

## I. Merits/CISG

*For the sake of this exercise, please only concern yourself with the issue of the delivery of substitute goods. Please indicate all sources used in footnotes. Maximum length: 2-3 pages.*

On 24 December 2010 Mr Friedensreich orders 12.000 bottles of diamond quality Pinot Grigio from “Vino Veritas Ltd”. Mr Friedensreich is the CEO of the well-known chain of prestigious luxury wine stores called “Kaihari Waina Ltd”. Kaihari Waina Ltd plans to sell the wine in the “Premium Brands”-sections of their stores. Vino Veritas Ltd is a well-known producer of quality wines and is represented by Mr Weinbauer.

In reply to the order, Mr Friedensreich receives an Email from Mr Weinbauer on 2 January 2011 stating the following:

*“Thank you for your order and interest in our products! We will deliver the required bottles by mid-May. The price for one bottle is USD 65.”*

On 5 January 2011 Mr Friedensreich reaches out to Mr Weinbauer and they eventually settle on a price of USD 60 per bottle diamond quality Pinot Grigio. Their written Sales Agreement (signed on 20 January 2011) can be found on the next page (EXHIBIT 1).

On 15 May 2011 Vino Veritas Ltd delivers 12.000 bottles of Pinot Grigio to Kaihari Waina Ltd, invoicing for USD 720.000. Of those bottles however, only 9.000 are of diamond quality. The rest only has silver quality (market price: USD 40 per bottle).

Mr Friedensreich is outraged. He calls Mr Weinbauer and states that Kaihari Waina Ltd demands the immediate delivery of 3.000 bottles of diamond quality Pinot Grigio. Mr Friedensreich argues that he will not be able to sell silver quality wine in the “Premium Brands”-section, and the other sections for minor quality wines (where the silver quality wine could hypothetically be sold) are already fully stocked for this year. He goes on to state that he is thus not interested in the silver quality wine.

Mr Weinbauer flat-out refuses and argues that this was neither communicated between the parties nor part of his personal knowledge and is thus not relevant to the content of the contract and if Kaihari Waina Ltd is entitled to anything, it is at best a price reduction under the CISG.

- a) Mr Friedensreich comes to you and asks for your assistance. If you were Mr Friedensreich’s lawyer, what legally relevant arguments could you make to support his position?
- b) Are there also arguments you could make in favour of Mr Weinbauer, if you were to represent him?

## SALES AGREEMENT

### Art 1: Contracting Parties

Seller: Vino Veritas Ltd, 56 Merlot Rd, St Fundus Vuachoua, Mediterraneo

Buyer: Kaihari Waina Ltd, 12 Riesling Street, Oceanside, Equatoriana

### Art 2: Obligations of the seller

The seller agrees to sell 12 000 bottles diamond quality Pinot Grigio for 60 USD per bottle. The seller agrees to delivery DAP on 15 May 2010.

### Art 3: Obligations of the buyer

The buyer agrees to buy 12 000 bottles diamond quality Pinot Grigio for 60 USD/in total 720 000 USD. The buyer agrees to pay the above sum upon delivery of the goods.

### Art 4: Applicable Law

The Parties agree that the substantive provisions of the Contract shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG) in its November 2010 version. For issues not dealt with by the CISG, the Unidroit Principles on International Commercial Contracts in its 2016 version are applicable.

### Art 5: Dispute Resolution

Any dispute, controversy or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be three.

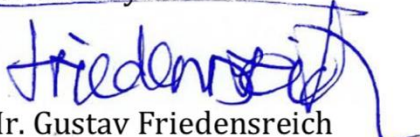
The seat of the arbitration shall be Vindobona, Danubia.

The arbitral proceedings shall be conducted in English.


The governing law of the arbitration clause shall be the substantive law of Danubia.

Date: 20 January 2011

For the buyer:

  
Mr. Gustav Friedensreich

For the seller

  
Mr. Werner Weinbauer

## II. International Commercial Arbitration

*Maximum length 1 page; please indicate all sources used in footnotes; as the below referred-to concept is internationally recognised, you may use sources referring to a different set of rules or law, however only relating to the below referred-to concept. Your assessments on this part of the research assignment should be completely independent from Issue I above.*

**Art 21 para 1** of the “Swiss Rules of International Arbitration 2012 (Swiss Rules)” by the Swiss Chambers Arbitration Institution describes a cornerstone principle of international commercial arbitration.

- (a) Briefly describe this concept in a few sentences. Further, explain why this concept is important in international commercial arbitration.
- (b) Then sketch a fact pattern in which this principle would be of particular relevance for a **claimant** in an arbitration.
- (c) Then think of any constellation in which a **respondent** might want to rely on that principle as well?