when McHinery’s engineers would re-erect the machine in the claimant’s premises. Because the direct shipment would mean one ocean transit rather than two, the price would be reduced from \$44,500 to \$42,000. Claimant’s Exhibit No. 4.

7. Mr. Butter replied on 21 May 2002 and ordered the machine. Claimant’s Exhibit No. 5.

8. On 27 May 2002 Mr. McHinery wrote that “[y]ou can be assured that with this machine you will be able to meet all the needs of your customers.” With the copy of the letter sent by courier he enclosed a contract, which Mr. Butter received on 30 May 2002. Mr. Butter signed and sent it back the same day. Claimant’s Exhibits Nos. 6 and 7.

9. The machine had arrived, been installed and refurbished by 1 July 2002. The personnel from the seller were doing the test runs. Claimant’s Exhibit No. 8.

10. Once the production runs began to print the foil wrappings for Oceania Confectionaries there were nothing but problems. The machine creased the foil and tore it. In addition, the multiple color runs on the foil were badly out of register. The personnel for the McHinery Equipment Suppliers Pty attempted to fix the problems, but they were unsuccessful. On 1 August 2002 Mr. Butter wrote to Mr. McHinery to indicate his concerns, since Oceania Confectionaries was threatening to cancel the printing contract. Moreover, once the machine delivered by the respondent, McHinery Equipment Suppliers Pty, began having problems, Reliable Printers purchased the machine they had been considering and had received it almost immediately. Mr. Butter expressed the concern that Oceania Confectionaries would contract with Reliable Printers. If that were to happen, “we [would] sit with an idle machine.” Claimant’s Exhibit No. 9.

11. Finally, on 15 August 2002 Mr. Butter wrote Mr. McHinery that the Magiprint Flexometix Mark 8 machine was still not working properly. The printing contract with Oceania Confectionaries had been cancelled. As a result the flexoprint machine was useless to Oceania Printers. Mr. Butter stated further that he would hold McHinery Equipment Suppliers Pty liable for all of the expenses they had incurred as well as the lost profit that could have been expected from the printing they would have done with it. Claimant's Exhibit No. 10.

12. During the past two and a half years there have been various attempts to reach an agreeable settlement but they have been unavailing.

13. On 14 October 2003 the Oceania Printers S.A. sold the Magiprint Flexometix Mark 8 machine to Equatoriana Printers. Ltd for \$22,000.

### III. Arbitration clause, applicable law

14. The contract provides in its paragraph 12 that it is subject to the United Nations Convention on Contracts for the International Sale of Goods. This would have been the case even without the choice of law clause since both Mediterraneo and Oceania are party to the Convention.

15. The arbitration clause is found in paragraph 13 of the contract. It provides as follows:

13. **Arbitration.** Any controversy or claim between Seller and Buyer arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the Chicago International Dispute Resolution Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English.

16. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration without amendment. Oceania, Mediterraneo and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

### IV. Legal Conclusions

17. A tribunal formed in accordance with the rules of the Chicago International Dispute Resolution Association would have jurisdiction over the dispute.

18. The respondent, McHinery Equipment Suppliers Pty, contracted to sell to the claimant, Oceania Printers S.A., a refurbished second hand 7 stand Magiprint Flexometix Mark 8 flexoprinter machine that would print on various materials, including aluminum foil of 8 micrometer thickness. The machine that was delivered was not able to print on foil of that thickness. Instead, the machine creased the foil and tore it and the multiple colour runs were badly out of register.

19. According to Article 35 of the United Nations Convention on Contracts for the International Sale of Goods (CISG):

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

\*\*\*

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, \*\*\*

20. According to Article 45(1) of the CISG “If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may ... claim damages as provided in articles 74 to 77.”

21. According to Article 74 of the CISG “Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach.”

22. Article 74 goes on to say that the damages may not exceed the loss which the party foresaw or ought to have foreseen at the time of the conclusion of the contract. However, the correspondence between Mr. Butter and Mr. McHinery make it perfectly clear that respondent clearly foresaw, or at least ought to have foreseen, the full range of consequences that occurred as a result of its breach of the contract.

#### IV. Relief

23. Oceania Printers S.A. requests the Tribunal to find:

- that the Tribunal has jurisdiction to consider the dispute between Oceania Printers S.A. and McHinery Equipment Suppliers Pty;
- that Oceania Printers S.A. wrote McHinery Equipment Suppliers Pty inquiring whether it could furnish a refurbished flexoprint machine that could print on 8 micrometer aluminum foil;
- that McHinery Equipment Suppliers Pty suggested a second hand 7 stand Magiprint Flexometix Mark 8 “for your task”;
- that Oceania Printers S.A. purchased the machine suggested by McHinery Equipment Suppliers Pty;
- that on several occasions Oceania Printers S.A. informed McHinery Equipment Suppliers Pty how important it was that the machine would be able to print the foil to be delivered to Oceania Confectionaries for wrapping confectionaries;
- that McHinery Equipment Suppliers Pty stated that “[y]ou can be assured that with this machine you will be able to meet all the needs of your customers.”

- that the machine could not print on 8 micrometer aluminum foil, but creased and tore the foil and that multiple color runs on the foil were badly out of register;
- that the respondent, McHinery Equipment Suppliers Pty, was in breach of its contractual obligations to the claimant, Oceania Printers S.A.;
- that the claimant, Oceania Printers S.A., suffered damages consisting of expenditures and loss of profits.

24. Consequently, Oceania Printers S.A. requests the Tribunal to order McHinery Equipment Suppliers Pty:

- to pay Oceania Printers S.A. the sum of \$20,000, being the difference between the \$42,000 purchase price of the Magiprint Flexometix Mark 8 and the \$22,000 received when the machine was sold to Equatoriana Printers Ltd;
- to pay Oceania Printers S.A. the sum of \$50,000, being the cost to Oceania Printers of preparing its plant for the installation of the Magiprint Flexometix Mark 8 machine;
- to pay Oceania Printers S.A. the sum of \$25,000, being the cost of materials expended by the personnel of McHinery Equipment Suppliers Pty in testing the machine;
- to pay Oceania Printers S.A. the sum of \$3,200,000, being the annual profit of \$400,000 that Oceania Printers S.A. would have earned from the contract with Oceania Confectionaries using the Magiprint Flexometix Mark 8 calculated over a period of the first four year contract and one renewal;
- to pay interest at the prevailing market rate in Oceania on the said sum from the date of breach to the date of payment;
- to pay all costs of arbitration, including costs incurred by the parties.

(Signed)  
Counsel

27 June 2005

Claimant's Exhibit No. 1

Oceania Printers S.A.  
Specialist Printers  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

17 April 2002

Dear Mr McHinery,

I see from your website that you can supply refurbished flexoprint machines. We would be interested in acquiring such a machine urgently and request your best price and delivery for a six colour machine with a varnishing stand.

We are interested in printing coated and uncoated papers for wrapping, polyester and also metallic foils for use in the confectionery market and similar fields. Typical plain and coloured aluminum foil for chocolate wrappers may be of 8 micrometer thickness.

There is no other flexoprint operator in Oceania and we believe the machine you supply will enable us to develop a commanding lead. At present users of foil products in particular have to import the printed products, which is expensive.

Yours faithfully,

(Signed)  
Roland Butter

Claimant's Exhibit No. 2

McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

Mr Roland Butter  
Oceania Printers S.A.  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

25 April 2002

Dear Mr Butter,

Thank you for your letter of 17 April 2002. We have indeed a second hand flexoprint machine for your task. It is a 7 stand Magiprint Flexometix Mark 8 machine with a varnishing stand having heated air drying. It is recently acquired from user in Athens, Greece, and has not yet been dismantled for transit to our works for refurbishment. We would be very happy to arrange for you to visit the works of the former owners to inspect the print machine, which we are able to offer at a price of \$44,500 c/i/f Port Magreton.

Yours sincerely,

(Signed)  
Norman McHinery

Claimant's Exhibit No. 3

Oceania Printers S.A.  
Specialist Printers  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

10 May 2002

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423, Mediterraneo

By post and fax

Dear Norman:

The trip to Athens was most enjoyable. It was my first time in Greece and I am glad we had a few days to be tourists.

The Magiprint Flexometix machine looked to be just what we need.

It is imperative that we move fast on this. We signed a contract with Oceania Confectionaries yesterday, which we must be able to service by 15 July. It is an excellent contract from which we can expect to earn a profit of \$400,000 a year. The contract runs for four years subject to renewal at the end of that period. Unless something unexpected happens, we can anticipate a long period of handsome profits.

There is one concern. It now appears that Reliable Printers, another printing firm in Oceania, is also considering the purchase of a flexoprint machine. They have not decided yet but, if our machine is in place and producing, they certainly won't make the purchase. They would go for the Oceania Confectionaries account if they had any possibility of getting it. While there are other uses for the machine, of course, the market in Oceania is very small and it is only the Oceania Confectionaries account that makes the flexoprint machine worthwhile.

I look forward to your prompt reply.

Yours faithfully,  
(Signed)  
Roland

Claimant's Exhibit No. 4

McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

16 May 2002

Mr Roland Butter  
Oceania Printers S.A.  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

By post and fax

Dear Roland,

I am glad you enjoyed the trip to Greece. That evening in Piraeus was something to be remembered.

The only way to get the machine to you quickly would be for it to be despatched directly to you from Greece, rather than by way of our workshops. Our engineers would re-erect it on your premises and refurbish anything that required it.

As that would involve one sea transit rather than two, we can reduce the price to \$42,000, if that appeals to you.

Your old pal

(Signed)  
Norman

Claimant's Exhibit No. 5

Oceania Printers S.A.  
Specialist Printers  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

21 May 2002

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

Post and Fax

Dear Norman,

We acknowledge your letter of 16 May 2002.

Please take this letter as our Order to buy the refurbished Magiprint Flexometix Mark 8 flexoprinter machine as discussed, direct to our plant at Site No 73, New Airport Industrial Development, Somerston, all for the sum of \$42,000. We will put in place a Letter of Credit for this sum when we receive your Bank details.

For and on behalf of Oceania Printers S.A.

(Signed)  
Roland Butter

Claimant's Exhibit No. 6

McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

27 May 2002

Mr Roland Butter  
Oceania Printers S.A.  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

By post and fax

Dear Roland,

I am very pleased that you are so satisfied with the Magiprint Flexometix Mark 8 flexoprinter machine. You can be assured that with this machine you will be able to meet all the needs of your customers.

Our contract is enclosed with the copy of this letter sent by courier. Please sign and send it to me immediately so that the machine can be sent to you quickly. A copy of the maker's manual for the Magiprint Flexometix Mark 8 flexoprinter machine is also enclosed with the copy sent by courier. Even though the machine is easy to operate and is a very reliable machine, you will certainly wish to have a copy.

The letter of credit should be opened in our favour at the Mediterraneo Overseas Commerce Bank.

Our personnel are already in Greece dismantling the machine and it should be ready for shipment within the week. They will be in Oceania by the time it arrives to do the refurbishing in place and to supervise the reassembly.

It has been a pleasure doing business with you.

With best wishes,  
(Signed)  
Norman

Enclosure:           Contract  
                          Instruction Manual

Claimant's Exhibit No. 7

Contract (Excerpts)

McHinery Equipment Suppliers Pty (hereafter Seller) agrees to sell and Oceania Printers S.A. (hereafter Buyer) agrees to purchase one second hand 7 stand Magiprint Flexometix Mark 8 flexoprinter machine.

1. Price is \$42,000 CIF Port Magreton, Oceania.
2. Machine is to be refurbished by Seller on installation at Buyer's premises.
3. Payment by letter of credit in favor of Seller, opened at first class bank and payable at Mediterraneo Overseas Commerce Bank.

\* \* \*

12. **Choice of Law.** This contract is subject to the United Nations Convention on Contracts for the International Sale of Goods.

13. **Arbitration.** Any controversy or claim between Seller and Buyer arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the Chicago International Dispute Resolution Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English.

(Signed) \_\_\_\_\_  
Mr N E McHinery  
McHinery Equipment Suppliers Pty

(Signed) \_\_\_\_\_  
Mr Roland Butter  
Oceania Printers S.A.

30 May 2002

Claimant's Exhibit No. 8

Oceania Printers S.A.  
Specialist Printers  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

1 July 2002

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

Post and Fax

Dear Norman,

Your workmen are first rate. They have refurbished the Magiprint Flexometix and given it a test run. So far, so good.

We plan on starting production printing next week.

If ever you come to Oceania, please let me know. It would be a pleasure to show you around our small, but quite beautiful, country.

Yours faithfully,

(Signed)  
Roland Butter

Claimant's Exhibit No. 9

Oceania Printers S.A.  
Specialist Printers  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

1 August 2002

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423, Mediterraneo

Post and Fax

Dear Mr. McHinery,

By now you are well aware of the situation in regard to the Magiprint Flexometix Mark 8 flexoprinter machine you sold to us. It has worked on the various paper products, but not on the foil products for confectionary wrapping. The machine creases the foil and tears it, and multiple color runs on foil are badly out of register.

Your personnel have been working diligently to try to fix matters. I do not fault their efforts. However, so far they have been unsuccessful. This is becoming very serious.

As I wrote you in my letter of 10 May 2002, our contract with Oceania Confectionaries requires that we begin delivery to them by 15 July. We are already more than two weeks past that date. They are threatening to cancel the contract if we are not able to start production promptly. The consequence would be that those contracts would most likely go to Reliable Printers.

When it became evident that our machine was having problems, Reliable purchased the machine they had been considering and got almost immediate delivery. Their machine is installed and from what I hear it is working well, though they do not have any real use for it at present. My fear is that they will soon be fully occupied while we sit with an idle machine.

If your personnel are not able to bring the machine into full operation soon, we will expect you to cover all of our expenses and losses.

Yours faithfully,  
(Signed)  
Roland Butter

Claimant's Exhibit No. 10

Oceania Printers S.A.  
Specialist Printers  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

15 August 2002

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

Dear Sirs,

Your mechanics and printers have been fiddling with the Magiprint installation for almost two months now, and we are no nearer to being able to print quality foil products for our customers than we were at the beginning.

Oceania Confectionaries has cancelled its contract with us since we were not able to supply them with the printed foil they needed. They have contracted with Reliable Printers. That leaves us with almost no business for that machine you sold us.

The machine is useless to us. We wish to give notice of our intention to claim compensation including the price of the machine, the cost of the preparatory work on our part, together with \$25,000 in respect of stocks of printing materials, some of which have been wasted by your personnel in tests, and our significant loss of profits from the loss of the Oceania Confectionaries contract.

I am so very sorry it has come to this stage, but it has.

Yours faithfully

(Signed)  
Roland Butter



July 7, 2005

VIA FEDERAL EXPRESS

Mr. James Stewart  
Lawyer and Adjuster  
14 Court Street  
Magreton  
00178 Oceania

Mr. N E McHinery  
McHinery Equipment Suppliers Pty  
Westeria City  
Mediterraneo

In the matter of:

Oceania Printers S.A.  
Claimant  
v.

McHinery Equipment Suppliers Pty  
Respondent

Ref: CIDRA 2005-0013

**Peter V. Baugher, President**

**200 World Trade Center, Suite 1540 The Merchandise Mart, Chicago, IL USA 60654  
312-409-1373 (phone), 312-701-9335 (fax), cidra@sw.com (email), www.cidra.org**

Dear Mr. Stewart and Mr. McHinery:

This will acknowledge receipt on July 5, 2005 by the Chicago International Dispute Resolution Association (“CIDRA”) of a letter on behalf of Claimant from Mr. Stewart dated June 27, 2005 and a Statement of Claim including a request for arbitration under the CIDRA rules (the “Statement of Claim”) with respect to a dispute arising out of an agreement between the parties dated May 30, 2002 (the “Agreement”). The Statement of Claim was accompanied by a power of attorney for Mr. Stewart to represent Claimant, a courier-service receipt for transmission of a copy of the Statement of Claim to Respondent and an administrative filing fee in the form of a bank draft in the amount of US\$7,000.

#### CIDRA Arbitration Rules

CIDRA’s Arbitration Rules as amended and effective July 1, 2005 (the “Rules”) are enclosed. The rules are also available at [www.cidra.org](http://www.cidra.org).

#### Statement of Defense

Pursuant to Article 4 of the Rules, Respondent shall communicate a statement of defense in writing to the Claimant and CIDRA within thirty days of Respondent’s receipt of the Statement of Claim.

#### Place of Arbitration

Claimant has requested that the hearing be held in Vindobona, Danubia. Please review Article 18 of the Rules regarding the place of arbitration.

#### Appointment of Arbitrators

The arbitration clause of the Agreement provides that three arbitrators are to be appointed to resolve this dispute. Please review Article 9 of the Rules regarding nomination and appointment of arbitrators where three arbitrators are to be appointed.

We acknowledge Claimant’s nomination of Ms Arbitrator 1 as its Arbitrator. Respondent is requested to nominate one arbitrator within thirty days of its receipt of the Statement of Claim.

#### Costs and Fees

CIDRA acknowledges receipt from Complainant of a nonrefundable administrative filing fee of US\$7,000. Other costs and fees and the apportionment thereof shall be based on the principles set forth in Articles 37-39 of the Rules and with CIDRA’s Fee Schedule which is attached to this letter. Pursuant to Article 40 of the Rules, CIDRA hereby requests from each party an initial deposit of US\$5,000. Such deposit shall be due and payable in full within thirty days after receipt of this request.

Administration

This case will be administered by CIDRA in Chicago, Illinois USA. Please address correspondence to the attention of Ms. Marilyn Turner, Case Administrator. Ms. Turner may be reached through CIDRA or directly at the contacts listed below. We look forward to assisting the parties and their counsel

Thank you for selecting CIDRA.

Sincerely,

Marilyn Turner, Case Administrator  
Schopf & Weiss, LLP  
312 W. Randolph St., Chicago, IL 60606  
312 701 9300  
Fax: 312-701-9335  
turner@sw.com

Attachment: CIDRA Fee Schedule

Enclosure: CIDRA Arbitration Rules, as amended effective July 1, 2005

## **CIDRA FEE SCHEDULE**

### **CIDRA ADMINISTRATIVE FEES**

A nonrefundable filing fee is payable in full in U.S. dollars by a filing party when a claim, counterclaim or additional claim is filed, as provided below:

<b>Dispute Amount</b>	<b>Filing Fee</b>
Up to \$100,000	\$1,250
Above \$100,000 to \$250,000	\$2,000
Above \$250,000 to \$500,000	\$3,500
Above \$500,000 to \$1,000,000	\$5,000
Above \$1,000,000 to \$5,000,000	\$7,000
Above \$5,000,000	0.15 % of the amount but not more than \$20,000

When the amount of claim, counterclaim or additional claim is not mentioned at the time of filing, the minimum filing fee is \$2,000, subject to increase when the claim or counterclaim is disclosed.

CIDRA shall determine an appropriate fee when a claim or counterclaim does not include a monetary amount.

The minimum filing fee for any case having three or more arbitrators is \$2,000.

### **ARBITRATOR'S FEES**

The arbitrators shall fix their fees consistent with the schedule provided by CIDRA. Currently, arbitrators are compensated at the rate of \$300 per hour.

### **ARBITRATION COSTS**

Costs are further discussed in Articles 37, 38, 39 and 40 of the CIDRA Arbitration Rules.

Dr. Herbert Comstock  
146 Court Street  
Capitol City  
Mediterraneo

3 August 2005

Ms. Marilyn Turner, Case Administrator  
Schopf & Weiss, LLP  
312 W. Randolph St., Chicago, IL 60606  
USA

Re: CIDRA 2005-0013

Oceania Printers S.A. v. McHinery Equipment Suppliers Pty

Dear Ms. Turner:

I acknowledge receipt of your letter of 7 July 2005 addressed to McHinery Equipment Suppliers Pty and the enclosed notice of arbitration and the statement of claim by Oceania Printers S.A.

I represent McHinery Equipment Suppliers Pty in this dispute. My power of attorney is attached.

In accord with your letter and the Chicago International Dispute Resolution Association Arbitration Rules there is enclosed the Answer to the claim brought by Oceania Printers S.A.

McHinery Equipment Suppliers Pty nominates Professor Arbitrator 2 as its arbitrator. His mailing address is 14 Litigation Avenue, Capitol City, Mediterraneo. A copy of his curriculum vitae is attached.

A bank draft for \$5,000 for the deposit on arbitrators' fees and costs is enclosed.

I look forward to hearing from you further in this matter.

Sincerely yours,

(Signed)  
Dr. Herbert Comstock

Encl: Power of attorney  
Answer  
Bank draft for advance on costs  
CV Arbitrator 2

Chicago International Dispute Resolution Association

Oceania Printers S.A.  
Claimant

v.

McHinery Equipment Suppliers Pty  
Respondent

CIDRA 2005-0013

ANSWER

I. Parties

1. Oceania Printers S.A. is a corporation organized under the laws of Oceania. It has its principal office at Tea Trader House, Old Times Square, Magreton, 00178 Oceania. The telephone number is (0) 555-7356 and the fax number is (0) 555-7359. Oceania Printers S.A. is a printing firm.

2. McHinery Equipment Suppliers Pty is a corporation organized under the laws of Mediterraneo. It has its principal office at Westeria City, 1423 Mediterraneo and conducts all of its business from Mediterraneo. The telephone number is (0) 487-1616 and the fax number is (0) 487-1620. McHinery Equipment Suppliers Pty is a seller of new and used industrial equipment.

II. Facts

3. Respondent agrees that on 17 April 2002 Mr. Roland Butter, owner and President of Oceania Printers S.A. wrote Mr N E McHinery, President of McHinery Equipment Suppliers Pty, and referred to McHinery's website on which refurbished flexoprint machines were offered for sale. Mr. Butter indicated an interest in purchasing such a machine. Claimant's Exhibit No. 1.

4. Mr. Norman McHinery, of McHinery Equipment Suppliers Pty, replied by letter dated 25 April 2002 that they had a second hand 7 stand Magiprint Flexometix Mark 8 machine available for sale. It had been recently acquired from the previous user in Athens, Greece and had not yet been dismantled for transit to McHinery's works for refurbishment. Mr. McHinery suggested that Mr. Butter might wish to inspect the machine at the works of the former owner. The price quoted was \$44,500 cif Port Magreton, Oceania. Claimant's Exhibit No. 2.

5. Mr. Butter and Mr. McHinery inspected the machine together in Athens, Greece on 5 and 6 May 2002. During the visit Mr. Butter had a full opportunity to inquire as to the performance specifications of the machine. After his return to Oceania on 10 May 2002 Mr. Butter wrote Mr. McHinery to say that the machine “looked to be just what [they] needed.” Claimant’s Exhibit No. 3.

6. Because Mr. Butter had indicated that there was a degree of urgency to the purchase, Mr. McHinery replied on 16 May 2002 that they would ship the machine directly from the location of its previous owner in Athens. The refurbishing would be done in Oceania where McHinery’s engineers would re-erect the machine in the Oceania Printer’s premises. Because the direct shipment would mean one ocean transit rather than two, the price would be reduced from \$44,500 to \$42,000. Claimant’s Exhibit No. 4.

7. Mr. Butter replied on 21 May 2002 and ordered the machine. Claimant’s Exhibit No. 5.

8. On 27 May 2002 Mr. McHinery replied and enclosed a contract and a copy of the manufacturer’s manual. The manual contained the specifications for the machine, including the substrate on which it could print. Those specifications stated that the machine could print on foil larger than 10 micrometers. Mr. Butter received the letter with contract and manufacturer’s manual on 30 May 2002 and signed the contract the same day. Claimant’s Exhibits Nos. 6 and 7 and Respondent’s Exhibit No. 1.

9. The machine had been installed and refurbished by the personnel from McHinery Equipment Suppliers Pty by 1 July 2002 and test runs were being performed. Claimant’s Exhibit No. 8.

10. On 15 July 2002 Mr. William Swain, foreman of the crew from McHinery Equipment Suppliers Pty, spoke to Mr. McHinery on the telephone and sent a confirming letter. The installation, refurbishing and test runs of the machine had been completed by 8 July 2002. Mr. Swain reported that the machine worked perfectly. The machine had been turned over to Oceania Printers. The first production job that Oceania Printers had attempted was to print aluminum foil wrappers for Oceania Confectionaries. The foil had not printed properly and Mr. Swain was called at the hotel where they were preparing to depart Oceania. When Mr. Swain arrived at the plant he saw immediately that they were attempting to feed 8 micrometer foil into the machine. Since the machine was not designed to print on foil that thin, it was not surprising that the foil creased during the print runs. At the request of Mr. Butter, Mr. Swain and his crew remained in Oceania and attempted to adjust the machine to print on 8 micrometer foil. They were unsuccessful. Respondent’s Exhibit No. 2.

11. Finally, on 1 and 15 August 2002 Mr. Butter wrote Mr. McHinery that the Magiprint Flexometix Mark 8 machine was still not working properly. The printing contract with Oceania Confectionaries had been cancelled by it. Mr. McHinery stated further that he would hold McHinery Equipment Suppliers Pty liable for all of the expenses they had incurred as well as the lost profit that could have been expected from the printing they would have done with it. Claimant’s Exhibits Nos. 9 and 10.

12. 10 September 2002 Mr. McHinery wrote Mr. Butter rejecting all claims arising out of the Magiprint Flexometix Mark 8 machine. The machine had been completely refurbished and was in perfect condition. It could do everything for which it was designed, pointing out that the specification page in the manufacturer's manual that Oceania Printers had received before they signed the contract clearly specified that the machine could print on 10 micrometer or thicker aluminum foil but not on 8 micrometer foil. Mr. McHinery offered to re-purchase the machine for \$20,000. Respondent's Exhibit No. 3.

13. During the past two years Oceania Printers S.A. has continued to insist that we owe them compensation for a mistake they made themselves when they neither inquired as to the performance characteristics of the Magiprint Flexometix Mark 8 machine nor consulted the manufacturer's manual, which they had in their hands prior to signing the contract.

### III. Arbitration clause, applicable law

14. As stated in the statement of claim, the contract provides in its paragraph 12 that it is subject to the United Nations Convention on Contracts for the International Sale of Goods. This would have been the case even without the choice of law clause since both Mediterraneo and Oceania are party to the Convention.

15. The arbitration clause is found in paragraph 13 of the contract. It provides as follows:

13. **Arbitration.** Any controversy or claim between Seller and Buyer arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the Chicago International Dispute Resolution Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English.

16. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration without amendment. Oceania, Mediterraneo and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

17. Article 87 of the Law of Obligations of Mediterraneo provides that the limitation period (prescriptive period) for contracts for the sale of goods is two years.

18. Article 14 of the Private International Law Act of Mediterraneo provides that the law applicable to an international sale of goods, including its formation and extinction by passage of the limitation period (prescriptive period) shall be that of the seller.

19. Article 32 of the Rules of Arbitration of the Chicago International Dispute Resolution Association provides:

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

#### IV. Legal Conclusions

##### a. Jurisdiction of the arbitral tribunal

20. The respondent agrees with the claimant that a tribunal formed under the rules of the Chicago International Dispute Resolution Association has jurisdiction over this dispute.

##### b. Choice of law, limitation period (prescriptive period)

21. The parties have designated the law applicable to the contract and its formation by designating the United Nations Convention on Contracts for the International Sale of Goods. Absent a designation of a different law, the Convention would have been the applicable law in any case since both Mediterraneo and Oceania are party to the Convention.

22. The parties have not designated the law applicable to other aspects of their relationship, including the law governing the period of limitation (prescriptive period). The prevailing rule is that the law that governs in the absence of a choice by the parties is that which is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. While there are exceptions to this prevailing rule, such as when the principal place of business of the party who is to effect the performance which is characteristic of the contract is located in a State other than in the State where the central administration is located, none are applicable to this dispute. In the case of a sale of goods, the performance which is characteristic of the contract is that of the seller. As in this contract, the seller furnished the flexoprint machine and the seller's personnel installed and refurbished it. All that the buyer did was to pay the price.

23. Article 14 of the Private International Law Act of Mediterraneo is in accord with the prevailing rule when it provides that the law applicable to an international sale of goods, including its formation and extinction by passage of the limitation period (prescriptive period) shall be that of the seller.

24. Since Article 87 of the Law of Obligations of Mediterraneo provides that the limitation period (prescriptive period) for a contract of sale of goods is two years and more than two years elapsed from the time the alleged breach of contract occurred, July 2002, and the commencement of the arbitration, July 2005, the claim of Oceania Printers S.A. is no longer actionable.

c. Alleged lack of conformity of the goods

25. The Magiprint Flexometix Mark 8 performed to the specifications set out in the manufacturer's manual. Oceania Printers S.A. had a copy of the manufacturer's manual in its possession prior to signing the contract. Furthermore, Mr. Butter, owner and President of Oceania Printers S.A., inspected the machine at the plant of its former owner on 5 and 6 May 2002 where he had a full opportunity to inquire into its performance. Subsequently he wrote Mr. McHinery that the machine "looked to be just what we need." Claimant's Exhibit No. 3.

26. These indications of the performance specifications of the flexoprint machine that was contracted are considerably more specific than the rather vague formulation employed by Mr. Butter in his inquiry letter of 17 April 2002 that "Typical plain and colored aluminum foil for chocolate wrappers may be of 8 micrometer thickness." Claimant's Exhibit No. 1, emphasis added. There was, consequently, no failure of performance on the part of the respondent, McHinery Equipment Suppliers Pty.

d. Damages

27. The damages claimed by Oceania Printers S.A. are composed of essentially two elements: monies expended in acquiring the Magiprint Flexometix Mark 8 machine and the loss of the expected profit from its use. There are no objections to the nature of the claim for monies expended, though the claimant must still offer evidence in regard to the money expended in preparation for the installation of the Magiprint Flexometix Mark 8 machine and for the cost of materials expended by the personnel of McHinery Equipment Suppliers Pty in testing the machine.

28. The damages of \$3,200,000 claimed by Oceania Printers S.A. for lost profit are themselves composed of two elements, an annual profit of \$400,000 that it claims it would have earned from the contract with Oceania Confectionaries and a period of time of eight years, consisting of a period of four years for the contract dated 9 May 2002 plus a second period of four years for the speculated renewal of that contract.

29. Respondent contests every element of that calculation: the method by which the anticipated annual profit of \$400,000 was derived; the inclusion of the second period of three years for the speculated renewal of the contract and the sum total arrived at by multiplying the anticipated annual profit by some number of years.

e. Interest and costs of arbitration

30. Neither pre-award interest nor post-award interest would be payable on any sum that the arbitral tribunal might award to the claimant, Oceania Printers S.A.

31. The costs of arbitration, including the costs of legal representation of McHinery Equipment Suppliers Pty should be awarded to it.

#### IV. Relief

32. McHinery Equipment Suppliers Pty requests the Tribunal to find:
- that the period of limitation (prescriptive period) had expired prior to the commencement of the arbitration;
  - that Oceania Printers S.A. knew or should have known that the Magiprint Flexometix Mark 8 machine could not print on aluminum foil thinner than 10 micrometers;
  - that Oceania Printers S.A. expressed satisfaction in writing with the Magiprint Flexometix Mark 8 machine on two occasions;
  - that the Magiprint Flexometix Mark 8 performed to the specifications set out in the manufacturer's manual and that the claimant, Oceania Printers S.A., had a copy of the manual prior to signing the contract of purchase;
33. McHinery Equipment Suppliers Pty requests the Tribunal to dismiss the claim in the arbitration on the grounds that the period of limitation (prescriptive period) has expired.
34. If the Tribunal should find that the period of limitation (prescriptive period) has not expired, McHinery Equipment Suppliers Pty requests the Tribunal to dismiss the claim in the arbitration on the grounds that the seller, McHinery Equipment Suppliers Pty, did not fail in any of its obligations under the contract.
35. If the Tribunal should find that McHinery Equipment Suppliers Pty did fail in one or more of its obligations under the contract, to reduce the damages claimed to an appropriate amount.
36. To order Oceania Printers S.A. to pay all costs of the arbitration, including the costs of legal representation incurred by McHinery Equipment Suppliers Pty.

(Signed)  
Counsel

3 August 2005

Respondent's Exhibit No. 1

Extract from Maker's Manual for Magiprint Flexometix Mark 8

Substrate Limits of Performance:  
Paper (bleached wood pulp) > 40 Grams/square metre  
Aluminium foil > 10 micrometers

Respondent's Exhibit No. 2

McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

15 July 2002

Mr N E McHinery  
McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423, Mediterraneo

Fax 487-1620

Dear Mr. McHinery:

This is to confirm what I told you on the telephone. We installed the Magiprint Flexometix Mark 8 machine at the premises of the Oceania Printers and refurbished it once installed. By 1 July we had started doing the test runs and made the final adjustments. The machine worked perfectly.

We turned over the machine to Mr. Butter on 8 July 2002. The first job they wished to use it for was to print aluminum foil wrappers for Oceania Confectionaries. We were at the hotel preparing our luggage for departure when Mr. Butter called us. He told me that the foil would crease and the colors were out of register.

When we arrived at the plant we saw that they were feeding 8 micron foil into the machine. Naturally it wouldn't print properly. The foil was too thin. Because Mr. Butter said that it was imperative that they be able to print on the 8 micron foil and that they had to be ready to deliver by 15 July, we have done everything I know of to adjust the machine to print on thinner material than it was designed for. So far we have been unsuccessful.

We will stay here for awhile yet. It may be that there are ways to get around the problems, but I have my doubts.

I will keep you informed of developments.

Yours truly,  
(Signed)  
William Swain  
Foreman

Respondent's Exhibit No. 3

McHinery Equipment Suppliers Pty  
The Tramshed  
Breakers Lane  
Westeria City 1423  
Mediterraneo

10 September 2002

Mr Roland Butter  
Oceania Printers S.A.  
Tea Trader House  
Old Times Square  
Magreton  
00178 Oceania

By post and fax

Dear Mr. Butter,

Your letter of 15 August 2002 has been received. I am very sorry that matters have reached this impasse.

I must reject in totality your claim in regard to the Magiprint Flexometix Mark 8 machine you purchased from us. Our foreman, Mr. Swain, has pointed out to you that you were attempting to use the machine to print 8 micrometer foil. However, the specification page in the manufacturer's manual that you received prior to your signing the contract clearly specified that it could be used only on 10 micrometer and thicker foil.

At your request, more like at your insistence, Mr. Swain and his crew attempted to adjust the machine to print 8 micrometer foil, but to no avail.

The Magiprint Flexometix Mark 8 machine was completely refurbished by Mr. Swain and his crew. It is in perfect condition and fit to do everything for which it was designed. If you have no further use for it, we would be prepared to re-purchase it for \$20,000.

I look forward to hearing further from you.

Yours sincerely,

(Signed)  
Norman McHinery



August 8, 2005

VIA FEDERAL EXPRESS

Mr. James Stewart  
Lawyer and Adjuster  
14 Court Street  
Magreton  
00178 Oceania

Ms. Arbitrator 1  
78 Front Street  
New City  
Equitoriana

Dr. Herbert Comstock  
146 Court Street  
Capitol City  
Mediterraneo

Professor Arbitrator 2  
14 Litigation Avenue  
Capitol City  
Mediterraneo

In the Matter of :

Oceania Printers S.A.  
Claimant

v.

McHinery Equipment Suppliers Pty  
Respondent

**CIDRA 2005-0013**

**Peter V. Baugher, President**

200 World Trade Center, Suite 1540 The Merchandise Mart, Chicago, IL USA 60654  
312-409-1373 (phone), 312-701-9335 (fax), [cidra@sw.com](mailto:cidra@sw.com) (email), [www.cidra.org](http://www.cidra.org)

Dear Mr. Stewart, Mr. Comstock, Ms Arbitrator 1 and Professor Arbitrator 2:

CIDRA has received from Mr. Comstock of (i) a letter on behalf of Respondent dated August 3, 2005 and (ii) an Answer.

#### Deposits and Fees

CIDRA has also received an initial deposit of US\$5,000 from Respondent pursuant to CIDRA's request in its letter of July 7, 2005.

#### Appointment of Party-Nominated Arbitrators

In Mr. Stewart's letter of 27 June 2005 submitting the request for arbitration Ms. Arbitrator 1 was nominated as arbitrator. In Mr. Comstock's letter Professor Arbitrator 2 is nominated as arbitrator.

Article 11 of the Rules provides that every arbitrator must be and remain independent of the parties involved in the arbitration. A prospective arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. In furtherance of these objectives, each of Ms. Arbitrator 1 and Professor Arbitrator 2 is requested to complete and return to CIDRA within 15 days of receipt of this letter his or her "Consent to Appointment and Notice of Independence" on the form attached to this letter.

If either party intends to challenge an arbitrator such party shall send notice of his challenge within fifteen days after its receipt of this letter or such later time as is within fifteen days after circumstances mentioned in Articles 11 and 12 of the Rules became known to that party. A party making a challenge shall notify CIDRA and the other party of that challenge. The notification shall be in writing and shall state the reasons for the challenge.

#### Appointment of Third Arbitrator

A party that desires that the arbitrators nominated by the parties agree on the third arbitrator as provided in Article 9 of the Rules shall so notify CIDRA and the other party within 15 days of its receipt of this letter. If (i) both parties do not so notify CIDRA in a timely manner that they desire the arbitrators nominated by the parties to agree on the third arbitrator, or (ii) the parties both notify CIDRA that they desire the arbitrators nominated by them to agree on the third arbitrator but the arbitrators have not agreed on the choice of the third arbitrator within 30 days following confirmation of appointment of the second arbitrator, CIDRA shall appoint the third arbitrator in accordance with the procedures described in Articles 8 and 9 of the Rules.

Sincerely,

Marilyn Turner, Administrator  
c/o Schopf & Weiss, LLP  
312 W. Randolph St., Chicago, IL 60606  
312 701 9300  
Fax: 312-701-9335  
turner@sw.com

Attachment: Form of CONSENT TO APPOINTMENT and STATEMENT OF  
INDEPENDENCE

**CONSENT TO APPOINTMENT and STATEMENT OF INDEPENDENCE**

In the matter of:

Oceania Printers S.A.  
Claimant

v.

McHinery Equipment Suppliers Pty  
Respondent

Ref: CIDRA 2005-0013

**Name :** \_\_\_\_\_

- (1) I hereby consent to my appointment as arbitrator in this arbitration.
- (2) I undertake to act in accordance with the CIDRA Rules of Arbitration as they may apply to this arbitration.
- (3) I declare that I am, and shall remain, impartial and independent of the parties.
- (4) **(Please delete whichever of the following two statements does not apply)**
  - (i) I further declare that to the best of my knowledge, there are no circumstances, past or present, that are likely to give rise to justifiable doubts as to my impartiality or independence.
  - (ii) In accordance with Article 11 of the CIDRA Rules of Arbitration I wish to disclose the following circumstances: **(Use separate sheet.)** To the best of my belief, these circumstances do not impair my impartiality or independence.
- (5) I undertake until conclusion of proceedings incident to this arbitration to disclose to CIDRA and to all parties, any circumstances that arise in the future which are likely to give rise to justifiable doubts as to my impartiality or independence.

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Ms. Arbitrator 1  
78 Front Street  
New City  
Equitoriana

19 August 2005

Ms. Marilyn Turner, Administrator  
c/o Schopf & Weiss, LLP  
312 W. Randolph St.  
Chicago, Il 60606  
USA

Re: Oceania Printers S.A., Clamant  
v.  
McHinery Equipment Suppliers Pty, Respondent  
CIDRA 2005-0013

Dear Ms. Turner:

I acknowledge receipt of your letter of 8 August 2005 in which you inform me that I have been nominated as arbitrator in the referenced arbitration.

I am willing to be an arbitrator in the arbitration and have no conflicts of interest of which I am aware. I have completed and attach your form CONSENT TO APPOINTMENT and STATEMENT OF INDEPENENCE.

Sincerely,

(Signed)  
Arbitrator 1

Enclosure: CONSENT TO APPOINTMENT and STATEMENT OF INDEPENENCE

**[Note: A similar letter and completed form were received from Professor Arbitrator 2.]**



August 26, 2005

VIA FEDERAL EXPRESS

Mr. James Stewart  
Lawyer and Adjuster  
14 Court Street  
Magreton  
00178 Oceania

Ms. Arbitrator 1  
78 Front Street  
New City  
Equitoriana

Dr. Herbert Comstock  
146 Court Street  
Capitol City  
Mediterraneo

Professor Arbitrator 2  
14 Litigation Avenue  
Capitol City  
Mediterraneo

In the matter of:

Oceania Printers S.A., Claimant

v.

McHinery Equipment Suppliers Pty, Respondent

Ref: CIDRA 2005-0013

**Peter V. Baugher, President**

**200 World Trade Center, Suite 1540 The Merchandise Mart, Chicago, IL USA 60654  
312-409-1373 (phone), 312-701-9335 (fax), cidra@sw.com (email), www.cidra.org (website)**

Dear Mr. Stewart, Mr. Comstock, Ms Arbitrator 1 and Professor Arbitrator 2:

Deposits

This is to acknowledge receipt of payment of an initial deposit of US\$5,000 from Claimant pursuant to CIDRA's request in its letter of July 7, 2005.

Appointment of Party-Nominated Arbitrators

CIDRA acknowledges receipt of a completed "Consent to Appointment and Notice of Independence" from each of Ms. Arbitrator 1 and Professor Arbitrator 2. A copy of each Consent and Notice is enclosed. CIDRA has not received notice of challenge to either Ms. Arbitrator 1 or Professor Arbitrator 2 serving as an arbitrator in this matter.

CIDRA hereby confirms appointment of Ms. Arbitrator 1 and Professor Arbitrator 2 as arbitrators.

Appointment of Third Arbitrator

CIDRA has not received notice that both parties desire the arbitrators nominated by the parties to agree on the third arbitrator. Accordingly, CIDRA shall appoint the third arbitrator in accordance with the procedures described in Articles 8 and 9 of the Rules.

Sincerely,

Marilyn Turner, Administrator  
c/o Schopf & Weiss, LLP  
312 W. Randolph St., Chicago, IL 60606  
312 701 9300  
Fax: 312-701-9335  
turner@sw.com

Enc.: Consent to Appointment and Notice of Independence from Ms. Arbitrator 1  
Consent to Appointment and Notice of Independence from Prof. Arbitrator 2



September 9, 2005

VIA FEDERAL EXPRESS

Mr. James Stewart  
Lawyer and Adjuster  
14 Court Street  
Magreton  
00178 Oceania

Ms. Arbitrator 1  
78 Front Street  
New City  
Equitoriana

Dr. Herbert Comstock  
146 Court Street  
Capitol City  
Mediterraneo

Professor Arbitrator 2  
14 Litigation Avenue  
Capitol City  
Mediterraneo

Mr. Arbitrator 3  
45 Roman Blvd.  
1010 Vindobona  
Danubia

In the matter of:

Oceania Printers S.A., Claimant

v.

McHinery Equipment Suppliers Pty, Respondent

Ref: CIDRA 2005-0013

**Peter V. Baugher, President**

**200 World Trade Center, Suite 1540 The Merchandise Mart, Chicago, IL USA 60654  
312-409-1373 (phone), 312-701-9335 (fax), cidra@sw.com (email), www.cidra.org**

Dear Mr. Stewart, Mr. Comstock, Ms Arbitrator 1, Professor Arbitrator 2 and Mr. Arbitrator 3:

In accordance with Article 9 of the Rules Mr. Arbitrator 3 has been selected by CIDRA as the third arbitrator in this matter. Mr. Arbitrator 3 has submitted to CIDRA a Consent to Appointment and Statement of Independence. A copy is enclosed.

CIDRA hereby confirms appointment of Mr. Arbitrator 3 as the third arbitrator in this matter.

Sincerely,

Marilyn Turner, Case Administrator  
C/o Schopf & Weiss, LLP  
312 W. Randolph St., Chicago, IL 60606  
312 701 9300  
Fax: 312-701-9335  
turner@sw.com

Enc.: Consent to Appointment and Notice of Independence from Mr. Arbitrator 3

Chicago International Dispute Resolution Association

Oceania Printers S.A.  
Claimant

v.

McHinery Equipment Suppliers Pty  
Respondent

CIDRA 2005-0013

Procedural Order No. 1

1. On 27 September 2005 the Tribunal discussed by means of a conference call the procedures that might be followed in the arbitration. Pursuant to CIDRA Arbitration Rules Article 30.2 the Tribunal has authorized the Presiding Arbitrator to make procedural rulings, subject to subsequent revision by the full Tribunal. Under that authority I have consulted with the parties in respect of the timetable for the further conduct of the arbitration as provided in Article 17.2. That discussion was by means of a conference call on 5 October 2005.

2. The provisions of the Oceania Conflicts of Law in the International Sale of Goods Act as set out in paragraph 7 below were furnished by counsel for Oceania Printers S.A. by fax subsequent to the conference call. It was agreed by counsel for both parties that the contentions of Oceania Printers S.A. in regard to the period of limitation, including which law was applicable, would be summarized in this Procedural Order and could be elaborated on in the memoranda to be submitted by the parties as set out in paragraphs 13 and 14 below.

3. In its Statement of Defense respondent McHinery Equipment Suppliers Pty raised as a defence to the claim of Oceania Printers S.A. that the period of limitation had expired. It pointed out that under the law of Mediterraneo there was a two year limitation period and that the alleged breach of contract had occurred in July 2002, more than two years before the commencement of the arbitration in July 2005.

4. It further stated that, while the contract between the parties had provided that the contract would be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG), no other choice of law to govern other legal issues that might arise had been made. Respondent noted that according to CIDRA Article 32 "Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable." It went on to say that the normal rule was that, absent a choice of law by the parties, the law of the party whose role was characteristic of the contract should govern the contract and all its incidences, including the period of limitation. Finally, it stated that the performance characteristic of a sale of goods is that of the seller, leading to the application of the law of Mediterraneo. Article 14 of the Private International Law Act of Mediterraneo is in accord with the prevailing rule when it provides that the law

applicable to an international sale of goods, including its formation and extinction by passage of the limitation period (prescriptive period) shall be that of the seller.

5. Oceania Printers S.A. has not as yet had the opportunity to reply to this defence in writing. It stated during the conference call that Article 87 of the Law of Obligations of Oceania provided for a four year period of limitation for sales of goods. This was naturally the period of time that it had expected to have before it would no longer be able to institute litigation or arbitration proceedings.

6. Counsel stated further that the basic principle that the law of the seller's country applies to all incidents of a contract of sale, including the period of limitation, is also recognized in the law of Oceania. However, there are exceptions where the law of the buyer's country applies and an exception would apply in this dispute.

7. Articles 1 through 15 of the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods of 22 December 1986 have been adopted by Oceania as the Conflicts of Law in the International Sale of Goods Act. The relevant provisions are Article 8(1) to (3). Article 8(4) of the Act, which reproduces Article 8(5) of the Convention, is also set forth.

#### *Article 8*

(1) To the extent that the law applicable to a contract of sale has not been chosen by the parties in accordance with Article 7, the contract is governed by the law of the State where the seller has his place of business at the time of conclusion of the contract.

(2) However, the contract is governed by the law of the State where the buyer has his place of business at the time of conclusion of the contract, if –

*a)* negotiations were conducted, and the contract concluded by and in the presence of the parties, in that State; or

*b)* the contract provides expressly that the seller must perform his obligation to deliver the goods in that State; or

*c)* the contract was concluded on terms determined mainly by the buyer and in response to an invitation directed by the buyer to persons invited to bid (a call for tenders).

(3) By way of exception, where, in the light of the circumstances as a whole, for instance any business relations between the parties, the contract is manifestly more closely connected with a law which is not the law which would otherwise be applicable to the contract under paragraphs 1 or 2 of this Article, the contract is governed by that other law.

(4) Paragraph 3 does not apply in respect of issues regulated in the United Nations Convention on contracts for the international sale of goods (Vienna, 11 April 1980) where, at the time of the conclusion of the contract, the seller and

the buyer have their places of business in different States both of which are Parties to that Convention.

8. Oceania Printers S.A. contends that Article 8(2)(b) or (3) should be applied and should lead to the application of the law of the buyer in respect of the limitation period, i.e. the four year period as provided in the law of Oceania.

9. Oceania Printers S.A. asserts that the contract for the sale of the flexoprint machine called for a machine that could print on 8 micrometer aluminum foil while McHinery Equipment Suppliers Pty asserts that the contract provided that it could print only on 10 micrometer aluminum foil. The facts necessary to resolve this question would seem to be clear from the Statement of Claim and the Statement of Defence. If there are any additional facts that should be before the Tribunal, they may be inquired about in the requests for clarification as provided in the rules of the Thirteenth Annual Willem C. Vis International Commercial Arbitration Moot.

10. McHinery Equipment Suppliers Pty does not dispute that, if there is an actionable claim on the part of Oceania Printers S.A., the following elements of damages would be recoverable – subject to adequate evidence to prove the expenditures:

- the sum of \$20,000, being the difference between the \$42,000 purchase price of the Magiprint Flexometix Mark 8 and the \$22,000 received when the machine was sold to Equatoriana Printers Ltd;
- the sum of \$50,000, being the cost to Oceania Printers of preparing its plant for the installation of the Magiprint Flexometix Mark 8 machine;
- the sum of \$25,000, being the cost of materials expended by the personnel of McHinery Equipment Suppliers Pty in testing the machine;

If necessary, there will be an evidentiary hearing at a time to be scheduled subsequent to the oral arguments as provided in paragraph 16 below.

11. McHinery Equipment Suppliers Pty does dispute the method by which the sum of \$3,200,000 for lost profits was calculated. It questions the calculation of the projected annual profits of \$400,000, which claimant must yet substantiate. It also questions whether profits should be calculated over an eight year period and whether the damages should be calculated as the projected annual profits multiplied by some number of years, e.g. \$400,000 times eight years, as Oceania Printers has done.

12. As noted above, it is not expected that there will need to be an extensive procedure to determine facts at this stage of the arbitration. Those factual issues that may need to be developed at this first stage of the arbitration will be determined in accordance with the procedures found in the Rules of the Thirteenth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten, preferably by e-mail at [eric.bergsten@chello.at](mailto:eric.bergsten@chello.at), by Wednesday, 27 October 2005. The answers are expected to be distributed to all parties by 2 November 2005.

13. It was agreed that the memoranda should be prepared by Oceania Printers S.A. for submission by e-mail by 8 December 2005 followed by hard copy in the required number to arrive by 15 December 2005. McHinery Equipment Suppliers Pty is to submit its memorandum by e-mail by 27 January 2006 followed by hard copy in the required numbers to arrive by 1 February 2006.

14. The memoranda should discuss the following issues:
- whether the period of limitation has expired prior to the commencement of the arbitration. A discussion of the appropriate rule of choice of law that the Tribunal should follow under CIDRA Article 32 should be included;
  - whether McHinery Equipment Suppliers Pty failed to perform any of its obligations under the contract and the CISG;
  - whether the claim for lost profits was appropriately calculated. The claimant may amend its claim for lost profits by means of the memorandum if desired.
15. The memoranda should not discuss:
- the appropriateness of the claim for expenditures made by Oceania Printers S.A. in respect of the machine;
  - the claim for either pre-award or post-award interest;
  - the allocation of the costs of arbitration.
16. Oral arguments will be scheduled in the month of April 2006 in Vienna and in late March/early April in Hong Kong. All participants in the Vienna arguments will be invited to a welcoming event followed by a reception on the evening of Friday, 7 April 2006. Arguments will take place beginning the following morning, Saturday, 8 April 2006. Participants will also be invited to a welcoming party sponsored by the Moot Alumni Association on Thursday evening, 6 April 2006. Participants in the Hong Kong arguments will be invited to a reception on the evening of Monday, 27 March 2006 and the arguments will commence the following morning.
17. It will be noted that the time limit of thirty days for the exchange of written statements, as provided in CIDRA Rules Article 22, has been extended by the Tribunal as authorized by that Article.

(Signed)  
Mr. Arbitrator 3  
Presiding Arbitrator

7 October 2005

Chicago International Dispute Resolution Association

Oceania Printers S.A.  
Claimant

v.

McHinery Equipment Suppliers Pty  
Respondent

CIDRA 2005-0013

Procedural Order No. 2

In conformity with the instructions given in Procedural Order No. 1 there have been a number of requests for clarification. There follow in this Procedural Order the clarifications requested.

**Legal questions**

**1. Is Danubia, Oceania or Mediterraneo party to the New York Convention on the Limitation Period in the International Sale of Goods (1974)?**

None of them are party to the Convention.

**2. Is Danubia, Oceania or Mediterraneo party to the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (1986)?**

None of them are party to the Convention though, as noted in Procedural Order No. 1, para. 7, Articles 1 through 15 of the Convention have been adopted by Oceania as the Conflicts of Law in the International Sale of Goods Act.

**3. What is the period of limitations (prescriptive period) for contracts of sale in Danubia?**

Three years.

**4. Is the period of limitations (prescriptive period) considered to be one of substance or one of procedure in Danubia, Oceania and Mediterraneo?**

It is considered to be a matter of substance in all three countries.

**5. What commences the running of the period of limitations (prescriptive period) in a contract for sales of goods in Danubia, Oceania and Mediterraneo and are there any provisions for suspending the running of the period?**

In all three countries the period commences when the event giving rise to the claim occurs. There are events that might suspend the running of the period but none of the possible reasons for suspending the running of the period have occurred.

**6. What is the choice of law rule in Danubia?**

The supreme court of Danubia has decided on two occasions that the choice of law rules of Danubia that are applicable in litigation in the courts of Danubia and in domestic arbitration are not applicable to international commercial arbitration held in Danubia where neither party is from Danubia. In those situations the choice of law rules are those in its law governing international commercial arbitration.

**7. Is Danubia, Mediterraneo or Oceania a member of the European Union?**

No.

**In regard to the qualities expected of the Magiprint Flexometix Mark 8 machine**

**8. Did the website of McHinery Equipment Suppliers Pty give any specifications as to the performance capabilities of the Magiprint Flexometix Mark 8 machine?**

As indicated in the Statement of Claim and of Defense, McHinery Equipment Suppliers Pty is a seller of new and used industrial equipment generally. The website did not list the specific machines that might be available or their performance capabilities.

**9. Did the contract give any information about the item sold other than the name of the machine?**

No.

**10. Was the Magiprint Flexometix Mark 8 machine produced in Mediterraneo?**

No. The machine in question has never been in the country of Mediterraneo.

**11. What did the words “Mark 8” in the name of the machine signify?**

This was the eighth model in the series of this machine.

**12. When Mr. Butter visited the plant of the previous owner of the machine, did he observe any actual printing with the machine?**

No, once the machine had been sold to McHinery Equipment Suppliers Pty, the previous owners no longer used it.

**13. When Mr. Butter visited the plant of the previous owner of the machine, did he inquire about the operation of the machine? Did he have an opportunity to**

**inspect the operating manual or other technical documentation? Was he knowledgeable about such machines or have a technical expert with him?**

Yes, he did inquire of the previous owners whether they had been satisfied with it or whether they had had any problems with it. He was assured that the machine had worked well. The question had been phrased in a general way and the answer had also been phrased in a general way. Mr. Butter had not inquired specifically whether the previous owner had printed on 8 micrometer foil.

The operating manual would have been available for his inspection, but it was not offered to him and he did not request to see it. Mr. Butter was generally knowledgeable about printing machines, but not especially about flexoprint machines. He did not have a technical expert with him.

**14. Why did the machine need to be refurbished by McHinery Equipment Suppliers Pty?**

The refurbishing was simply the general servicing that a dealer in second-hand equipment gives to the equipment before delivering it to its own customer. It does not imply that there was anything wrong with the machine.

**15. When the personnel of McHinery Equipment Suppliers Pty tested the machine after it had been installed at the premises of Oceania Printers S.A., did they test it on foil?**

The testing was done on the full range of products for which the machine was designed. This included foil of 10 micrometers. Even though foil of 8 micrometer thickness was available from Oceania Printers S.A., none was used for testing purposes. Oceania Printers' personnel were not involved in the testing and were seldom present.

**16. Did the personnel of McHinery Equipment Suppliers Pty demonstrate the use of the machine to the personnel of Oceania Printers?**

Yes. They ran several print runs to demonstrate how to set up the machine for various materials and various widths on which it would print. They did not use 8 micrometer foil and were not asked to do so. Mr. Butter was not present at the demonstration.

**17. Were the multiple color runs on the foil badly out of register only when printing on 8 micrometer foil or was it a more general problem?**

It occurred only when printing on 8 micrometer foil.

**18. What did Mr. Swain say to Mr. Butter or other personnel of Oceania Printers when he saw the defective printing and what did he attempt to do in trying to make it possible to print on 8 micrometer foil?**

As soon as he saw the foil they had been attempting to print on he told them that the machine was not designed for 8 micrometer foil. Mr. Swain then pointed out to Mr. Butter the specification page in the manual. At Mr. Butter's request he attempted to

change the settings so that the printing could be done. However, at the very beginning he told Mr. Butter that it was unlikely that he would be able to do it. Later that day Mr. Butter asked him to do his best because he had contacted several sellers of such machines and it would not be possible for him to purchase and have delivered another machine that could print on 8 micrometer foil in time to service the Oceania Confectionaries contract.

**19. How large is the instruction manual and where were the specifications?**

The instruction manual is 25 pages long. The specifications are in pages 22 and 23.

**20. Could the machine have been used for other purposes in Oceania?**

In 2002 the total value of the potential contracts for which the machine could be used in Oceania did not exceed \$10,000 per year, rendering a gross profit of perhaps \$2,000 before depreciation of the machine. There had been rumors at the time that a large foreign pharmaceutical might create a subsidiary company, Oceanic Generics, to build a plant producing generic pharmaceuticals. Such a plant would need foil of 10 micron or thicker for its bubble pack containers. The plant is currently under construction and is expected to be in operation in early 2007. The contract for printing the foil should generate profits of about \$300,000 per year.

**21. Is 8 micrometer foil a standard thickness for confectionary purposes?**

Fine chocolates are often wrapped in such thin foil, but it could not be called an industry standard. In fact, the contract with Oceania Confectionaries called for some of the printing to be done on 10 micrometer foil, which was the foil used when the machine was being tested. However, Oceania Confectionaries was particularly interested in prompt delivery of 8 micrometer foil and terminated the contract when that could not be delivered by Oceania Printers.

**22. How was Reliable Printers able to purchase and have installed a machine so quickly?**

In the hopes of procuring the contract with Oceania Confectionaries they had entered into a preliminary agreement to purchase an appropriate machine. When they learned that Oceania Printers had purchased the Magiprint machine, they were told by their supplier that it would not print on 8 micrometer foil. Therefore, they made the arrangements to have their machine in place in the hope of securing the Oceania Confectionaries contract after all.

**Business relationships**

**23. What has been the nature of Oceania Printers' business?**

Oceania Printers has been engaged in general printing activities. All of its previous activities have been on various types of non-specialized forms of paper stock. The reference to "Specialist Printers" in its letterhead indicates that their business tended

towards small printing contracts rather than the larger contracts of the nature of the one with Oceania Confectionaries. Use of the flexoprint machine would have constituted a significant extension of its previous line of activities.

**24. Does McHinery Equipment Suppliers Pty sell only flexoprint machines?**

No, it sells a wide range of new and used industrial equipment. It does not sell any new flexoprint machines. Sales of used flexoprint machines constitute five to ten percent of its total business.

**25. Was there any previous business relationship between Oceania Printers S. A. and McHinery Equipment Suppliers Pty?**

No. The letter of 17 April 2002 (Claimant's Exhibit No. 1) was the first contact there had ever been between them.

**26. What is the general business reputation of the two firms?**

Both have generally good reputations.

**27. Was the machine used by Oceania Printers S. A. prior to its sale to Equatoriana Printers on 14 October 2003?**

No. The machine had been purchased in order to service the contract with Oceania Confectionaries.

**28. Was the CIF term in the contract meant to be interpreted according to INCOTERMS 2000?**

Yes,

**Calculation of damages**

**29. How was the estimated profit of \$400,000 arrived at?**

At this stage of the arbitration (i.e. during the Moot) the estimated profit of \$400,000 per year will be accepted. If the tribunal decides that the claim is not barred by a period of limitations or period of prescription prescriptive period and if the tribunal decides that McHinery Equipment Suppliers Pty is responsible for having delivered a machine that could not print on 8 micrometer aluminium foil, it would be necessary for Oceania Printers S.A. to prove the estimated lost profit.

When Procedural Order No. 1 specifies that the parties should, at this stage of the proceedings, discuss whether the claim for lost profits was appropriately calculated, it was referring to the fact that the claim was for \$3,200,000, arrived at by multiplying the estimated annual lost profits of 400,000 by eight years.

**30. Was the price of \$22,000 for which Oceania Printers S. A. sold the machine to Equatoriana Printers a reasonable price?**

What is a reasonable price is very much a matter of judgment. The price of \$22,000 was more than McHinery Equipment Suppliers Pty had offered for it. The difference between the \$42,000 price of the machine when sold to Oceania Printers and the \$20,000 offered by McHinery Equipment Suppliers Pty reflected the cost of refurbishing the machine, shipment to Oceania and gross profit. Oceania Printers S. A. informed McHinery Equipment Suppliers Pty that it intended to sell the machine and no objection was raised.

**31. What is the life expectancy of the flexoprint machine?**

In normal use and proper maintenance it could be expected to last for at least another 20 years.

**32. Is it expected that Oceania Confectionaries will renew its printing contract with Reliable Printers when it expires in the summer of 2006?**

At the present time (2 November 2005) there is no reason to believe that it will not renew the contract since there is no other firm that could print the foil that they need. However, Oceanic Generics will probably need printed foil for the blister packs of medicine they will produce beginning in early 2007. That introduces the possibility that another printer in Oceania, including Oceania Printers, might purchase a flexoprint machine for that contract. If so, there may be competition for the Oceania Confectionaries account at the time the current contract with Reliable Printers is up for renewal in the summer of 2006.

**33. What were the prevailing inflation rates and interest rates in Oceania?**

For the past five years the inflation rate has fluctuated around 2 percent per annum. There are various interest rates for different purposes. They have been unusually low as compared with historical trends during the entire period of time. The official discount rate maintained by the central bank has fluctuated around 3 percent. The prime lending rate to first class borrowers has been around 6 percent. The average return on investment has been around 11 percent.

(Signed)  
Mr. Arbitrator 3  
Presiding Arbitrator

2 November 2005