Version 2 – 02/15/2019

International Institute for Conflict Prevention & Resolution

2019 CPR International Mediation Competition Problem

Decipher Me and Devour Me![1]

CPR

International Institute for
Conflict Prevention & Resolution

Table of Contents

2019 CPR International Mediation Competition Problem

Decipher Me and Devour Me![2]

1. TUPI FRUIT EXPORTS LTDA. ("TFE")

TUPI FRUIT EXPORTS LTDA. ("TFE") is a multi-generational family-owned business based in Tampa, the largest city in Tupana, a former Portuguese colony, which was discovered in 1500, declared independence in 1822 and is a civil law country. Tupana is the third largest fruit producer in the world and fruits are one of the most profitable sectors of the country's economy.

Founded in 1930 by Bernardo Barbosa, the family has extensive land holdings devoted to agricultural fruit production and global exports, such as figs, melons, papayas, oranges and ginger. A. Barbosa, the son of the founder is CEO, Chairman and major shareholder of TFE. Determined and persistent, he has a comprehensive knowledge of the food industry and a solid reputation for honesty and loyalty. Despite total annual revenues of more than T$ 240 million (T$=Tupi Dollars), deals with local farmers, suppliers and international clients are based on a traditional gentlemen's agreement.

The agri-holdings of TFE are a split between a 60% family-owned company and a 40% rural partnership with local and regional cooperatives comprising small to large-size farmers. TFE bears all the costs of production and distributes net value profits on a 50/50 basis to the cooperative farmers.

Since its founding almost 90 years ago, the company has been committed to business development and the financial and operational support of local and regional farmers. TFE is rated highly for regulatory, legal compliance and transparency related to Fair Trade best practices (WTFO), fair wages, benefits and the working conditions of its workforce.

TFE is the second largest producer of figs in the world, producing approximately 7,100 (seven thousand one hundred) tons of figs per year; it is also an industry leader in organic fruit production. On average 75% of its production is exported to international markets and 25% is sold in Tupana.

The company has been a driving force behind the surpluses of the Tupana trade balance since 2006. According to a 2017 World Bank study, figs are the largest product exported by Tupana and they are key to its economic power, accounting for a significant percentage of the agricultural GDP.

TFE's main growing, harvesting, processing, and distribution facilities are in the lush countryside of Paradise Valley, in southwest Tupana, known for its outstanding climate, soil and growing conditions, which yield consistently high-quality fig fruits on the land owned or managed by TFE in partnership with local and regional farmers.

Currently, the worldwide agri-business environment depends on greater collaboration between producers with more reliance on cooperatives, partnerships, environmental groups, and networks of medium to large-size farmers with varied organizational and governmental oversight.

TFE urgently needs to pivot from an absolute relationship-based customer service model and integrate powerful, productive technologies, progressively develop internal staff and control high overhead costs (insurance, labor, facilities management, water usage) in order to remain competitive – and in business – in both the short and long-term as do any other players in the agri-business sector.

Sophisticated and innovative supply chain management is necessary to reduce volatility and production losses and adds strategic benefits that address customer concerns regarding quality, food safety and broader social issues related to sustainability, environmental stewardship, climate change and good community relations.

Industry challenges increasingly include customer demands for transparent government and regulatory compliance, production fluctuations driven by global demand, weather (drought) and pest infestation, as well as land management and labor issues.

Pests are a serious problem for fig trees which are prone to fungal and viral infections, spider and mite infestation. The most serious and common pest is the fig tree borer (*Phryneta Spinator*). Fig trees take 2 years to begin bearing fruit and take approximately 8 years to reach full maturity. The economic life of each tree is 35 years with two harvests per year. Every tree averages 18kg of fruit twice a year, or 36kg per year. Typical plantings equal 155- 260 trees per hectare depending on spacing, soil and water conditions. Increased CO_2 levels impact yield and are a problem for fig producers worldwide. Consistently for the past 5 years, TFE production levels have held steady at 200 trees per hectare. TFE employs a team of botanists, pest management/control, yield and crop rotation analysts and water-management experts.

The future viability of TFE has reached a turning point. The Strategic Planning Group (SPG), which is led by A. Barbosa's daughter, Chris Barbosa, generally supports and respects the conventional leadership of the present CEO. However, increasing financial losses, pressure from long-term banking partners, dissatisfied major customers, escalating insurance and overhead costs, under-powered technology and mandates from the Board of Directors all demand bold steps to grow and protect the company's competitive position.

TFE's elite production facilities, quality control and transport operations are considered among the most efficient in South America. The entire delivery chain is within a 20km radius of Copus Airport, the major international airport cargo hub in Tupana, and less than 80km from Cumbuco Airport, the country's biggest airport. Sunny Port, the largest deep-water port in the region is within 110km.

Over the last 10 years, Tupana has made substantial investments in highway infrastructure comparable to systems in North America, Europe and Asia. Development of a connecting railway network is tied up in political, environmental and regulatory issues and is realistically years away from being finished. TFE's Strategic Planning Group recently announced plans to allocate and reinvest 3% of gross profit per year in partnership with the Ministry of Transport in Tupana to improve regional rail infrastructure with the goal of optimizing rail-to-port and rail-to airport travel time by 40% by 2030.

The Strategic Planning Group also set milestones to transition at least 50% of the production facilities power generation to solar and wind by 2025 with the provision to sell back excess capacity to the National Agency of Energy. A working committee has been formed to develop alternative revenue streams from use of fig oil for biodiesel, cosmetics and pharmaceuticals. Negotiations are underway for increased lease agreements for dedicated company satellite time addressing transport status, real time customer updates/feedback, weather analysis and forecasting, and "Smart Contract" block chain payment authorization.

While TFE is consistently recognized for high performance and best practices in agricultural production, A. Barbosa faces increasing pressure from a family-led faction pressing for sophisticated technology in line with international trade standards to reduce business risks and losses. Examples of advanced business technologies under review include blockchain sales transactions, Six Sigma quality control, a proprietary real time end-to-end aging, tracking and customer notification and feedback systems.

Considerable disagreement, dissatisfaction and resentment among a growing contingent of family members threatens the market dominance of TFE in agricultural fruit production as well as its relationships with existing customers.

A. Barbosa is unaware that TFE has received low marks compared to its leading competitors for its water use practices, and supply chain management. Environmental issues, supply chain transparency, transportation and workforce issues have been noted by customers especially in Europe, North America and India as supply chain weaknesses.

2. AGRITECH FRUIT WHOLESALERS, INC. (“AFW”)

AGRITECH FRUIT WHOLESALERS, Inc. (“AFW”) is a family-run business rated one of the Big Ten global wholesalers of fruits and vegetables with headquarters in MontRoyale, Kanata, a former British and French colony which became independent in 1867 and is a common law country. AFW’s worldwide satellite offices are in Europe, China and India.

The company’s CEO is J. Carthier, who is the son/daughter of the founder, C. Carthier. J. Carthier is passionate about his company reputation and proudly says, “*Our mission is to procure and wholesale the highest quality fresh produce worldwide. Commitment to our partners is rewarded through their loyalty and abundant supply of deliciously perfect fruits.*”

Located in MontRoyale, a busy river port city, AFW has access to a major sea port nearby, Port of Soleil, within 60 km east, and two international airports both with cargo capacity: i) the L. Persons International Airport, near the city of Tarante; and ii) the P. Trousseau International Airport, within 120km of MontRoyale. AFW also invests heavily in sophisticated technology systems which drive supply chain efficiency. The company maintains strong relationships with suppliers, shippers, vendors, customers and government agencies.

Since 2006, AFW has developed a strong and trusted commercial relationship with TFE and is its major client.

During the long-lasting relationship between the companies for more than a decade, A. Barbosa and J. Carthier have developed a solid friendship based on their common business interests, the shared vision of a prosperous future for their families and their thriving business partnership. During the last decade, the families have spent vacations together at A. Barbosa´s elegant countryside house and at J. Carthier´s charming beach cottage. In these relaxed settings, A. Barbosa and J. Carthier have had long conversations about life, business, family legacy and succession issues, and the future. A. Barbosa frequently says, “As a third-generation family farming business that specializes in figs, we operate our business to comply with the highest international business standards. The fact that AFW is also a family-run business is the core of our successful partnership."

Based on a high-level of mutual confidence and trust, both CEOs execute deals informally through email purchase orders. The commercial terms of each order – quantity, price, payment terms and shipment instructions – are negotiated and agreed directly by both CEOs through email. While this business model suits both CEOs, it deviates from best business practices and does not comply with global supply chain management standards.

Recent government legislation has required AFW to upgrade the technological efficiency of its international trade processes – financing, customs clearance, certification, transportation, logistics, insurance, distribution, intellectual property (IP) and government procurement. A Blockchain program is under review and scheduled to apply to all suppliers in the near future. The commitment to a digital platform for records and ledgers of transactions is an expensive yet crucial investment to spur growth. Increased customer satisfaction, government compliance, supply chain transparency and risk reduction are the desired outcomes of the Blockchain program.

Due to Board pressure and deepening dissatisfaction with J. Carthier's leadership and management style, R. Moneyholder was promoted as the new CFO of AFW in 2016. Moneyholder has full Board support and is the first non-family board member to serve in this position; the new CFO draws upon extensive knowledge of the company having worked in all departments from palletizing bags in production to product testing. Under R. Moneyholder's leadership, several projects, including construction of new satellite facilities in South America and a recent strategic alliance between China and Kanata focusing on supply chain innovation, are ongoing.

R. Moneyholder is a board member of the North American Fruit Distributors Association ("NAFDA") and the European Toxicology Association ("EurToxA"). R. Moneyholder has published papers and patents ranging from enzyme production to global economics, is a food safety and quality specialist, and was recently named as one of "The top leaders in agriculture" by the government of Kanata.

There is Board consensus that greater contractual control and formality are essential to track the weight, growing location, time, place of harvest, customs information and cold storage facility conditions, shipment and payment for fig products that meet AFW's precise standards. Mounting pressure from business customers, individual consumers and international industry certifiers regarding, for example fair trade, food safety and human rights, raise concerns.

The AFW Board has decided that the simple purchase order transactions exchanged by email between A. Barbosa and J. Carthier are inappropriate, do not qualify as an arm´s length transaction, and do not comply with company policy.

For that reason, one of the first measures adopted by R. Moneyholder was to formalize a written agreement with TFE. Thus, a Purchase and Sale Agreement ("PSA"- See **Annex 1**) was executed on December 30, 2016, establishing a five-year term specifying that TFE supply AFW with the very best figs produced at Paradise Valley according to the terms and conditions set forth in the PSA.

Additionally, the Board charged R. Moneyholder with upgrading and improving productivity across the supply chain through the use of standard smart contract Blockchain technology. Smart contracts are self-executing contracts with the terms of the agreements between buyers and sellers directly written into lines of code that exist across a distributed and decentralized Blockchain network.

A measure aiming to boost productivity and client satisfaction was the development by TFE, assisted by AFW, of a highly efficient air transport farm-to-table system from Tupana to Kanata. The new technology enables a Kanatian consumer to have a fresh fig fruit on the table within 48 hours of harvest.

The product data is now recorded using the new Blockchain supply chain transport technology "Datalogger". Considered one of the most accurate product shipment and delivery systems, its thermometer records and transmits individual pallet changes in time intervals. Datalogger records the time and temperature for the whole itinerary of the figs: from packing at TFE's premises to the arrival at AFW's closest refrigerated warehouse in Kanata.

3. THE DISPUTE

During 2017, business relations between TFE and AFW were going well. Due to new market opportunities predicted by AFW, the parties negotiated by email (annexes 2-3-4-5-6) and agreed to amend the PSA in order to double the order for figs in 2018 (see **Annex 7** - Amendment to PSA). However, by the third quarter of 2018, shipment quality deteriorated sharply.

On July 25, 2018, a TFE delivery arrived, but 25% of the figs loaded at Cumbuco Airport in Tupana, and delivered to L. Persons International Airport in Kanata, were unsuitable for human consumption due to spoilage caused by severe temperature variations during storage as recorded specifically by Datalogger.

The optimal industry shipment standard is to pack 24 figs in 1 box; each box @1.2kg; and 240 boxes form a pallet.

The price terms applicable to the July 25, 2018 shipment are as follows:

- AFW pays K$8.50 (eight Kanatian dollars and fifty cents) to TFE for each box;
- Each box is sold by AFW for K$12.00 (twelve Kanatian dollars) to its major clients (large 100+ store supermarkets within a 50km radius of the AFW main distribution warehouse and some medium-sized local markets and fairs);
- The sale price range is K$15.00-K$17.50 (fifteen to seventeen Kanatian dollars and fifty cents) for the end consumer in Kanata.
- The production price of a box of figs to TFE is approximately T$12.00 (twelve Tupis). The exchange rate is not fluctuating widely and is equal to K$1.00=T$3.00.

Despite the history of good communications between the companies, J. Carthier wrote an e-mail to A. Barbosa on August 1, 2018 (see **Annex 8**) complaining that 25% of the last delivery was spoiled and demanded a payment reduction of 25%, plus the payment by TFE of K$24,000.00 (twenty-four thousand Kanatian dollars) as reimbursement for storage, within 5 days or AFW will suspend payment of the whole transaction and terminate the contract.

J. Carthier was shocked by A. Barbosa´s reply on August 2, 2018 (see **Annex 9**) stating that J. Carthier, was creating "a tempest in a tea pot." J. Carthier insists (see **Annex 10**) that AFW is acting within its legal rights and that TFE must accept the terms of the e-mail dated August 1, 2018.

On August 24, 2018, A. Barbosa retained the legal services of Dr. M. Ross, senior partner of “Specter and Ross Advogados”, a full-service law firm headquartered in Tupana specializing in cross border transactions. Following Dr. Ross’ legal advice, TFE notified AFW claiming breach of contract.

Despite their problems, TFE and AFW have an interest in maintaining business dealings and preserving their longstanding relationship. Thus, TFE decided to keep the shipments, and in September 2018 everything went very well. However, the financial issue has not yet been resolved.

On October 17, 2018, (i) 50% of the shipment of figs was spoiled. Datalogger verified that a recurrence of the same temperature issues that had occurred earlier was the cause; and (ii) 50% had a bad appearance because of the excess of "*bordeaux syrup*" (*“calda bordalesa*”), which is a fig preservative, prompting more quality notification exchanges between TFE and AFW.

On October 24, 2018, the entire shipment that arrived in Kanata was not cleared for entry by the local health authorities because the same-day inspection detected a pest infestation.

Due to the pest problem, TFE began a detailed inspection of its fig trees at Paradise Valley in November and December 2018. During these two months, TFE suspended fig deliveries to AFW. Approximately 444 (four hundred and forty-four) tons of figs, equivalent to K$3.333.333,00, were not delivered to AFW.

Unfortunately, despite all the best efforts made by J. Carthier and by A. Barbosa to overcome these problems, heated conversations, reciprocal written threats and notices have resulted in a suspension of business dealings between the two companies, resulting in severe losses and damages.

Dr. M. Mulroy, the AFW General Counsel, has been instructed by R. Moneyholder to inform TFE and adopt the necessary measures to terminate the PSA, and to claim compensation for losses and damages due to spoilage and several instances of contamination. This development prompted more quality notification exchanges between TFE and AFW (see **Annex 11**).

TFE rejects all claims for damages raised by AFW, counters that it accepts no responsibility or liability for shipment conditions, as transportation issues have, according to TFE, nothing to do with TFE´s conduct (see **Annex 12**).

A. Barbosa, J. Carthier and their attorneys talked several times via videoconference to try to find a solution. As no settlement could be reached directly by the parties, TFE was advised by its counsel to request mediation according to the MED-ARB clause (clause 10) of the PSA and its Amendment which provides the following:

> “10.1. The parties shall endeavor to settle the dispute by mediation under the CPR International Mediation Procedure currently in effect. The parties agree that they will select a Mediator from the CPR Panels of Distinguished Neutrals.
>
> 10.2. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein within 45 days after initiation of the mediation procedure, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration of International Disputes currently in effect by three arbitrators, of whom each party shall designate

one, with the third arbitrator to be designated by the two party-appointed arbitrators; provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

10.3. The seat of the Mediation and/or the Arbitration shall be São Paulo, Brazil, and the language of the mediation and/or arbitration shall be English.*"*

Thus, TFE requested the commencement of a mediation to be conducted in English under the CPR International Mediation Procedure, in São Paulo, Brazil. As AFW was still interested in an amicable solution, the invitation for the First Session was accepted. The mediation conference is scheduled to take place on April 4-6, 2019.

The parties have selected B. Paz as their mediator from the CPR Panel of Distinguished Neutrals. B. Paz is well known, has an excellent reputation, and possesses superb mediation skills as evidenced by the recent resolution of a multi-party, cross-border international business dispute.

At the mediation conferences TFE will be represented by A. Barbosa, as the CEO of TFE, and its attorney, Dr. M. Ross, and AFW will be represented by J. Carthier, as the CEO of AFW, and its General Counsel, Dr. M. Mulroy.

The Parties have agreed not to commence any judicial or arbitral proceeding during the mediation, as well as to suspend any pending lawsuits relating to matters being mediated, except for emergency measures.

4. WRITTEN STATEMENT INSTRUCTIONS

Pursuant to Section 5 of the CPR International Mediation Procedure, the parties are invited to submit a Written Statement to the Mediator in preparation for the mediation: "*At least 10 business days before the first joint mediation meeting, unless otherwise agreed, each party will submit to the mediator a written statement summarizing the background and present status of the dispute, including any settlement efforts that have occurred, and such other material and information as the mediator requests or the party deems helpful to familiarize the mediator with the dispute. It is desirable for the submission to include an analysis of the party's real interests and needs and of its litigation risks.*"

You represent AFW and B. Paz has requested you to email your written statement in Word format to Chris Silva at csilva@cpradr.org **no later than 5 pm ET on February 28, 2019**. Written statements should not contain any reference to Team Members.

International Institute for Conflict Prevention & Resolution

ANNEX 1

PURCHASE AND SALE AGREEMENT (PSA)

This Purchase and Sale Agreement (hereinafter referred to as "Agreement" or "PSA") dated as of December 30, 2016

BY AND BETWEEN

TUPI FRUIT EXPORTS LTDA. (TFE), a company incorporated and existing under the laws of Tupana, with headquarters in the city of Tampa, State of Tampa, at Av. Nove de Julho, 5252, ZIP 55555-444, represented by its CEO, A Barbosa, hereinafter referred to as "**SELLER**",

AND

AGRITECH FRUITS WHOLESALERS, Inc. (AFW), a company incorporated and existing under the laws of Kanata, with headquarters in the city of MontRoyale, State of MontRoyale, at Tremblant Avenue, 2500, ZIP 454545, represented by its CEO, J. Carthier, hereinafter referred to as "**BUYER**", both hereinafter referred to as "**PARTY**" or "**PARTIES**",

WHEREAS:

I) the **BUYER** is one of the Big Ten global wholesalers of fruits and vegetables;

II) the **SELLER** is the second largest producer of figs in the world, producing around 7,100 (seven thousand one hundred) tons of figs per year and is also an industry leader in organic production;

III) the **BUYER** acknowledges the high-level quality of the figs ("*Ficus Carica*") produced by the **SELLER** and intends to purchase the figs on a regular basis;

IV) the **SELLER** as an exporting producer intends to enhance its market share abroad and agrees to supply the **BUYER** on regular basis;

NOW, **THEREFORE**, the **PARTIES** agree to execute this Purchase and Sale Agreement (PSA), which shall be governed by the following clauses and conditions:

1. **Scope of the Agreement.** The SELLER shall supply 1,333 (one thousand three hundred and thirty-three) tons of figs "ficus carica" ("Products"), per year, to the BUYER, according to the price and conditions set forth in clauses 2 and 3 below.

2. **Price and Payment Conditions**. The BUYER shall pay to the SELLER the amount of K$9.00 per box (Contractual Price) of figs within 2 (two) working days after the delivery of the Products to the BUYER. Such payment shall be performed through wire transfer in favor of SELLER, which shall provide its bank account information to the BUYER in writing.

2.1. Late Payment. In the event of late payment of any amounts due by BUYER, by virtue of its exclusive fault, the unpaid amount will be accrued by a fine of 10% (ten percent) plus interests of 1% (one percent) per month, both levied on the overdue amounts, to be paid to the SELLER. The penalty provided for in this clause will not be due in the event of delay in payment resulting from the fault or negligence of the SELLER.

2.2. Invoice Requirements. The invoices accompanying the Products are to be issued by SELLER in strict conformity with the requirements of the applicable laws.

3. **Delivery and Incoterm**. The delivery of the Products shall be done by air-freight only, by the transport of boxes of figs in standardized pallets by airlines with regular flights from Tupana to Kanata on a weekly basis, precisely every Tuesday and Friday (from Copus Airport and/or Cumbuco Airport to L. Persons International Airport and/or P. Trousseau International Airport).

   3.1. Incoterm. CIP (Carriage and Insurance Paid) to Cumbuco and/or CIP to Copus.

4. **Late Delivery**. In case of late delivery of Products, BUYER may charge a default fine equivalent to 1% (one percent) of the total value of the Products, per day of delay, counted from the date on which delivery was due, limited to 50% (fifty percent) of the total value of the respective shipment, to be paid by SELLER to BUYER.

5. **Packaging and Stowage.** SELLER is responsible for the proper packaging and stowage of Products in order to facilitate handling, shipment and storage.

   5.1. The Products shall be supplied by SELLER in boxes of 24 fresh figs each, weighing 1.2kg each. Due to the nature of the Products, the SELLER shall comply with all the regulations applicable to the production, packing, sale, exportation, and transport of the Products, as well as guarantee compliance with the best quality practices applicable worldwide to the agri-business industry for figs ("*ficus carica*"), such as Global G.A.P. and Sedex SMETA.

   5.2. SELLER shall be responsible for any damages caused by defective packaging or stowage of the Products.

6. **Final Customer**. The Products supplied by SELLER under this Agreement are destined to sale and/or distribution by BUYER to its clients, large supermarket chains, end-consumers among others.

7. **Term and Renewal**. This Agreement shall remain in full force for five (5) years, beginning on December 30, 2016 and ending on December 29, 2021. This Agreement may be renewed by the PARTIES upon a written document prior at least to six (6) months from the end of its current term.

8. **Termination**. In the event any of the PARTIES notices the recurrence of inexact or incorrect fulfilment or recurrence of breach of the terms of this Agreement by the other party, it may immediately terminate this Agreement by means of a written notice to the other party, without prejudice to the innocent party adopting necessary measures, including asking for the payment of a penalty of 20% (twenty percent) of the total value of this Agreement and supplementary losses and damages.

9. **Force majeure**. This Agreement may be terminated for good cause with immediate effect by either contractual party in case of Acts of God or Force Majeure affecting the execution of this Agreement. In this case, neither party shall be held liable for non-performance, losses and damages.

International Institute for Conflict Prevention & Resolution

10. Dispute Resolution. Any conflict arising out of or relating to this Agreement shall first be resolved by negotiation between the parties and if they fail or do not reach a solution within fifteen (15) days, then:

10.1. The parties shall endeavor to settle the dispute by mediation under the CPR International Mediation Procedure currently in effect. The parties agree that they will select a Mediator from the CPR Panels of Distinguished Neutrals.

10.2. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein within 45 days after initiation of the mediation procedure, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes currently in effect by three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators; provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

10.3. The seat of the Mediation and/or the Arbitration shall be São Paulo, Brazil, and the language of the mediation and/or arbitration shall be English.

11. Law Applicable. This agreement shall be construed, interpreted governed by the international trade usage, mainly and where applicable by the United Nations Convention on Contracts for the International Sale of Goods ("CISG"; also known as the "Vienna Convention") as both Kanata and Tupana States already ratified it.

In witness thereof, the PARTIES execute this Agreement in two (2) counterparts in the presence of undersigned witnesses.

December 30th, 2016

By the SELLER: ____

TUPI FRUIT EXPORTS LTDA.
A. Barbosa

By the BUYER: ____

AGRITECH FRUITS WHOLESALERS, Inc.
J. Carthier

Witnesses:

1. ______________________________	2. ______________________________
Name: Arthur Conan Doyle	Name: Miguel de Cervantes
ID: 7.777.888-9	ID: 9.999.888-7

ANNEX 2

Date: Dec. 18, 2017
From: J. Carthier <carthier@afw.com.kt>
To: A. Barbosa <barbosa@tfe.com.tp>
Subject: PSA

Dear Barbosa, I hope this email finds you well.

As you know, figs coming from Tupana - especially those provided by TFE - have become increasingly popular with consumers, and we have new opportunities to expand our market.

Considering the fact that AFW might have a new buyer, I would like to consult with you about the possibility of increasing our annual order of figs to 2,666 (two thousand six hundred and sixty-six) tons. The idea is to double our usual request from now on.

Also considering that the price is K$9.00 per box, I would like to request a reduction of the price to K$8.00 for next year. Of course, the quality of the fruits and punctual delivery are still essential factors for our continued business.

Looking forward to hearing back from you regarding our proposal.

Kind regards,

J. Carthier

AGRITECH FRUITS WHOLESALERS

CPR
International Institute for
Conflict Prevention & Resolution

ANNEX 3

Date: Dec. 20, 2017
From: A. Barbosa <barbosa@tfe.com.tp>
To: J. Carthier <carthier@afw.com.kt>
Subject: RE: PSA

Dear Carthier,

I received your proposal with enthusiasm. TFE's team is happy to know that your customers in Kanata are enjoying our figs.

As you are well aware, we have worked hard to maintain the excellence of our products. We are now undergoing an international certification, at the highest level, that will position us as one of the most important suppliers of figs in the world.

We accept your request to increase our annual deliveries of figs. Concerning the price, we have an issue. As our product is gaining a new seal of quality that involves improvements and greater costs for next year, the market value now is K$10.00 per box - but since we have a longstanding partnership, we will maintain the same value, K$9.00.

Please let me know as soon as possible if this works for you.

Kindly,

A. Barbosa

TFE
TUPI FRUIT EXPORTS

TUPI FRUIT EXPORTS LTDA.

International Institute for
Conflict Prevention & Resolution

ANNEX 4

Date: Dec. 21, 2017
From: J. Carthier <carthier@afw.com.kt>
To: A. Barbosa <barbosa@tfe.com.tp>
Subject: RE: PSA

Dear Barbosa,

Congratulations on your pursuit of a new industry certification!

I hope you get it and I am sure it will open new markets and bring higher sales.

If the price increases because of the new certification seal, this would impact marketing significantly.

I have talked to my board and after getting in touch with a potential new customer-buyer (a major new supermarket chain specializing in AAA products), we were able to negotiate a deal with partial success based on sales prices which work for us and them.

In order to move forward, we need your usual partnership and understanding; would it be possible to agree on a price of at least K$8.50 per box of figs? Without this discount, we will not be able to sell our figs on the market in the way we are anticipating in terms of sales growth.

Is it possible for AFW to have exclusivity for the purchase of your fig products in 2018? If so, let's move on! For the following years: 2019, 2020 and 2021, we will pay the usual price, with the adjustments that are necessary due to specific conditions.

I hope to be able to count on your collaboration and I am sure that this business will be profitable for both companies.

Thank you for your consideration.

Kindly yours,

J. Carthier

AGRITECH FRUITS WHOLESALERS

ANNEX 5

Date: Dec. 22, 2017
From: A. Barbosa <barbosa@tfe.com.tp>
To: J. Carthier <carthier@afw.com.kt>
Subject: RE: PSA

Carthier,

I studied your proposal and I agree to change the price to K$8.50 per box of figs in 2018, in exchange for being your sole seller during this period. This means that TFE will have exclusivity to supply figs to AFW during 2018. We believe in your market vision and I will do my best to expand our partnership.

I will put our assistants in contact so they can organize the next steps.

Best regards,

Barbosa

TFE
TUPI FRUIT EXPORTS

TUPI FRUIT EXPORTS LTDA.

ANNEX 6

Date: Dec. 27, 2017
From: J. Carthier <carthier@afw.com.kt>
To: A. Barbosa <barbosa@tfe.com.tp>
Subject: RE: PSA

Dear Barbosa,

What excellent news! I agree with the new terms. Let's move on!

According to my legal advisor it will be necessary to sign an amendment to our Agreement (PSA) and you will soon receive it.

Best regards,

J. Carthier

AGRITECH FRUITS WHOLESALERS

International Institute for Conflict Prevention & Resolution

ANNEX 7

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (PSA)

This Amendment to the Purchase and Sale Agreement (hereinafter referred to as "Amendment") dated as of December 29, 2017

BY AND BETWEEN

TUPI FRUIT EXPORTS LTDA. (TFE), a company incorporated and existing under the laws of Tupana, with headquarters in the city of Tampa, State of Tampa, at Av. Nove de Julho, 5252, ZIP 55555-444, represented by its CEO, A Barbosa, hereinafter referred to as "**SELLER**",

AND

AGRITECH FRUITS WHOLESALERS, Inc. (AFW), a company incorporated and existing under the laws of Kanata, with headquarters in the city of MontRoyale, State of MontRoyale, at Tremblant Avenue, 2500, ZIP 454545, represented by its CEO, J. Carthier, hereinafter referred to as "**BUYER**", both hereinafter referred to as "**PARTY**" or "**PARTIES**",

WHEREAS:

I) the **PARTIES** executed the Purchase and Sale Agreement ("**PSA**") on December 30th, 2016;

II) the **SELLER** and **BUYER** decided to modify and adapt some terms and conditions of the **PSA** as per the clauses hereinbelow;

NOW, **THEREFORE**, the **PARTIES** agree to execute this First Amendment to the Purchase and Sale Agreement (Amendment), which shall be governed by the following clauses and conditions:

1. **Scope of the Amendment.** The SELLER shall supply 2,666 (two thousand six hundred and sixty-six) tons of figs "*ficus carica*" (Products), per year, to the BUYER, according to the terms and conditions set forth in this First Amendment and the PSA.

   1.1. SELLER guarantees the supply of figs in the quantity established in section 1 above. In case the production of figs at Paradise Valley does not achieve the guaranteed volume above, SELLER is entitled to supply to the BUYER Products from other properties than Paradise Valley up to 10% (ten percent) of the quantity set forth in section 1 above.

   1.2. On the other hand, for the purpose agreed on section 1.1., BUYER shall purchase the Products exclusively from SELLER.

2. **Price and Payment Conditions.** The BUYER shall pay to the SELLER the amount of K$8.50 per box (Contractual Price) of figs within 2 (two) working days after the delivery of the Products to the BUYER.

Such payment shall be performed through wire transfer in favor of SELLER, which shall provide its bank account information to the BUYER in writing.

3. **Term and Renewal**. This Agreement shall remain valid and in full force from the remaining contractual term, beginning on December 30, 2017 and ending on December 29, 2021. This Agreement may be renewed by the PARTIES in writing at least six (6) months prior to the end of its current term.

4. The PARTIES agree that all clauses and conditions of this First Amendment and of the PSA shall be interpreted and constructed as a whole. Any other clause or condition of the PSA not expressly modified by this First Amendment shall remain in force according to the PSA original wording, which is hereinafter ratified.

In witness thereof, the PARTIES execute this First Amendment in two (2) counterparts in the presence of the undersigned witnesses.

December 29th, 2017

By the SELLER: ____
TUPI FRUIT EXPORTS LTDA.
A. Barbosa

By the BUYER: ____
AGRITECH FRUITS WHOLESALERS, Inc.
J. Carthier

Witnesses:

1. ______________________________	2. ______________________________
Name: Agatha Christie	Name: Gabriel García-Marquéz
ID: 1.111.222-3	ID: 4.444.555-6

International Institute for
Conflict Prevention & Resolution

ANNEX 8

Date: August 1, 2018
From: J. Carthier <carthier@afw.com.kt>
To: A. Barbosa <barbosa@tfe.com.tp>
Subject: URGENT PROBLEM

Dear Barbosa,

I hope this e-mail finds you well.

As you might know, we received a TFE delivery on July 25th, 2018. However, 25% of the 6.94 tons of figs loaded at Cumbuco Airport in Tupana and delivered to L. Persons International Airport in Kanata were unsuitable for human consumption due to spoilage, caused by severe temperature variations during storage.

For that reason, we have had a lot of trouble keeping that shipment in special storage in order not to contaminate other products. Obviously, we could not deliver the figs to our supermarket buyers, putting our commercial reputation at risk.

Considering our long and lasting relationship and in accordance with the Purchase and Sale Agreement, we request a payment reduction of 25%, plus the payment by TFE of K$24,000.00 (Twenty-four thousand Kanatian dollars) as reimbursement for special storage within 5-days or AFW will suspend payment for the whole transaction and terminate the contract.

I look forward to hearing back from you.

Best regards,

Carthier

AGRITECH FRUITS WHOLESALERS

International Institute for
Conflict Prevention & Resolution

ANNEX 9

Date: August 2, 2018
From: A. Barbosa <barbosa@tfe.com.tp>
To: J. Carthier <carthier@afw.com.kt>
Subject: RE: URGENT PROBLEM

Dear Carthier,

I hope this email finds you well and calmer. I think you are creating "a tempest in a tea pot"- making this issue much bigger than it really is.

As you know, Cumbuco has a problem of maintaining the right temperature in the storage house **(DataLogger attached**). Although we make every effort to use best practices on the delivery, this issue is beyond our control! Probably the flight was late or something else has happened. TFE is not responsible for that occurrence at all!

In accordance with the Purchase and Sale Agreement, we request payment of the whole transaction within a 5-day period or AFW will be responsible for the consequences.

Sincerely Yours,

Barbosa

TUPI FRUIT EXPORTS LTDA.

International Institute for Conflict Prevention & Resolution

DATALLOGER

DATA REPORT

Note: All times shown are based on UTC and 24-Hour clock in the format {MM/DD/YY HH:MM:SS]
Temperature is always expressed in Degrees Celsius (°C) Trip: Tupana-Kanata (Air Kanata 131)
Device: Wise-USB Device ID 1000223334444-G Trip: From July 23rd to 25th, 2018

Logging Summary

Highest Temperature**: 25.9 °C**	Start Time: 07/23/18 18:46:27
Lowest Temperature: **5.3°C**	Stop Time: 07/25/18 08:16:27
Average Temperature: **11.6°C**	Trip Length: 01d13h30min
Temperature Range for the Product: **From 4°C till 17°C**	

Date	Time	Temp (°C)
07/23/18	18:46:27	9.6°C
07/23/18	21:46:27	16.4°C
07/24/18	00:46:27	25.9°C
07/24/18	03:46:27	24.8°C
07/24/18	06:46:27	23.2°C
07/24/18	09:46:27	5.3°C
07/24/18	12:46:27	5.3°C
07/24/18	16:46:27	5.6°C
07/24/18	20:46:27	5.7°C
07/25/18	00:16:27	5.8°C
07/25/18	04:16:27	5.8°C
07/25/18	08:16:27	5.9°C (last measure)

International Institute for Conflict Prevention & Resolution

ANNEX 10

Date: August 3, 2018
From: J. Carthier <carthier@afw.com.kt>
To: A. Barbosa <barbosa@tfe.com.tp>
Subject: RE: URGENT PROBLEM

Dear A. Barbosa,

AFW has legal rights, as you must know. We do not accept your allegations and we reaffirm all the terms of our e-mail dated August 1, 2018.

We really hope to maintain our positive commercial relationship.

Regards,

J. Carthier

AGRITECH FRUITS WHOLESALERS

CPR
International Institute for
Conflict Prevention & Resolution

ANNEX 11

Date: Dec. 21, 2018
From: Dr. M. Mulroy <mulroy@afw.com.kt>
To: A. Barbosa <barbosa@tfe.com.tp>
Cc: J. Carthier <carthier@afw.com.kt>
Subject: Notification to terminate the PSA and its first and only Amendment

Dear Sir/Madam,

Considering that:

(1) AFW did not succeed in obtaining TFE's acknowledgment of AFW's just, contractual and legal request sent by email on August 1, 2018.

(2) On October 17, 2018, 50% of the shipment of figs was spoiled due to the recurrence of a temperature oscillation, as demonstrated by the DataLogger report. This caused a loss equivalent to 13.88 tons of figs, corresponding to the amount of K$104,140.00. Further, 50% of the figs received had a bad appearance due to an excess of *"bordeaux syrup" ("calda bordalesa"*), a fig preservative This caused another loss equivalent to 13.88 tons of figs, to the amount of K$104,140.00, and prompted more quality notification exchanges between TFE and AFW.

(3) On October 24, 2018, we were surprised that 100% of the shipment which arrived in Kanata was not cleared for entry by the local health authorities because the inspection test made on the day of arrival detected a pest infection. This caused a loss equivalent to 27.77 tons of figs, to the amount of K$208,280.00.

(4) TFE has not delivered the figs as per the Amended PSA over the past 2 months (November, December 2018). This has caused a direct loss to AFW equivalent to K$3,333,333.00, as our company was unable to resell 444 tons of figs to our customers.

This is to notify TFE that we have decided to terminate, both the PSA and its Amendment executed on December 30, 2016 and December 29, 2017, effective immediately. We claim damages in the amount of K$3,749,893.00, as well as other damages caused to AFW, including damages to the reputation of the company, and damages caused by pending issues raised in our emails exchanged on August 1, 2 and 3, 2018, which should be calculated according to the contract.

It is clear to AFW that TFE is the party that failed to fulfill its legal and contractual obligations, and that it is responsible for the termination of the contract due to the breaches mentioned above.

Regards,

Dr. M. Mulroy (on behalf of AFW)
General Counsel of AGRITECH FRUITS WHOLESALERS, Inc.

ANNEX 12

Date: Dec. 28, 2018
From: Dr. M. Ross <ross@srlawfirm.com.tp>
To: Dr. M. Mulroy <mulroy@afw.com.kt >; J. Carthier <carthier@afw.com.kt>
Cc: A. Barbosa <barbosa@tfe.com.tp>
Subject: Counter Notification

Dear Dr. Mulroy and Dear Sir/Madam Carthier,

As attorneys of TFE, we hereby answer the correspondence, dated as of December 21, 2018 sent by Dr. Mulroy on behalf of AFW, to COUNTER NOTIFY AFW as follows:

1. It was with surprise that TFE received AFW's correspondence in which it communicated the unilateral termination of the Amended SPA, based on the argument detailed in your notification. According to your correspondence, TFE caused the termination and should pay the total claim to AFW.

2. AFW presented five (5) claims in the correspondence which TFE does not accept as just cause for the termination of the agreement.

    a. The first claim, according to AFW, is a problem with 50% of the figs delivered on Oct. 17, 2018. We cannot accept as a fact that according to the DataLogger, what happened was a recurrence of the temperature oscillation; TFE made all the best efforts to serve AFW, as usual.

    b. The second claim is related to the "bad appearance" of the other 50% of the figs delivered on Oct. 17, 2018. You acknowledge that this was due to the excess of "*bordeaux syrup*" (*"calda bordalesa"*) which, as you know, is just a fig preservative that can be simply removed with water, and easily made acceptable and suitable for consumption. Therefore, TFE also refuses to pay AFW the amount of K$104,140.00.

    c. The third claim is related to the full delivery of figs, on October 24, 2018, that was reported by AFW as infected with pests. Our client completely denies this allegation, and consequently will not pay the amount of K$208,280.00.

    d. Regarding the fourth claim, please note that TFE suspended the delivery of figs due to the lack of payment for the figs previously delivered. As it is AFW who breached the Agreement in the first place, TFE is not the party at fault. There is therefore no chance for AFW to claim K$3,333,333.00.

    e. Pertaining to the fifth claim, even if any of the previous four claims are accepted, it is absurd to say that AFW lost credibility or that its reputation is damaged. TFE is the only party that has suffered financial losses.

3. With all due corrections made, TFE does not accept the unilateral termination intended by AFW. TFE deems that the decision taken by AFW is unilateral and unlawful, and together with the acts resulting from this decision, we hold them to be cause for the redress of all damages suffered by TFE. This implies that TFE is entitled to receive all the amount owed by AFW, with the penalties and consequences pursuant to the Agreement still in force.

4. As you know, since the executed Amendment to the PSA, TFE is the only supplier of figs for AFW. Keeping in mind that the contract was breached by AFW, TFE is now counter notifying AFW as the defaulting party.

5. So, taking into consideration that AFW is the party who breached the contract, AFW must be held responsible to pay what is still owed to TFE and also to pay an indemnity for early termination of the PSA Agreement, as AFW is responsible for TFE's lost profits for the years 2019, 2020 and 2021. Additional damages may also accrue.

6. In view of the above, you are counter-notified of the following:

a) TFE rejects the unilateral termination of the amended PSA Agreement. Therefore, AFW shall continue to be obligated in accordance with the terms of the Agreement until its termination date, by paying what is owed to TFE immediately, and cease all actions to end the Agreement before the termination date; or

b) AFW will be liable for all the damages already caused, and for the damages that may be caused to TFE as a result of the unilateral termination of the Agreement, as well as actions related, directly or indirectly, to this decision. Accordingly, AFW will be required to compensate TFE for its loss of profits for the years 2019, 2020 and 2021.

Sincerely yours,

M. Ross (on behalf of TFE)
Partner, Specter and Ross Advogados

SPECTER ROSS