

**In the Matter of an Arbitration under the Arbitration Rules of the United Nations
Commission on International Trade Law (2013)**

(“Claimant”)

versus

Promostar S.R.L. (Italy)

(“Respondent”)

Award

of the

Arbitral Tribunal

composed of

D I P , Sole Arbitrator

29 May 2020

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1. Introduction

1.1 The disputing parties in this arbitration matter are as follows:

(a) The Claimant:

Address: _____ a
Tel: _____
Fax: _____
Email: _____ 1

(b) The Respondent:

Promostar S.R.L.

Address: Via Casali Leoncini, 2/C, 33030 Buia, Udine, Italy
Tel: + 39 0432 975752
Email: info@promostar.it

1.2 The Claimant and the Respondent are hereinafter jointly referred to as the “**Disputing Parties.**”

1.3 The authorized representatives of the Disputing Parties in this arbitration matter are as follows:

(a) For the Claimant:

_____, Attorney at Law with License No. 9241, and Mr. _____ i,
Attorney at Law with License No. 3427,
_____ <

Address: _____
Tel: _____
Email: _____

(b) For the Respondent:

Avv. Stefano Buonocore (Mr.) and Avv. Andrea Zoppolato (Mr.),

Buonocore Galletti Zoppolato Avvocati

Address: P.za Garibaldi, 4, 33100 Udine, Italy

Tel: + 39 0432 1843307

Fax: + 39 0432 1841042

Email: stefano.buonocore@BGZlex.com and andrea.zoppolato@BGZlex.com

- 1.4 On 20 January 2010 the Claimant and the Respondent concluded Contract No. CO100120-1, hereinafter referred to as the “**Agreement**,” which was amended on 20 December 2010.¹
- 1.5 Chapter 1.1 of the Agreement provides that – subject to the terms of the Agreement – “the [Respondent] will supply and the [Claimant] will accept to buy a complete system composed of an **Automatic Wire Mesh Line for the Production of Fencing Mesh Panels and Coils**,” hereinafter referred to as the “**Equipment**,” “with all services related to the **installation, testing and start-up** of the Equipment, supply of technical assistance and know-how and relevant documentation as set out in Annex 1 [...]”²
- 1.6 The dispute in the present arbitration matter arises in connection with the claims of the Claimant that the Respondent failed to install and start-up the Equipment in accordance with the terms of the Agreement in spite of the fact that the Claimant paid the purchase price for the Equipment as well as its installation and start-up.³ The Claimant seeks compensation of the contractual price for the Equipment, interest, material damages, lost profit as well as expenses related to the efforts of putting the Equipment into function and the costs of this arbitration, including the Claimant’s legal fees and expenses.⁴ The Respondent denies these claims and, while asserting that it has complied with all of its obligations under the Agreement, it contends that Claimant’s request for the installation and start-up of the Equipment was submitted after the expiration of the preclusive term for the notification of defects – provided under the substantive law governing the Agreement – that commenced after the delivery of the Equipment to the Claimant and that, in any case, the completion of the installation and the start-up of the Equipment was prevented by circumstances attributable solely to the Claimant.⁵ The Respondent requests that the Claimant bears the costs of this arbitration, including Respondent’s legal fees and expenses.⁶
- 1.7 In the Agreement, the Disputing Parties have agreed to refer to, and finally resolve, any disputes in connection with the Agreement by arbitration, provided that the Disputing Parties

¹ Exhibit C-1, Exhibit R-2 and Exhibit R-3.

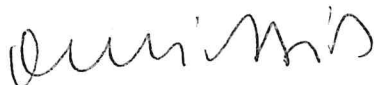
² Exhibit C-1 and Exhibit R-2.

³ Statement of Claim, page 8.

⁴ Statement of Claim, page 11, and Claimant’s Post-Hearing Memorial, page 11.

⁵ Statement of Defense, paragraphs 27, 32(i), 30(d), 30(f), 31(a) and 33, and Rejoinder, paragraph 20.

⁶ Statement of Defense, paragraph 33 and Request for Relief (D), and Respondent’s Post-Hearing Memorial, paragraph 19.



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decides to apportion these costs between the Disputing Parties in equal proportion. Namely, each party will bear the cost related to the fees and the expenses of the Sole Arbitrator that were already pre-paid by each of the Disputing Parties. For the same reasons the Arbitral Tribunal decides that each Disputing Party shall bear its own legal fees and expenses, within the meaning ascribed to such costs under Article 40, paragraph (e), of the UNCITRAL Arbitration Rules in relation to this arbitration matter. In light of the above, the Disputing Parties are not required to compensate to each other any costs of arbitration related to the fees and expenses of the Sole Arbitrator, their own legal fees and expenses as well as the fees and expenses of their respective witnesses/experts.

- 6.44 Finally, the Arbitral Tribunal notes that the Claimant has paid solely the administrative fee for the designation of an appointing authority by the Permanent Court of Arbitration, in the amount of EUR [redacted] (two thousand Euros) as well as the fee for the Appointing Authority to appoint the Sole Arbitrator in this arbitration matter, in the amount of EUR [redacted] (one thousand and [redacted] Euros). In this respect, the Arbitral Tribunal decides that these fees, which constitute valid arbitration costs according to Article 40, paragraph (f), of the UNCITRAL Arbitration Rules, must be apportioned between the Disputing Parties in equal proportion. Consequently, the Arbitral Tribunal has decided to order the Respondent to pay to the Claimant 50% of the fee for the designation of the Appointing Authority by the Permanent Court of Arbitration, in the amount of EUR [redacted] (in words: one thousand Euros) as well as 50% of the fee of the Appointing Authority for the appointment of the Sole Arbitrator, in the amount of EUR [redacted] (hundred Euros).

7. Award

NOW THEREFORE, the Arbitral Tribunal, having considered the positions of the Disputing Parties, and the accompanying exhibits, on the basis of the analysis provided above and for the reasons set forth above, hereby decides to:

- 7.1 **DECLARE** that it has jurisdiction to adjudicate the present arbitration matter between the Claimant and the Respondent;
- 7.2 **REJECT**, in their entirety, all the claims/requests for relief of the Claimant on the merits as ungrounded;
- 7.3 **DECLARE** that the costs of the arbitration relating to the fees and expenses of the Sole Arbitrator, in the amount of EUR [redacted] (twenty five thousand Euros), shall be apportioned between the Claimant and the Respondent in equal parts, while acknowledging that these costs have already been pre-paid by the Claimant and the Respondent in equal parts;

- 7.4 **DECLARE** that each Disputing Party shall bear its own legal fees and costs related to this arbitration matter, as detailed in the Statement of Costs of the Claimant and the Statement of Costs of the Respondent, respectively;
- 7.5 **DECLARE** that the costs for the designation of the Appointing Authority and the appointment of the Sole Arbitrator shall be apportioned between the Claimant and the Respondent in equal parts and **ORDER** the Respondent to pay to the Claimant, within a period of ten (10) calendar days from the date of this Award, an amount equal to **EUR** (), which represents 50% of the fee for the designation of the Appointing Authority by the Permanent Court of Arbitration as well as 50% of the fee of the Appointing Authority for the appointment of the Sole Arbitrator that the Claimant has already paid to the Permanent Court of Arbitration; and
- 7.6 **REJECT** all other claims/requests for relief of the Disputing Parties that are not explicitly mentioned herein.

Place of Arbitration: _____

Date: 29 May 2020

Arbitral Tribunal:

, Sole Arbitrator