SWISS ARBITRATION CENTRE

Lawsuit No. 500146-2022

Swiss Arbitration Centre

SEPT 22 2023

Park Plus Inc. (United States of America)

Claimant

vs.

Sotefin SA (Switzerland)

Respondent

FINAL AWARD

September 21, 2023

J.D. Gabriele Ruscalla
Sole Arbitrator

Seat of arbitration: Lugano, Switzerland

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ABBREVIATIONS

APS	Automatic parking system
USA Arbitration	Arbitration in Maryland resulted in award on March 5, 2020
Claimant	Park Plus Inc.
CO	Swiss Code of Obligations
CISG or Convention	United Nations Convention on Contracts for the International Sale of Goods, adopted in Vienna on April 11, 1980
Contract or Towson Contract	Contract dated April 3, 2009, and signed by the Parties on April 8, 2009
Langone Contract	Supply and Assistance Agreement of September 19, 2014, concerning the Langone NYU Hospital project
Respondent	Sotefin SA
OP1	Procedural Ordinance No. 1
p.	page
Palisades	Palisades and Encore Development Corp.
para.	paragraph
Langone Project	Parking made for Langone Medical Hospital
Request	Request for arbitration

Response	Response to request for arbitration
Westfalia	Westfalia Technologies Inc.

I. INTRODUCTION

1. This Award is rendered in accordance with Articles 33 et seq. of the Swiss Rules of International Arbitration in effect as of June 2021 ("**Swiss Rules**").

2. Following the decisions of the Sole Arbitrator reasoned in the Sections below, this Award is final and thus concludes not only the first phase of the arbitration but the entire lawsuit.

II. THE PARTIES

A. The Claimant

3. The Claimant is **Park Plus Inc.**, with registered office at

Attn. Mr. Ronald Astrup (legal representative *pro tempore* and CEO)
83 Broad Avenue, Fairview
NJ 04022 (United States of America)

4. The Claimant is represented and defended by:

Attorney Lorenzo Agnoloni

MEPLaw
Foro Traiano, 1/A
00187 Rome (Italy)
e-mail: info@agnolonilaw.com ; studiolegaleinternazagnoloni@gmail.com

45 East Putnam Avenue (STE 115)
Greenwich, CT - 06830 (United States of America)

122 East 42nd Street
New York City, NT - 10168 (United States of America)

B. The Respondent

5. The Respondent is **Sotefin SA**, with registered office at

Attn. Mr. Andrea Valli
Via Gaggiolo, 27
6855 Stabio (Switzerland)

6. The Respondent is represented and defended by:

Attorney Stefano Codoni

Walder Wyss SA
Via F. Pelli, 12
CP
6901 Lugano (Switzerland)
e-mail: stefano.codoni@walderwyss.com

7. The Claimant and the Respondent will hereinafter be referred to collectively as the "**Parties**" or individually as a "**Party**".

III. COURT OF ARBITRATION

8. The Sole Arbitrator, appointed by the Court of Arbitration (**Court**) of the Swiss Arbitration Centre pursuant to Article 10(3) of the Swiss Rules, is:

J.D. Gabriele Ruscalla
11 boulevard Sébastopol
75001 Parigi
Tel.: +33 6 09836242
E-mail: g.ruscalla@liedekerke.com

IV. THE CONDUCT OF THE ARBITRATION PROCEEDINGS

9. By letter dated September 23, 2022, the Swiss Arbitration Centre acknowledged receipt of the Claimant's Request for Arbitration (**Request**) on September 20, 2022. In said letter, the Swiss Arbitration Centre requested further details from the Claimant about the value of the case, encouraged her to file an electronic version of the Request, and pay a non-refundable registration fee.

10. The arbitration agreement invoked by the Claimant does not specify the number of arbitrators, the seat of arbitration and the language of arbitration. In the Request, the Claimant suggests that the court be composed of a sole arbitrator, that Lugano be the seat of arbitration, and that Italian be the language of arbitration.

11. On September 28, 2022, the Claimant submitted an electronic version of the Request to the Swiss Arbitration Centre, informed that the value in dispute amounted to US $3,515,000.00, and requested details to make the payment of the non-refundable registration fee.

12. On September 30, 2022, the Swiss Arbitration Centre informed the Claimant that some attachments mentioned in the Request had not been transmitted.

13. On October 3, 2022, the Claimant sent the missing attachments to the Swiss Arbitration Centre.

14. On October 4, 2022, the Swiss Arbitration Center confirmed the receipt of the missing attachments and submitted the bank details for the payment of the non-refundable registration fee of CHF 6,000.00.

15. On October 25, 2022, the Swiss Arbitration Centre acknowledged receipt of the non-refundable registration fee of CHF 6,000.00 and notified the Respondent of the Request. The case was registered under No. 500146-2022.

16. On November 22, 2022, the Swiss Arbitration Centre acknowledged receipt of the Respondent's Response to the Request for Arbitration (**Response**) dated November 19, 2022. In the Response, the Respondent (i) argued a lack of jurisdiction with respect to the Claimant's claims based on the Supply and Assistance Agreement dated September 19, 2014, concerning the Langone NYU Hospital project (**Langone Contract**); (ii) expressed its agreement to the Claimant's proposals regarding the number of arbitrators (one), the seat of arbitration (Lugano, Switzerland), and the language of arbitration (Italian).

17. On November 28, 2022, the Claimant sent the Swiss Arbitration Centre its remarks regarding the lack of jurisdiction.

18. On December 5, 2022, the Swiss Arbitration Centre informed the parties of the decision of the Swiss Arbitration Centre Court that the arbitration could not proceed with respect to the Claimant’s claims related to the Langone Contract, pursuant to Article 5(1)(a) of the Swiss Rules. The Swiss Arbitration Centre also granted the parties 30 days for the joint appointment of the sole arbitrator (until January 4, 2023), and set an interim advance payment of CHF 17,088.00 calculated on the basis of a value in dispute of CHF 2,870,000.00. Finally, the Swiss Arbitration Centre forwarded a number of Claimant's documents to the Respondent, which had not been forwarded when the Request was served on the Respondent.

19. On December 21, 2022, the Respondent sent its remarks on the additional documentation produced by the Claimant and received on December 5, 2022, asserting that this documentation was confusing and haphazard.

20. On January 4, 2023, the Parties agreed to extend the deadline for the joint appointment of the sole arbitrator to January 27, 2023.

21. On January 25, 2023, the Swiss Arbitration Centre urged the Claimant anew to pay the provisional advance payment of CHF 17,088.00 by January 30, 2023.

22. On January 27, 2023, the Claimant informed the Swiss Arbitration Centre that the Parties had failed to reach an agreement for the appointment of the sole arbitrator.

23. On February 5, 2023, the Respondent submitted its observations regarding the selection criteria of the sole arbitrator. The Claimant did not submit any observations in this regard.

24. On February 15, 2023, the Swiss Arbitration Center Court confirmed the appointment of J.D. Gabriele Ruscalla as **Sole Arbitrator**, and informed the Parties accordingly. On the same day, the Swiss Arbitration Center submitted the case file to the Sole Arbitrator.

25. On February 16, 2023, the Sole Arbitrator contacted the Parties and requested their availability to hold the initial meeting pursuant to Article 19 of the Swiss Rules.

26. By email dated February 22, 2023, the Sole Arbitrator set the initial meeting in agreement with the Parties for February 28, 2023. In the same correspondence, the Sole Arbitrator requested the advance for the costs of arbitration pursuant to Article 41(1) of the Swiss Rules set at CHF 95,000.00, payable as follows:
    Claimant: CHF 30,432.00 (CHF 47,500.00-CHF 17,068.00 already paid as a provisional advance payment)
    Respondent: CHF 47,500.00.

27. Furthermore, pursuant to Article 19(2) and (3) of the Swiss Rules, the Sole Arbitrator sent to the Parties a draft of the Procedural Order no. 1 (**OP1**), including the procedural timetable (**CP**).

28. On February 27, 2023, the Parties shared their comments on the OP1 draft.

29. Due to the Claimant's absence at the initial meeting on February 28, 2023, said meeting was postponed to 6 March 2023.

30. On March 3, 2023, the Parties informed the Sole Arbitrator of their agreement to separate the procedure into two phases, with the first phase devoted to the Respondent's prescription and peremption raised with respect to the Claimant’s claims. The Parties also agreed on the dates of the pleadings for the first phase of the procedure.

31. On March 6, 2023, at 16h30 (Lugano time), the initial meeting attended by both Parties and the Sole Arbitrator took place.

32. On March 7, 2023, the Sole Arbitrator sent the finalized OP1 including all the remarks raised by the Parties during the initial meeting of March 6, 2023. On the same date, the Parties confirmed by email that they agreed with the latest version of the OP1. Therefore, the Sole Arbitrator sent the signed OP1 version to the Parties. The procedural timetable established by the Sole Arbitrator upon joint proposal of the Parties is as follows:

    April 14, 2023: filing of the Claimant's Statement of Claim;

    May 5, 2023: filing of the Respondent's Response Brief, limited to the plea of prescription/peremption;

    May 19, 2023: filing of the Claimant's Reply Brief, limited to the plea of prescription/peremption;

    May 31, 2023: filing of Respondent's Sur-reply Brief, limited to the plea of prescription/peremption;

    June 7, 2023: simultaneous filing of the Parties' Costs Memoranda;

    No later than three months after the Parties' last Memorandum on substantive aspects of the dispute: Partial/Final Award.

33. By letter dated March 8, 2023, the Respondent informed the Sole Arbitrator that they did not intend to make the advance payment for arbitration costs as set on February 22, 2023.

34. On March 9, 2023, the Sole Arbitrator asked the Claimant to comment on the Respondent's letter dated March 8, 2023.

35. On March 13, 2023, the Claimant contested the arguments raised by the Respondent in the letter dated March 8, 2023.

36. On March 15, 2023, the Respondent suggested that the Sole Arbitrator set separate advance payments so that *"the arbitration fees related to the partial award will then be charged directly and exclusively to the losing party's deposit."*

37. On March 21, 2023, the Sole Arbitrator rejected the Respondent's request because there is no basis for the application of separate advance payments in the present procedure, motivating his decision as follows:

    > *Firstly, in the absence of counterclaims, it is not possible to accurately monetize the two stages of the procedure.*
    >
    > *Secondly, at this time it is not possible to calculate the amount of the Sole Arbitrator's fees and the SAC Court's administrative fees corresponding to the first stage of the procedure that will end with*

> *the partial award. It is therefore impossible for the time being to conclude that the advance payment already made by the Claimant is sufficient to cover these expenses.*
>
> *Thirdly, even in the event that the present procedure ends with the pronouncement of the partial award, it is not certain that the Sole Arbitrator's fees and the SAC Court's administrative fees will be borne exclusively by the losing party. In fact, although Article 40 of the Swiss Rules states that "[t]he costs of the arbitration shall, in principle, be borne by the losing party," the same article contemplates the possibility for the Sole Arbitrator to consider other circumstances (including the conduct of the Parties) to reach his or her decision about the allocation of the costs of the arbitration. Any decision regarding such costs made at this point in the proceedings would therefore be premature.*

38. On March 22, 2023, the Respondent informed the Sole Arbitrator that they had decided to pay the requested amount.

39. On March 24, 2023, the Secretariat of the Swiss Arbitration Centre informed the Sole Arbitrator that they had received an amount of CHF 47,480 from the Claimant and an amount of CHF 47,500 from the Respondent as an advance payment for arbitration costs.

40. In accordance with the procedural timetable, the Claimant filed the **Statement of Claim** on April 14, 2023.

41. On April 17, 2023, the Respondent informed that they had only received the Claimant's Statement of Claim, without any attachments.

42. On April 18, 2023, the Sole Arbitrator instructed the Claimant to complete, order and correctly number the attachments to the Statement of Claim where necessary.

43. On April 20, 2023, the Claimant transferred a number of attachments to the Statement of Claim. On the same date, the Respondent complained about a series of issues related to the documents produced by the Claimant, particularly the lack of numbering, contextualization, and identification of the attachments produced by the Claimant up to that point. The Claimant then requested the Sole Arbitrator to *"confirm that solely the documents submitted yesterday should be considered (with all their deficiencies) as validly relied upon in support of the claim and that the Claimant cannot rely on, and the Respondent should not have to confront, additional documentation submitted by the Claimant in the earlier stages of the proceedings."*

44. Upon exhortation of the Sole Arbitrator, on April 22, 2023, the Claimant challenged the Respondent's claim and requested the Sole Arbitrator to consider all documents filed in the proceedings. The Claimant also requested that the deadline for the filing of pleadings and attachments be midnight of the place of professional residence of the parties' lawyers.

45. On April 27, 2023, having considered the standpoints of both Parties, the Sole Arbitrator rejected the Respondent's request for the following reasons:

    i. *The Swiss Rules do not specify a numbering and ordering system for the attached documents. Thus, the attachments to the Request for Arbitration can be numbered and ordered based on a system selected by the Claimant.*

    ii. *The rules in Procedural Ordinance No. 1 about the numbering and ordering of documents attached to the pleadings have been established by the Sole Arbitrator to facilitate the orderly conduct of the arbitration proceedings. That being said, the attachments to the pleadings filed prior to the Procedural Ordinance No. 1, although they do not follow the order and numbering provided by/to the Ordinance itself, may not be dismissed because they have already been introduced into the record of proceedings.*

    iii. *The relevance and correctness of the attached documents and the question of whether these documents support (sufficiently) the factual allegations raised by the Parties in their pleadings will be subject to analysis and decision on the merits by the Sole Arbitrator in the award. The Respondent will have the opportunity to express its position in this regard in the upcoming pleadings provided for in the Procedural Timetable.*

46. In the same correspondence, the Sole Arbitrator also invited the Respondent to express its position about the Claimant's request on the time limit for filing pleadings and attachments.

47. Within the time limits prescribed by the procedural calendar, the Respondent filed the Response Brief limited to the plea of prescription/peremption on May 4, 2023, with attachments (**Response Brief**). The Respondent also contested the Claimant's request regarding the time of the deadline for filing pleadings and attachments, pointing out that, by signing the OP1, the Parties had expressed their agreement that the deadline should be midnight CET (Lugano time).

48. On May 11, 2023, the Sole Arbitrator rejected the Claimant's request regarding the time for filing pleadings and attachments, and decided that *"the time of filing indicated in Procedural Order No. 1 is to be intended as 'midnight Lugano time (CET) '"*.

49. In accordance with the procedural calendar, the Claimant filed the Reply Brief, limited to the plea of prescription/peremption on May 19, 2023 (**Reply Brief**).

50. In accordance with the procedural calendar, the Respondent filed the Sur-reply Brief, limited to the plea of prescription/peremption on May 30, 2023 (**Sur-reply Brief**).

51. On June 6, 2023, the Respondent sent the **Costs Memorandum** to the Sole Arbitrator.

52. On June 14, 2023, not having received the Claimant's Costs Memo, the Sole Arbitrator asked said Party to take a stand on the issue by June 16, 2023.

53. On the same date, the Respondent stated that a Costs Memorandum from the Claimant would be overdue and requested the Sole Arbitrator to reject such Memorandum, should it be filed by the Claimant.

54. On June 14, 2023, the Claimant filed the **Costs Memorandum**.

55. On June 17, 2023, the Respondent sent its comments on the Claimant's Costs Memo, to which the Claimant responded on June 18, 2023.

56. On September 11, 2023, the Sole Arbitrator declared the case closed pursuant to Article 31 (1) of the Swiss Rules.

57. On September 11, 2023, pursuant to Article 39(5), the Sole Arbitrator submitted its draft decision on the calculation of costs to the Secretariat of the Swiss Arbitration Centre for approval by the Swiss Arbitration Centre Court.

V. THE FACTUAL BACKGROUND RELATING TO THE DISPUTE AND THE POSITION OF THE PARTIES

A. Preliminary Remarks of the Sole Arbitrator

58. The Sole Arbitrator declares that he has examined in detail all the briefs produced by the Parties and all the documents attached to those briefs, including the attached documents to which the Sole Arbitrator does not explicitly refer, or which are not mentioned in this Award.

59. In this Section, the Sole Arbitrator shall briefly set forth the uncontested facts as well as the Parties' stance on the relevant facts and merits of the dispute.

B. The Towson Contract

60. The dispute arises from the Towson Contract dated April 3, 2009, and signed by the Parties April 8, 2009 (**Towson Contract** or **Contract**)[1].

61. The subject of the Contract (**Article 1**) was the supply of an automated parking system (APS) by Sotefin

[1]Attachment C-1 (Respondent).

SA to Park Plus Inc. for a capacity of 400 cars and 5 parking units. Pursuant to **Article 7** of the Contract, Sotefin SA also pledged to provide technical assistance according to precise conditions, as will be examined in subsequent sections of this Award.

62. The Contract also provides for a list of components to be delivered to Park Plus Inc. (**Article 2**).

63. The contract price for the supply of the components ("*Price FOB Italian Port of the component parts delivered from the EU as per art. 2*") is determined in **Article 3** of the Contract to be EUR 2,000,000.00. Regarding technical assistance, the price is set at EUR 4,000.00 for 7 days of supervision plus travel and accommodation expenses.

64. **Article 4** of the Contract lists several items that are excluded from the contract price.

65. **Article 6** of the Contract states that the warranty for any defects in what is supplied by Sotefin SA is valid for a period of 12 months from the installation of the system or for a period of 18 months from the *bill of lading*.

66. The Claimant states that, following the signing of the Towson Contract, Park Plus Inc. entered into a contract on May 4, 2009, with the U.S.-based Palisades and Encore Development Corp. (**Palisades**) for the construction of a parking lot in the 'Tue Palisades of Towson' housing complex in Towson, Maryland, with the components, technology and design that Sotefin SA had committed to provide under the Towson Contract[2]. The Respondent does not contest this statement[3].

67. Park Plus Inc. delivered the APS system to Palisades in August 2010[4].

C. The Claimant's statement of facts and position on the merits of the dispute

68. The Claimant states that after installing the APS system, numerous problems seemed to occur on a daily basis, and Palisades complained about the lack of stability and reliability of the system. These problems included multiple system malfunctions, mechanical, electrical, and software problems that resulted in recurring system outages and delays, temporarily lost vehicles, and instances where vehicle damage occurred due to APS[5] system malfunctions.

[2]Request for Arbitration, p. 3; Statement of Claim, p. 2. The Sole Arbitrator notes that the Claimant did not produce the May 4, 2009 contract between Park Plus Inc. and Palisades and Encore Development Corp.
[3]Response Brief, para. 7.
[4]Response to Request for Arbitration, para. 24; Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p. 4.
[5]Request for Arbitration, p. 3; Statement of Claim, p. 2. Please see Attachment 5 (Claimant) 'Arbitration Decision of 5 March 2020', p. 5.

69. On February 13, 2012, a fatal accident occurred in the parking lot of Towson's 'Tue Palisades' complex. As a result of a malfunction and shutdown of one of the four shuttles in the APS system, a technician employed by the Palisades company, was crushed and killed by a shuttle that fell into the elevator shaft while attempting to manually remove vehicles from a garage area[6].

70. As a result of this fatal accident, the estate administrator of the deceased Palisades company technician filed a lawsuit against Palisades, Park Plus Inc. and Sotefin SA before the Circuit Court for Baltimore County, Maryland. To put an end to these proceedings, the deceased technician's mother signed a settlement agreement on January 12, 2015 with Palisades, Park Plus Inc. and Sotefin SA, under which the three companies proceeded to pay sums of money in favor of the deceased technician's mother, admission of liability for the death that occurred[7].

71. Up until June 2014, problems with the APS system continued to occur. For this reason, Palisades decided to appoint the company Westfalia Technologies Inc. (**Westfalia**) to provide a third-party evaluation of the APS system[8].

72. Westfalia concluded that the APS system needed to be replaced. Accordingly, Palisades commissioned Westfalia to repair and improve the system and to add the necessary functionality to make the system stable and reliable. Westfalia completed its work in spring 2017 and delivered the repaired system to Palisades[9]. The cost of the work that Palisades had to pay Westfalia amounted to USD 3,274,622.77[10].

73. The Claimant states that the numerous defects and problems with the technology and design provided by Sotefin SA led to an arbitration in Maryland (**U.S. arbitration**) between Palisades et Park Plus Inc. at the end of which the Sole Arbitrator found that Park Plus Inc. was responsible for the problems found in the design of the APS system provided by Sotefin SA, including defects in the mechanical and technological components[11].

74. In his decision of May 5, 2020[12], the arbitrator appointed in the U.S. arbitration proceedings found that the APS system sold and installed by Park Plus Inc. did not function stably and reliably and that Palisades was entitled to damages in connection with the work done to resolve these problems[13].

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[6]Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p.6.
[7]Attachment 4 (Claimant) 'Settlement and Release Agreement', p.2.
[8]Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p.9.
[9]Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p.10.
[10]Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p.11.
[11]Request for Arbitration, p. 3; Statement of Claim, p. 3; Response brief, p.3.
[12]The Claimant reports that the final arbitration award in the U.S. arbitration proceedings became enforceable in the month of June 2022. See Request for Arbitration, p. 4; Statement of Claim, p. 4.
[13]Request for Arbitration, p. 3; Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p.12.

The arbitrator then ordered Park Plus to pay Palisades USD 2,333,220.00, a sum corresponding to the cost of troubleshooting the APS system, along with other minor sums[14].

75. The Claimant further states that the arbitration award rendered in the U.S. arbitration on March 5, 2020 ruled that it was joint tort between Park Plus Inc. and Sotefin SA because the issues found by the sole arbitrator were directly attributable to and related to the design provided by Sotefin SA[15].

76. The Claimant also argues that Sotefin SA cannot be considered excluded from the damage found by the sole arbitrator in the U.S. arbitration since Sotefin SA signed a settlement agreement on January 12, 2015[16] with the mother of a Palisades technician who died in a work-related accident, Palisades and Park Plus Inc.

77. The Claimant therefore concludes that Park Plus Inc. has an interest in recourse against Sotefin SA to recover the amounts paid to Palisades as damages under the arbitration award dated March 5, 2020, made enforceable in June 2022[17]. The Claimant claims that the payment of these sums has already been tried in favor of Palisades[18].

78. The Claimant also states that such technical problems with the design and technology of the APS system provided by Sotefin SA have manifested themselves in other projects in which Park Plus Inc. and Sotefin SA have collaborated, such as the parking lot built for Langone Medical Hospital (**Langone Project**)[19].

1. On the jurisdiction of the Sole Arbitrator

79. In the Request for Arbitration, the Claimant also invokes the Contract for the supply of an automated parking system signed by the Parties on September 19, 2014, concerning the Langone NYU Hospital project (**Langone Contract**). Indeed, in the Request for Arbitration, the Claimant refers to the NYU Langone Medical Hospital[20], and raises, albeit in a confusing manner, requests for reimbursement also in relation to this project[21].

[14]Attachment 5 (Claimant) 'Arbitration Decision of March 5, 2020', p.16.
[15]Request for Arbitration, pp. 3 and 4; Statement of Claim, p. 3.
[16]Request for Arbitration, p. 4; Statement of Claim, p. 4.
[17]Request for Arbitration, p. 4; Statement of Claim, p. 4; Reply Brief, p.5.
[18]Request for Arbitration, p. 5; Reply Brief, p. 5.
[19]Request for Arbitration, p. 6; Statement of Claim, p. 6.
[20]Request for Arbitration, p. 6.
[21]Request for Arbitration, p. 7, point B.

2. On the law applicable to the merits of the dispute

80. The Claimant requests in numerous passages of its pleadings that *"the Arbitral Court decide in equity all the facts set forth and as requested ... "*[22] and that *"the present judgment be decided in equity* [being] *a specific option provided by the rules governing arbitration and with a benefit to the person introducing the judgment"*[23].

81. The Claimant provided no comment regarding the potential application of the United Nations Convention on Contracts for the International Sale of Goods (**CISG**) to the present dispute.

3. On the legal nature of the Towson Contract

82. The Claimant argues that the Towson Contract is a **procurement contract** for the following reasons:

82.1. According to said contract, the Respondent had agreed to provide the Claimant with, not only an automatic parking system, but also the design, technical components, technology, and related technical support[24];

82.2. The price agreed in Article 3 of the contract included both the supply and technical assistance for 'installation[25];

82.3. Through the Respondent's assistance and consulting activities over the years, the Respondent assumed a subcontractor role in the relationship between the Claimant and its client Palisades[26];

83. According to the Claimant, the Respondent's involvement in connection with the provision of the components, design, technical support, and software was demonstrated in the U.S. arbitration as reported by the arbitrator in his arbitration award dated March 5, 2020[27].

4. On the peremption and prescription of the Claimant's claims

84. The Claimant believes that the construction of the car park for the Palisades company involved a series of serious problems and flaws in the technology and design of the system created by Sotefin SA and that this was confirmed by the award rendered in the US arbitration in which (i) the liability of Park Plus Inc. as the contractor was established and (ii) it was stated that it was a joint tort between Park Plus

[22]Request for Arbitration, p. 6 and p. 7; point B; Statement of Claim, pp. 36-7, point B; Reply Brief, p.6, point B; Claimant's Costs Memorandum, pp.4 and 7.
[23]Reply Brief, p. 5.
[24]Request for Arbitration, pp. 2 and 4.
[25]Request for Arbitration, p. 2; Statement of Claim, p. 2; Reply Brief, p.2.
[26] Statement of Claim, pp. 3 and 4; Reply Brief, p. 4.
[27]Reply Brief, p. 3.

Inc. and Sotefin SA because most of the deficiencies of the APS system were found by the arbitrator as problems directly attributable to Sotefin SA[28].

85. Consequently, according to it, since the damages were established in the U.S. arbitration[29], the Claimant claims that it has an interest in recourse against the subcontractor Sotefin SA[30].

86. The Claimant argues that the matter of Sotefin SA's liability arises at the moment the award was made in the U.S. arbitration and not before, because had there not been such a decision the liabilities and damages could not have been established[31].

87. The Claimant requests the Sole Arbitrator to reject the Respondent's claims about the peremption and prescription of its claims. The Claimant argues that it has always reported and promptly communicated the defects in the APS system to Sotefin SA, and that the latter's technicians were aware of these defects, as evidenced by the fact that these technicians tried to remedy them[32].

88. In the Claimant's view, Park Plus Inc's February 11, 2010, email to Sotefin SA asking Giovanni Valli for a set of instructions and on-site presence of technicians demonstrates the existence of problems with the APS system[33].

89. The Claimant does not provide any analysis of the provisions of Swiss law or the CISG applicable to the case, but requests the Sole Arbitrator to decide on the merits in equity[34].

D. The Respondent’s statement of facts and position on the merits of the dispute

90. The Respondent claims that, in accordance with the terms of the Towson Contract, Sotefin SA supplied electromechanical equipment for the construction of an automated mechanical parking facility for approximately 400 residents to be installed by Park Plus Inc for Palisades, Maryland.
The Respondent states that the assembly, installation, testing and delivery of the equipment was Park Plus Inc.'s sole responsibility, as was maintenance[35].

91. The Respondent claims that, any malfunctions of the system were due solely to failures in installation, configuration, testing, and maintenance attributable to Park Plus Inc. and that there is no element to

[28]Request for arbitration, p.3; Statement of Claim, p.3; Sur-reply Brief, p.3.
[29]Sur-reply Brief, p.5.
[30]Request for arbitration, p.4; Statement of Claim, p.4.
[31]Statement of Claim, p.4.
[32]Sur-reply Brief, p.5.
[33]Sur-reply Brief, p.4.
[34]Sur-reply Brief, pp.5-6.
[35]Response to the Request for arbitration, para.23; Response Brief, para.7

grasp that such malfunctions were attributable to defects in the components supplied by Sotefin SA[36].

92. According to the Respondent, the Claimant has not substantiated (i) what the alleged defects are, (ii) the existence of a causal link between the damages suffered by Palisades/Park Plus and the alleged unspecified defects in the components supplied by Sotefin SA, (iii) and that any defects would have been timely notified to Sotefin SA.

1. On the jurisdiction of the Sole Arbitrator

93. The Respondent argues that all references and requests regarding the Langone Project made by the Claimant should be rejected because this project is not within the jurisdiction of the Sole Arbitrator[38].

94. In its Reply to the Request for Arbitration, the Respondent alleges a lack of jurisdiction of the Sole Arbitrator in relation to the Claimant's claims concerning the Langone Project, arguing that it is a different project from the Towson Project, that in connection with that project the Parties signed a separate contract (the Langone Contract), and that this contract does not contain an arbitration clause. Accordingly, the Respondent argues that the Sole Arbitrator lacks jurisdiction to make a decision concerning this contract[39].

2. On the applicable law

95. The Respondent argues that *"the present procedure must be decided on the basis of the rules of law and certainly not equity"*[40], according to Article 35 of the Swiss Rules. Furthermore, the Respondent states that *"there is absolutely no authorization (neither implicit nor explicit) on the part of the Respondent to decide according to the rules of equity"*[41], and that the *"Arbitral Court must decide the dispute according to the rules of law chosen by the parties"*[42], who in this case have chosen Swiss law[43].

96. The Respondent also argues that the requirements for the application of the CISG are fulfilled[44], that the scope of the CISG includes the sale of goods but also the supply of goods manufactured specifically

[36]Response to the Request for arbitration, para.25.
[37]Response to the Request for arbitration, para.25; Response Brief, para.12 and 27; Sur-reply Brief, para.39.
[38]Response to the Request for arbitration, para.16-17; Response Brief, para.88; Sur-reply Brief, para.29.
[39]Response to the Request for arbitration, para.16-17.
[40]Response Brief, para.22; Sur-reply Brief, para.41.
[41]Response Brief, para.24.
[42]Response Brief, para.25.
[43]Response Brief, para.25.
[44]Response Brief, para.38.

for the principal[45], and that the Parties' intent regarding the application of the CISG will have to be established through contractual interpretation[46].

3. On the legal nature of the Towson Contract

97. The Respondent argues that the Towson Contract is a **sales contract** for the following reasons:

97.1. Pursuant to the Contract, Sotefin SA provided certain electromechanical equipment for the construction of an automated mechanical parking lot, such as trolleys, lifts, turntables, or standard equipment[47];

97.2. The assembly (including the integration of other mechanical parts not supplied by the Respondent), installation, performance of tests and delivery of the system were the sole responsibility of the Claimant on the basis of a separate contract signed with its client (Palisades)[48];

97.3. Maintenance was the Claimant's direct responsibility[49];

97.4. The difference in price between the goods supplied by the Respondent (EUR2,000,000.00) and that for the procurement contract concluded between the Claimant and its client Palisades (USD6,391,500.00) shows that the Respondent's contribution was limited to a partial supply of goods[50];

97.5. Even if there were custom-designed components for the Claimant's order, since the labor performance is limited and not predominant, the qualification of the Towson Contract does not change, thus remaining a sales contract and not a procurement contract[51].

98. The Respondent also argues that even if the Towson Contract qualified as a procurement contract, this would not make it part of the contract received by the Claimant from its client Palisades. Accordingly, the Respondent concludes that the subject matter of the Towson Contract remains the mere supply of the electromechanical components, and the Respondent is therefore a mere supplier to the Claimant for those components[52].

[45]Response Brief, para.38.
[46]Response Brief, para.40.
[47]Response to the Request for arbitration, para.23; Response Brief, paras. 5 and 30.
[48]Response to the Request for arbitration, para.23; Response Brief, para.7.
[49]Response to the Request for arbitration, para.23; Response Brief, para.7.
[50]Response Brief, para.7.
[51]Response Brief, para.32.
[52]Response Brief, para.34.

99. Finally, the Respondent argues that regardless of the qualification of the contract (sales or procurement), the rules applicable to peremption and prescription in sales contracts contain provisions identical to those applicable to peremption and prescription in procurement contracts[53].

4. On the peremption and prescription of the Claimant's claims

100. The Respondent argues that the *bill of lading* show that the supply was made through delivery in 3 batches aboard ships at the port of La-Spezia with destination Baltimore, according to Inconterms FOB terms as stated in Article 2 of the Contract[54].

101. The Respondent states that the Claimant received all of the goods on February 15, 2010 at the latest[55], and that it did not notify any defects either prior to the loading of the ship (pursuant to Article 9 of the Contract), or upon acceptance at the port of destination, or subsequent to the delivery of the APS system by Park Plus Inc. to Palisades in August 2010[56].

102. Thus, the Respondent argues that the Claimant's claims were peremptory and time-barred.

103. Regarding peremption, the Respondent argues that:

103.1. The applicable legal provisions are Article 201 CO (should Swiss domestic law be applied and the Contract be defined as a sales contract), Article 367 CO (should Swiss domestic law be applied and the Contract be defined as a procurement contract), or Article 39 CISG (should CISG be applied).

103.2. The Respondent argues that, under Article 201 CO, the buyer must immediately give notice of any defects to the seller, otherwise the item sold is deemed accepte[57]. The requirements placed by Article 201 CO are restrictive:

(i) Regarding the content of the notification, it must state that it does not accept the item sold and explicitly and accurately describe the defects in question[58].

[53]Response Brief, para.33; Sur-reply Brief, paras. 18-21.
[54]Response Brief, paras.9-10; Attachment C-2 (Respondent).
[55]Response Brief, para.11; Attachment C-3 (Respondent).
[56]Response Brief, paras.12-14.
[57]Response Brief, para.43.
[58]Response Brief, para.45.

(ii) Regarding the timing of notification, defects must be notified promptly, within a few days[59].

103.3. The Respondent claims that, if these conditions are not met, a defect claim must be considered lapsed and perishable. According to the Respondent, this would also apply to any claim for damages resulting from the defect[60].

103.4. The Respondent argues that the same conclusions would apply even if Article 367 CO were applicable[61].

103.5. The Respondent states that the CISG provisions (Articles 38 and 39) provide similarly restrictive requirements in terms of the content and timing of defect notification to the selling party. Specifically, the buyer (i) must examine the goods within the shortest possible period of time, (ii) must notify the seller of any defects of conformity within a reasonable period of time from the time he or she detected it or should have detected it (roughly 30 days for apparent defects, and a few weeks for hidden defects), and (iii) no later than 2 years from the date on which the goods were actually delivered, unless such a period is inconsistent with the duration of a contractual warranty. The notice of defect by the buyer must be precise and must accurately specify the manifestation of such defect. The Respondent argues that the 2-year time limit in CISG Article 39(2) is a period of peremption that cannot be interrupted or suspended[62].

103.6. The Respondent believes that regardless of the applicable regime (CO or CISG), the burden of proof regarding timely and complete notification of defects shall be on the buyer[63].

103.7. In the Respondent's view, the requirements of the above provisions have not been fulfilled by the Claimant: all the deadlines for notification of defects under these provisions have expired, including the longest deadline, i.e., the two-year deadline under CISG Article 39(2). Indeed, that deadline would have expired on February 15, 2012 (i.e., two years after the final delivery of the goods to Park Plus Inc. on February 15, 2010).

[59]Response Brief, para.46.
[60]Response Brief, para.47.
[61]Response Brief, paras.48-51.
[62]Response Brief, paras.52-58.
[63]Response Brief, para.51; Reply Brief, para.8.

103.8. The Respondent declares that, either way, the warranty for any defects in what was supplied by Sotefin SA was limited to the terms provided in Article 6 of the Towson Contract, i.e., 12 months from the installation of the system or 18 months from the *bill of lading*[64].

103.9. Accordingly, in the event that the CISG was applicable, the Respondent believes that the period of forfeiture should be reduced to 18 months from the last *bill of lading* (pursuant to the warranty provisions of Article 6 of the Contract), and would therefore have expired on July 17, 2011[65].

104. Regarding the prescription, the Respondent argues that due to the number of years that have elapsed between the last FOB delivery (January 17, 2010) and the start of the present arbitration proceedings (September 20, 2022), the Claimant's claims are time-barred[66].

104.1. The Respondent argues that the previous version of Article 210 applies to the present case because the statute of limitations had expired before the CO reform came into effect (January 1, 2013). Said article states that warranty actions for defects of goods are time-barred after one year upon delivery of the item to the buyer, even when the latter has discovered the defects later on, unless the seller has expressly promised the warranty for a longer time[67].

104.2. The Respondent claims that if the Contract were classified as a procurement contract, Article 371 CO would provide the same principles set out above in relation to Article 210 CO[68].

104.3. The Respondent argues that if the CISG were applicable, the prescription would be governed by Swiss law, since the Convention does not provide for any prescription period (but only for peremption)[69].

104.4. In the Respondent's view, in the event that the parties agree on a warranty period that differs from the prescription period under Swiss law, such a period supersedes and modifies the legal prescription period[70]. The Respondent believes that, in the present case, the warranty (and the statute of limitations) expired on July 17, 2011, which is 18 months from the date of the last *bill of lading*, pursuant to Article 6 of the Contract, thus before the entry into force of the new version of the CO. The limitation period is therefore 1 year. Substituting the legal prescription period of

[64]Response to the Request for arbitration, para.27.
[65]Response Brief, paras.63-67.
[66]Response Brief, para.18.
[67]Response Brief, paras.69-70.
[68]Response Brief, para.74.
[69]Response Brief, paras.76-78.
[70]Response Brief, para.75.

1 year for the longer warranty period under Article 6 of the Contract, the Respondent argues that the prescription period occurred on July 17, 2011, even if the Claimant had notified any defects[71] in due time and in the correct manner.

104.5. The Respondent believes that the time limit set forth in Article 210 CO (previous version) can be interrupted by acts interrupting the statute of limitations according to Article 135 CO, which provides for a limited number of such acts[72]. The burden of evidence to prove any acts interrupting the statute of limitations lies with the Claimant[73]. The Respondent argues that the Claimant never initiated any acts interrupting the statute of limitations under Article 135 CO before July 17, 2011, or after. The first act that potentially qualifies as interrupting the statute of limitations is the initiation of these proceedings in September 2022, which is more than 12 years after the delivery of the goods[74].

104.6. With respect to the U.S. arbitration, the Respondent asserts that it was unaware of that procedure (because not that it was never called in) and that it first became aware of the arbitration award with the Request for Arbitration[75]. Therefore, the findings of that award cannot be opposed to Sotefin SA in these proceedings. In addition, the Respondent believes that the statute of limitations does not run from the time when the alleged damage would have manifested itself with the adjudication of the arbitration award but from the time when Sotefin SA delivered the goods (January 17, 2010)[76]. Consequently, according to them, the March 5, 2020, award is totally irrelevant for the purposes of these proceedings[77].

104.7. The Respondent also argues that the 2012 accident that caused Timothy Bartholomew's death and led to the signing of the January 12, 2015 settlement agreement signed with his heirs is irrelevant, since each consequence of said accident was ultimately settled by the settlement agreement, since the agreement itself states that none of the parties involved acknowledge their responsibility in the causes of the accident[78], and since it has not been proven that the alleged and never disclosed defect in the equipment that supposedly led to the accident would be related to the alleged and never disclosed or proven defects in the components supplied by Sotefin SA[79].

[71] Response Brief, paras.80-81.
[72] Response Brief, paras.71-73.
[73] Reply Brief, para.13.
[74] Response Brief, para.82.
[75] Response to the Request for arbitration, para.26; Response Brief, para.17.
[76] Response to the Request for arbitration, para.28.
[77] Reply Brief, para.33.
[78] Response to the Request for arbitration, para.30; Response Brief, para. 15.
[79] Response Brief, para.87.

104.8. In addition, the Respondent argues that this agreement cannot be considered as an interruption of the statute of limitations because, at the time it was signed, the Claimant's claims arising from the Agreement were already time-barred. Finally, according to the Respondent, 8 years have passed since the agreement, which is too long compared to the potentially applicable statute of limitations[80].

105. In the Respondent's standpoint, the statute of limitations for the Claimant's claims has expired as well as the statute of limitations for peremption.

VI. THE PARTIES' CLAIMS

A. The Claimant

106. In the Request for Arbitration, the Claimant raised the following claims:

> *That being said and considered, the Claimant as identified and represented requests that the appointing Sole Arbitrator should, contrariis reiecis, acting ritually and according to law, answer the following questions:*
>
> *(A) Ascertain and declare liability and/or at the very least co-responsibility of Sotefin in the construction of the parking lot for issues also related to the design and technology provided by Sotefin, as reconvened by the arbitration award dated March 5, 2020 - made enforceable in May 2022 - related to the Palisades project in Towson, Maryland (USA), for all the defects that emerged and were found to the technology of the components and design pertaining to the Automatic Parking System (APS) supplied by Sotefin SA and referred to in the outcome of the aforementioned arbitration, from which Sotefin cannot be deemed to have been completely excluded for all the reasons inferred;*
>
> *(B) Order Sotefin SA to reimburse the expenses and sums by way of compensation (or for any other reason that may be deemed due in equity) already incurred and paid by Park Plus Inc, as a result of the problems that emerged in the arbitration in which it was found to be the losing party, as well as an additional sum determined by the Arbitration Court for damages suffered to the good name of Park Plus due to the flaws and defects ascertained to the technological components and design supplied by Sotefin, which contributed to causing various damages and in light of a technology that showed defects also in another project with technology and design supplied by Sotefin in the USA (Langone NYU Hospital);*
>
> *(C) In any case, condemn the Respondent to reimburse the litigation costs of the present arbitration proceedings, as it was not possible to reach a settlement and preliminary agreement between the parties, which was nevertheless attempted by Park Plus Inc.'s President Mr. Paul Bates*

[80] Response Brief, para.87.

and CEO Ronald Astrup with Sotefin's President Giovanni Valli, at least for a compensation of the damages suffered, possibly also in view of other serious problems that have arisen in other business relationships, between the same parties, in which identical technical problems and defects of the components and design of the Automatic Parking System (APS) have emerged, demonstrating (Sotefin) an unacceptable rigidity and an unwillingness to take on at least part of the responsibilities in shared projects (Attachment 8-9)

107. The Claimant did not amend her claims in the subsequently filed pleadings.

108. In the Costs Memorandum, the Claimant requested to be compensated CHF 77,123.00, including CHF 29,623.00 (equivalent to US $33,000.00) (legal fees) et CHF 47,500.00 (advance payment for arbitration costs)[81].

B. The Respondent

109. In its Response to the Request for Arbitration, the Respondent requested that the Sole Arbitrator:

- *Reject the Claimant's claims in their entirety;*
- *Order the Claimant to fully bear the costs of the arbitration including the fees of the Arbitral Court and other expenses of the Court and of the arbitration proceedings and to reimburse the Respondent for any advance payments made by the Respondent to cover the costs of the arbitration;*
- *Order the Claimant to reimburse the Respondent for all legal fees and other expenses incurred by the Respondent in connection with the arbitration proceedings.*

110. The Respondent slightly amended its claims in subsequent pleadings as follows:

- In the Response Brief:

- *Reject the Claimant's claims in their entirety;*
- *Order the Claimant (i) to fully bear the costs of the Arbitration including the fees of the Sole Arbitrator and other expenses of the Sole Arbitrator and the Arbitration Procedure; and (ii) to reimburse the Respondent for the advance payments made by the Respondent to cover the costs of the Arbitration so far as they are not returned by the Swiss Arbitration Centre;*
- *Order the Claimant to reimburse the Respondent for all legal fees and other expenses incurred by the Respondent in connection with the Arbitration Procedure.*

- In the Sur-Reply Brief:

In light of all the foregoing, given that the exchange of the allegatory pleadings and evidence in support of the respective allegations is now concluded, there can be no doubt that any and contested counterparty's compensatory claims would also be largely time-barred and peremptory. For this reason, the Respondent requests that the Sole Arbitrator:

- *Reject the Claimant's claims in their entirety;*
- *Order the Claimant (i) to fully bear the costs of the Arbitration including the fees of the Sole Arbitrator and other expenses of the Sole Arbitrator and the Arbitration Procedure; and (ii) to reimburse the Respondent for the advance payments made by the Respondent to cover the costs of the Arbitration so far as they are not returned by the Swiss Arbitration Centre;*

[81] Claimant's Costs Memorandum, p.7.

- *Order the Claimant to reimburse the Respondent for all legal fees and other expenses incurred by the Respondent in connection with the Arbitration Procedure.*

111. In the Costs Memorandum, the Respondent requested that the Claimant compensate an amount of CHF 89,191.85, including CHF 36,491.85 (advocacy fees already billed and estimated up to the award), CHF 47,500.00 (advance payment for arbitration fees, minus any reimbursement that the Swiss Arbitration Centre Secretariat should return directly to the Respondent from the portion of the advance payment made by the Respondent), and CHF 5,200.00 (as reimbursement of direct expense to the Respondent)[82].

VII. THE ARBITRATION CLAUSE

112. The **arbitration clause** is incorporated in Article 11 of the Towson Contract, and states that:

> *All disputes arising in connection with this contract shall be finally settled by the Arbitration Court of Lugano (CH) in accordance with the Lugano Arbitration Rules published by the Chamber of Commerce, Industry and Handicraft of the Canton of Ticino, Switzerland.*
> *The Swiss Law will apply[83].*

113. As indicated above, by subsequent agreement of the Parties, the language of the arbitration is Italian, the seat of the arbitration is Lugano (Switzerland), and the Arbitral Court is composed of a sole arbitrator.

VIII. THE DECISIONS OF THE SOLE ARBITRATOR

A. The suits submitted to the Sole Arbitrator

114. The first suit that the Sole Arbitrator is called upon to address concerns the lack of jurisdiction that the Respondent raised against the Sole Arbitrator with respect to the Claimant's claims related to the Langone Contract **(Section VIII(B))**.

115. The Sole Arbitrator must then decide about the law applicable to the merits of the dispute, specifically the Claimant's request that the dispute be decided in equity **(Section VIII(C))**.

116. Next, the Sole Arbitrator must decide on the legal nature of the Towson Contract **(Section VIII(D))**.

117. Subsequently, the Sole Arbitrator is called upon to respond to the Respondent's request for a declaration that the Claimant's claims are peremptory and time-barred **(Section VIII(E))**.

[82]Respondent's Costs Memorandum, para.11.
[83]Attachment C-2 (Respondent).

118. Finally, it will be up to the Sole Arbitrator to decide on the determination and distribution of the costs of the arbitration proceedings between the Parties **(Section VIII(F))**.

B. The jurisdiction of the Sole Arbitrator

119. The Claimant's claims are based on the arbitration clause contained in the Towson Contract signed by the Parties and dated April 3, 2009. The Respondent expressly indicated that the jurisdiction of the Sole Arbitrator in relation to the Towson Contract is not disputed[84].

120. On December 5, 2022, the Swiss Arbitration Centre Court ruled, pursuant to Article 5(1) of the Swiss Rules, that the arbitration should not proceed with respect to the Claimant's claims related to the Langone Contract[85].

121. Article 5(2) of the Swiss Rules provides that "[t]*he decision of the Court to proceed shall be without prejudice to the power of the arbitral court to make any decision under Article 23."*

122. The doctrine also notes that, "[t]*he Court 's decision not to proceed with a given claim [...] is not an obstacle to its reintroduction after the arbitral tribunal has been constituted, in fine with Art.6(3)"*[86].

123. Since, albeit confusingly, the Claimant reiterates its claims concerning the Langone Contract in its subsequent pleadings[87], the Sole Arbitrator is called upon to decide on its own jurisdiction over the claims arising from that contract, in accordance with the powers conferred upon it by Article 23 of the Swiss Rules, which reads as follows:

> 1. *The arbitral court shall have jurisdiction to rule on any exception concerning its jurisdiction, including those concerning the existence, validity or scope of the Arbitration Convention, and any exception according to which claims made on the basis of more than one Arbitration Convention cannot be decided jointly.*
>
> *[…]*
>
> 2. *Any exception regarding the jurisdiction of the arbitral court must be filed prior to any defense on the merits, unless the arbitral court allows a later exception in exceptional circumstances.*

[84]Response to the Request for arbitration, para.15.
[85]Letter of the Swiss Arbitration Centre to the Parties of December 5, 2022.
[86]Tobias Zuberbuhler, Klaus Muller, Philipp Habegger, Swiss RULES OF INTERNATIONAL ARBITRATION: COMMENTARY, Schulthess Juristische Medien AG, 2022, p. 73.
[87]Statement of Claim, p.6 and 7, point B.

124. The Sole Arbitrator upholds the lack of jurisdiction raised by the Respondent with respect to the Claimant's claims arising from the Langone Contract for the following reasons.

125. First, the Langone Contract does not contain an arbitration clause, but rather a jurisdiction clause (Article 20) that grants exclusive jurisdiction to the state courts in Lugano, Switzerland, for disputes arising from that contract:

> *20. Law - Competent Jurisdiction*
> *Any dispute, controversy or claim arising with respect to, or in connection with, this Contract, including the validity, invalidity, breach, termination or interpretation thereof, shall be governed by Swiss law to the exclusion of its rules of conflict of laws. The exclusive jurisdiction shall be the courts of Lugano, Switzerland.*

126. Second, it is true, as the Respondent argues, that the Towson Contract and the Langone Contract correspond to two completely different projects, despite the fact that the signatory parties are identical:

126.1. The Towson Contract, dated **April 3, 2009**, governs the relationship between the Parties with respect to the Towson project and has as its subject matter the *"Automatic Parking System for a capacity of 400 cars"* for the construction for the Palisades company of an automatic parking lot in Towson, Maryland.

126.2. The Langone Contract, dated **September 19, 2014**, governs the relationship between the Parties regarding the NYU Langone Medical Center project and has as its subject matter the *"Supply of an Automatic Vehicle Storage System (AVS) for a capacity of 123 vehicles to be installed in 34th street & FDR Drive, New York NY 10016 USA".*

126.3. Moreover, the Langone Contract, which is the most recent of the two contracts, contains no reference to the Towson Contract.

126.4. Finally, the time elapsed between the signing dates of the two contracts (almost 5 1/2 years) clearly shows that the two projects are disconnected from each other.

127. In light of the above, it is clear that the two contracts do not constitute a single economic transaction and that it was not the Parties' intention to submit all of the Parties' claims arising from the two contracts. Had this been the Parties' intention, they would have at least included two identical (or compatible) arbitration clauses in the two contracts.

128. Finally, the Sole Arbitrator notes that the Respondent argued the Sole Arbitrator's lack of jurisdiction in its first brief filed in these arbitration proceedings, before submitting its defenses on the merits, thus complying with the terms of Article 23(3) of the Swiss Rules.

129. In conclusion, **the Sole Arbitrator upholds the lack of jurisdiction raised by the Respondent and declares himself without jurisdiction over the Claimant's claims arising from the Langone Contract.**

130. The Sole Arbitrator confirms his jurisdiction over the Claimant's claims arising from the Towson Contract, also in light of the absence of any objection in this regard.

C. The applicable law

131. Article 35 of the Swiss Rules reads as follows:

> *1. The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such choice, by applying the rules of law with which the dispute has the closest connection.*
> *2. The arbitral tribunal shall decide according to equity or as amiable compositeur only if the parties have explicitly authorized it to do so.*
> *3. In any case, the arbitral tribunal shall decide the dispute in accordance with the provisions of the Contract and shall take into account the commercial usages applicable to it.*

132. Article 11 of the Towson Contract provides that *"The Swiss Law will apply".*

133. As has been noted by the doctrine, Article 35(1) of the Swiss Rules (as well as Swiss law in Article 187(1) PILA) recognizes the priority of the parties' choice of law over the merits of a dispute[88].

134. Moreover, under Article 35(2) of the Swiss Rules, an arbitral tribunal may decide according to equity only if the parties have explicitly authorized it to do so[89].

135. The Sole Arbitrator believes that, in the present proceedings, the Parties did not authorize said Sole Arbitrator to decide the dispute according to equity, as an exception to the choice of law included in the Towson Contract, namely Swiss law. In fact, the Respondent has not only never agreed to the Claimant's request to resolve the dispute according to equity, but, as mentioned above, has punctually rejected it by insisting that the law chosen by the Parties in the Towson Contract, i.e., Swiss law, is

[88]Tobias Zuberbuhler, Klaus Muller, Philipp Habegger, SWISS RULES OF INTERNATIONAL ARBITRATION: COMMENTARY, Schulthess Juristische Medien AG, 2022, p. 468.
[89]Tobias Zuberbuhler, Klaus Muller, Philipp Habegger, SWISS RULES OF INTERNATIONAL ARBITRATION: COMMENTARY, Schulthess Juristische Medien AG, 2022, p. 476.

applicable to the present dispute and that the Sole Arbitrator is bound to resolve the dispute according to that law and not according to equity.

136. Consequently, in the absence of an agreement between the Parties, the Sole Arbitrator decides that he cannot resolve this dispute in an equitable manner, and that he will have to comply with the choice of the Parties regarding the applicable law "*Swiss* Law", a choice explicitly expressed in Article 11 of the Towson Contract.

137. The Sole Arbitrator also states that article 16 of the Contract provides that *"Trade custom and/or trade usage is superseded by this Agreement and shall not be applicable in the interpretation of this Agreement"*. Therefore, there is no doubt that the Parties' intention was that the Contract should be interpreted exclusively according to Swiss law.

138. With regard to the application of the CISG to the present dispute, Article 1(1) of the Convention states that it "shall apply to contracts for the sale of goods between parties having their places of business in different States: (a) when these States are Contracting States"90. The Sole Arbitrator notes that both Parties have their places of business in different states that are contracting to the CISG (United States of America and Switzerland).

139. Furthermore, arbitration jurisprudence agrees that the reference to Swiss law in a contract as the law applicable to it should be interpreted as including Swiss law and all treaties and conventions applicable in Switzerland, including the CISG, unless a different conclusion can be reached on the basis of the parties' willful intention[91]. The parties' desire to exclude the application of the CISG must be clearly manifested and the mere indication in the contract that Swiss national law is applicable to the issues inherent in the contract itself is not sufficient to exclude the CISG[92].

140. The doctrine identifies as an example of the exclusion of the application of the CISG the case in which the parties have decided to submit a contract to Swiss law, when neither the parties nor the contract have any connection with Switzerland*: "Dans ce cas, il est improbable que les parties aient eu l'intention de soumettre leurs relations à la CVIM, et il conviendrait d'appliquer le Code des obligations."*[93] In the present case, the dispute's connection to Switzerland is evident since Sotefin SA is a company under Swiss law.

141. Moreover, the Sole Arbitrator believes that there is no element (and the Parties have not identified

[90]Attachment DC-2 (Respondent), para.10.
[91]Attachment DC-4 (Respondent), p.2; Attachment DC-5 (Respondent), pp.1 and 2.
[92]Attachment DC-2 (Respondent), para.12.
[93]Attachment DC-2 (Respondent), para.12.

any) that would lead him to interpret the reference to *"Swiss Law"* in the Contract as referring only to Swiss national law, thus excluding the CISG.

142. Accordingly, **the Sole Arbitrator rules that the law applicable to the merits of this dispute is Swiss law, including the CISG.** The latter will apply to this dispute if the Sole Arbitrator decides that the Towson Contract is an international sales contract.

D. The legal nature of the contract

143. The Parties disagree on the nature of the Towson Contract. On the one hand, the Claimant believes that the Towson Contract is a procurement contract, while the Respondent argues that it is a sales contract. The Sole Arbitrator is therefore called upon to define the nature of the Contract, before discussing the merits of the Parties' claims.

1. The applicable legal principles

144. Whenever a dispute over the legal nature of a contract (sales or procurement) and, consequently, the applicability of the CISG, is brought before the arbitrator, the arbitrator is called upon to decide whether the contract in question can be defined as an international sales contract within the meaning of the CISG.

145. Article 3 CISG comes to the aid of the arbitrator in answering this question. Pursuant to that article,

> *1. Contracts for the supply of goods to be manufactured or produced are considered sales, unless the party ordering them is to supply an essential part of the material necessary for such manufacture or production.*
> ***2. This Convention shall not apply to contracts in which the preponderance of the obligation of the party supplying the goods consists in a supply of labor or other services.*** (bold added by the Sole Arbitrator)

146. Article 3.2 CISG discusses mixed contracts that involve the provision of labor or other services by the seller in addition to the provision of sales. Such contracts are fully governed by the CISG provided that the labor or other services do not constitute a preponderant part of the seller's obligations[94].

147. The CISG is applicable to a mixed contract only if the sale of goods and services constitute a single contract[95]. In the case of two separate contracts, the CISG will be applied to the sales contract while domestic law will apply to the service contract[96]:

[94]Attachment DC-3 (Respondent), para. 4. Please see Ingeborg Schwenzer and Ulrich G. Schroeter, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP , 2022, p. 81, para. 11.
[95]Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 81, para. 12.
[96]Attachment CD-3, para. 5. Please see Ingeborg Schwenzer and Ulrich G. Schroeter, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP , 2022, p. 83, para. 16.s.

> *... a comparison between the obligations related to the goods and the obligations of labour or services is needed to see whether the Convention applies. The Convention presupposes a single unified contract, but it must be analyzed first whether the different obligations are indeed part of a single, albeit mixed contract. This is an issue of interpretation. If there is one contract for the supply of goods and services, the Convention applies to the contract as a whole (Article 3(2) CISG). However, if the parties intended to conclude two separate contracts, the Convention would be applicable to the sales contract, so long as the other requirements for its application were met*[97].

148. However, the spirit of the CISG is that, in case of doubt, the convention applies[98].

149. The decisive criterion for deciding whether the obligations agreed upon by the parties form a single contract or should rather be considered as separate agreements is the parties' will, which must be determined under Article 8 CISG and not by domestic law[99]. Article 8 CISG provides that:

> *1. For the purposes of this Convention, the directions and other actions of a party shall be construed in accordance with that party's intention when the other party knew or could not have been unaware of that intention.*
> *2. If the preceding paragraph is not applicable, the indications and other actions of a party shall be interpreted according to the meaning that a reasonable person, of the same quality as the other party, in the same situation, would have given them.*
> *3. In order to determine the intention of a party or what a reasonable person would have intended, the relevant circumstances shall be taken into account, in particular any negotiations that may have taken place between the parties, practices established between them, customs and any subsequent conduct of the parties*

150. In the event that it is decided that the obligations relating to the sale of goods and those relating to services form a single contract, it must be decided whether the obligations relating to services represent a preponderant or non-preponderant part of the obligations relating to the sale of goods.

151. The expression "preponderant party" found in Article 3(2) CISG (as well as all the provisions of the Convention) should not be interpreted according to national criteria, but autonomously, in accordance with the provisions of Article 7(1) CISG[100]. The expression "preponderant party" means something different from the expression "essential party" used.

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[97] CISG-AC Opinion no. 4, Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG), 24 October 2004, para. 3.1. Rapporteur: Professor Pilar Perales Viscasillas, Universidad Carlos III de Madrid, para. 1.2, CISG Advisory Council Opinion No 0 4 - CISG-AC (cisgac.com).
[98] CISG-AC Opinion no. 4, Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG), 24 October 2004, para. I.2. Rapporteur: Professor Pilar Perales Viscasillas, Universidad Carlos III de Madrid, para. 1.2, CISG Advisory Council Opinion No 0 4 - CISG-AC (cisgac.com).
[99] Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 81, para. 12.
[100] CISG-AC Opinion no. 4, Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG), 24 October 2004, para. 1.6. Rapporteur: Professor Pilar Perales Viscasillas, Universidad Carlos III de Madrid, para. 1.2, available at: CISG Advisory Council Opinion No 04 - CISG-AC (cisgac.com).

used in the first paragraph of Article 3 CISG and is easier to observe, **simply having to make a comparison of the economic relevance of the services**[101].

152. According to part of the doctrine, services whose value exceeds 50% of the value of the sale of goods are predominant. For other authors, services are predominant only if their value significantly exceeds this 50% threshold1[102]. In any case, the value of services should be compared to the value of the entire contract, and not only to the price related to the sale of goods[103].
Based on this reasoning,

> *several courts stated that a contract for the delivery of goods providing also for the "seller's" obligation to install the goods is generally covered by the Convention, since the installation obligation is generally minor in value compared to the more traditional "sale" obligations. Similarly, a contract for the delivery of goods obliging the seller to also assemble the goods does not generally fall under the article 3(2) exclusion.* ***The same holds true for contracts for the delivery of goods that also contain an obligation to train personnel, to provide maintenance services, or to design the goods, if these additional obligations are only ancillary to the primary obligation to delivery***[104].
> (bold added by the Sole Arbitrator)

153. Among the relevant factors that arbitration courts and state courts have considered in interpreting the will of the parties to define the legal quality of a contract are: the name and the content of the contract, the price structure, and the weight given by the parties to the various obligations under the contract[105].

154. Finally, it is widely recognized that the party on whom the burden of proof of the preponderant nature of the obligations relating to services over that of the obligations relating to the sale of goods rests is the party claiming that the contract in question is not an international sale contract[106].

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[101] Sergio Maria Carbone and Marco Lopez de Gonzalo, "Article 3", *in* Cesare Massimo Bianca (ed.), CONVENZIONE DI VIENNA SUI CONTRATTI DI VENDITA INTERNAZIONALE DI BENI MOBILI, CEDAM, 1992, pp. 8-9. Please see, Attachment DC-3 (Respondent), para. 4. Please see the Note to Arbitral Award CCI no. 14241 of 2007, shown in Jean-Jacques Arnaldez, Yves Derains, and Dominique Hascher, COLLECTION OF ICC ARBITRAL AWARDS, VOL. VI, Wolters Kluwer, 2013, p. 927.
[102] Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 85, para. 20.
[103] Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 85, para. 20.
[104] UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, p. 20, para. 4, UNCITRAL Digest of Case Law on the UN Convention on Contracts for the International Sale of Goods.
[105] CISG-AC Opinion no. 4, Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG), 24 October 2004, para. 3.4. Rapporteur: Professor Pilar Perales Viscasillas, Universidad Carlos III de Madrid, para. 1.2, CISG Advisory Council Opinion No 04- CISG-AC (cisgac.com).
[106] Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 86, para. 23.

2. The application of legal principles to the present case

155. As mentioned above, the subject of the Towson Contract is the provision by Sotefin SA of an automated parking system (APS) for 400 cars and 5 parking units at the "Palisades of Towson" residential complex in Towson, Maryland.

156. Article 2 of the Contract sets out a list of mechanical and electrical components that Sotefin SA agreed to supply to Park Plus Inc.

157. Article 4 of the Contract provides for a number of items that were outside the scope of the contract. As the Respondent correctly points out, *"assembly (including the integration of other mechanical parts not supplied by the Respondent, such as the four main doors for vehicle access to the metal entry/exit areas as well as the main electrical distribution panel of the system ...), installation, testing and commissioning and delivery of the complete system as well as the subsequent routine maintenance and emergency service for system failure"*[107] were outside the scope of Sotefin SA's obligations under the Towson Contract.

158. In addition to the provision of the system components under Article 2, Sotefin SA was also required to:

158.1. Provide all components according to Inconterms FOB terms within 9 months of receipt of the advance payment from Park Plus Inc. (Article 5 of the Contract);

158.2. Promptly repair or replace at no cost any missing or defective parts for Park Plus Inc. during the warranty period. This warranty period covered up to 12 months from the installation of the system or 18 from the bill of lading (Articles 6 and 12 of the Contract).

However, the Contract limited Sotefin SA's liability and provided that it would not be liable if the goods were damaged due to improper movement, storage, and/or installation. In addition, parts supplied or replaced by Sotefin SA outside the warranty period remain the responsibility of Park Plus Inc. without any extension of the contractual warranty (Article 12 of the Contract).

158.3. Provide Park Plus Inc. with all the drawings, technical information necessary for on-site assembly, assembly and installation of the system, including operational tests, and a maintenance manual (Article 7(1) and (2) of the Contract);

[107] Response Brief, para.7; Response to the request for arbitration, para.23.

158.4. Provide, upon Park Plus Inc.'s request, *"Supervisor assistance"* according to the conditions stipulated in Article 3 of the Contract, i.e. against payment by Park Plus Inc. of EUR 4,000.00 for 7 days of assistance (Article 7(3) of the Contract);

158.5. Accept all risks and insure the system according to Incoterms FOB Italian port terms in good conditions (Article 10 of the Contract);

158.6. Give immediate notice in writing if delays are incurred, reduce such delays by all reasonable means, and bear all costs associated with such delays (Article 10 of the Contract);

158.7. Wrap the goods properly to make them suitable for transportation abroad (Article 13 of the Contract).

159. The structure of the contractual price in Article 3 of the Contract that separates the price for the supply of components (EUR 2,000,000.00) from the price for installation assistance (EUR 4,000.00 for 7 days) might suggest that, at the time of signing the Contract, the Parties intended to consider the obligations related to the sale of goods separate from those related to technical assistance service. However, there is nothing else in the Contract that would lead the Sole Arbitrator to believe that that was the real intention of the Parties, and the Claimant brings no evidence to support that position.

160. On the contrary, the separation of price items makes it clear that the obligations relating to the sale of goods far outweigh those relating to the sale of services (in this case installation assistance) pursuant to Article 3(2) CISG.

161. Furthermore, the Sole Arbitrator agrees with the Respondent's position that, although the Contract provided that there were custom-designed components for this job order, the labor performance is limited with respect to the obligations related to the sale of the goods. The Claimant has not demonstrated otherwise, nor has it contributed any evidence or documents proving that the Parties intended to qualify the Towson Contract as a procurement contract.

162. Based on the principles and facts set forth, **the Sole Arbitrator decides that the Towson Contract is an international sale contract, and that the CISG applies to the entirety of the Contract.**

E. The prescription and peremption of the Claimant's claims

163. The Sole Arbitrator ruled *supra* that the Towson Contract is an international sales contract, and that the CISG is applicable to the entire Contract.

164. As correctly stated by the Respondent, aspects not regulated by the CISG remain subject to the law that is applicable under the rules of private international law, i.e., in this case Swiss law[108].

165. The CISG regulates the terms of peremption (Articles 39 et seq.) but does not contain any provisions regarding the statute of limitations of the buyer's claims[109]. Consequently, the Respondent's claim about the statute of limitations of the Claimant's claims will have to be analyzed under Article 210 CO[110].

1. On the peremption of the Claimant's claims

166. Under Article 9 of the Contract, Park Plus Inc. could have requested that the goods be examined before shipment by its representative or by a specialized company such as Bureau Veritas. It is clear that Park Plus decided not to benefit from the terms of Article 9 of the Contract, and no evidence to the contrary is provided by the Claimant.

167. Moreover, **Article 38 CISG** provides an obligation for the buyer to verify the goods upon delivery:

> *1. The buyer shall examine the goods or cause them to be examined within the shortest possible time, having regard to the circumstances.*
> *2. If the contract involves transportation of goods, the examination may be deferred until they arrive at their destination.*
> *3. Goods are diverted or re-dispatched by the buyer without the buyer having had a reasonable opportunity to examine them, and if, at the time of the conclusion of the contract, the seller knew or should have known of the possibility of such diversion or redispatch, the examination may be deferred until the arrival of the goods at their new destination.*

168. The dates on the *bills of landing* show that three cargoes departed from the port of La Spezia and reached the United States on July 13, 2009, January 8, 2010, and January 17, 2010[111], respectively.

169. Park Plus Inc. confirmed delivery of the cargoes on February 11, 2010 by email directed to Sotefin SA, in which Park Plus Inc. also indicated that it had begun installation of the system that same week[112].

[108]Attachment DC-2 (Respondent), para.10.
[109]Attachment DC-6 (Respondent), para.22; Attachment DC-8 (Respondent), para.3; Attachment DC-12 (Respondent), para.17.
[110]Attachment DC-12 (Respondent), para.18.
[111]Attachment C-2 (Respondent).
[112]Attachment C-3 (Respondent).

170. According to the Sole Arbitrator, it is unlikely that Park Plus Inc. a company with significant experience, had initiated the installation of the system without examining the goods received from Sotefin SA. Consequently, it is plausible that such an examination was carried out by Park Plus Inc. once the delivery of the goods to the port of destination was finalized in January/February 2010.

171. As will be discussed in more detail below, Park Plus Inc. failed to report any defect in the goods shipped by Sotefin SA within the time limits established by the applicable legislative and contractual provisions.

172. The Sole Arbitrator is responsible for verifying whether, as claimed by the Respondent, the Claimant's claims are peremptory.

173. Peremption is governed by **Article 39 CISG**, which reads as follows:

> *I. The buyer shall forfeit his right to invoke a defect in conformity if he does not report it to the seller, specifying the nature of such defect in conformity, within a reasonable time from the time when he discovered it or should have discovered it.*
> *2. In all cases the buyer forfeits the right to invoke a defect in conformity if he does not report it within a period of two years, at the latest, from the date on which the goods were actually delivered to him, unless this deadline is incompatible with the duration of a contractual warranty.*

174. The requirements of Article 39 are as follows:

(i) The buyer must notify any defects in conformity. As pointed out by the doctrine, any notification of defects in conformity to the seller is important to the seller for the following reasons. First, such notification allows the seller to remedy the defect in conformity by delivering the missing goods, to repair or otherwise reduce the buyer's loss. Second, the notification of defect in conformity is also intended to give the seller an opportunity to prepare for possible negotiation or dispute with the buyer and to take necessary measures in this regard such as acquiring evidence. Third, the seller may need to do so in order to himself prepare a claim against his supplier. Fourth, the intent is to establish certainty about the status of transactions and when the seller can consider them closed. If the buyer shows no dissatisfaction with the goods and continues to sell or use them, the seller may reasonably assume that the buyer has accepted the goods[113].

[113]Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 853, para. 4, and p. 871, para. 6.

(ii) (The notification must state the buyer's intention to dispute the goods and specify the nature of the defect in conformity. Notifications worded in entirely general terms or general expressions of dissatisfaction are generally insufficient for the purposes of CISG[114]. Similarly, a mere order of new goods cannot be construed as notification of non-conformity of the delivered goods, even if the buyer reports the occurrence of damage[115].

(iii) Notification must be given within a reasonable time from the time when the defect was discovered or should have been discovered. Although there is no precise definition of the term "reasonable time" and the nature of "reasonable" must be evaluated on a case-by-case basis, courts in several jurisdictions seem to agree that a period of about one month could meet the reasonableness standard[116].

(iv) This period is extended to 2 years if the defect in conformity was not detectable after a thorough examination and the buyer did not subsequently establish it, nor could have done so. This period begins to run from the actual (i.e., physical) delivery of the goods and, being a period of peremption and not of prescription, it cannot be suspended or interrupted[117].

(v) The two-year period in Article 39(2) does not apply if it would be inconsistent with any term of a contractual warranty. Accordingly, this term may be extended or reduced[118].

175. If the buyer fails to report or fails to properly report the defect in conformity under Article 39 CISG, the buyer loses the right to enforce the defect in conformity of the goods, or the goods are deemed to be approved[119]. The buyer then loses all remedies to which he or she would be entitled under the CISG[120].

176. The CISG provides two main exceptions to the application of the terms of Article 39[121]:

(i) Article 40 CISG states that failure to notify has no legal consequences if the defect in conformity is based on facts of which the seller was aware or could not have been unaware and which he did not communicate to the buyer.

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[114]Attachment DC-8 (Respondent), para.5.
[115]Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 853, para. 4, and p. 871, para. 6.
[116]Attachment DC-6 (Respondent), para.21 and note no. 68. Please see Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p.879, para.17.
[117]Attachment DC-6, para.22. Please see Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 882, paras. 24-25.
[118]Attachment DC-8 (Respondent), para.7.
[119]Attachment DC-6 (Respondent), para.21.
[120]Attachment DC-8 (Respondent), para.4. Please see Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 886, para. 32.
[121]Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 887, paras. 33-34.

The two-year period in Article 39(2) may not apply in such case[122];

(ii) Article 44 CISG states that the buyer retains the right to claim price reduction and damages if he has a reasonable excuse for failing to notify a defect in conformity. However, even if the buyer demonstrates a reasonable excuse, failure to notify completely excludes the right to require the supply of replacement goods or repair, the right to terminate the contract, as well as the right to compensation for lost profit. In contrast to Article 40, the 2-year period in Article 39(2) will apply in cases where Article 44 is invoked[123].

177. The burden of proving that the notice of non-conformity of the goods was sent within the period provided for in Article 39 CISG[124], or that there is a reasonable excuse justifying the lack of notice of non-conformity is on the buyer[125].

178. The Sole Arbitrator agrees with the Respondent that there is no evidence to show that Park Plus Inc. sent Sotefin SA a notification under Article 39 CISG specifying the nature of alleged defects in the goods supplied within the time limits established by the CISG.

179. Specifically, in fact, the "reasonable" time limit under Article 39(1) CISG has obviously elapsed.

180. The same can be said of the time limit provided for in Article 39(2) CISG. As indicated supra, this period begins to run from the date of physical delivery of the goods. It is undisputed to consider, as the Respondent[126] argues, that the actual and material delivery of the goods occurred on approximately February 15, 2010, i.e., upon delivery of the last batch of materials supplied by Sotefin SA[127] to Park Plus Inc. Park Plus Inc. itself indicated in an email dated February 11, 2010 that *"The last two containers have arrived and we are scheduled to receive them on Monday,"* i.e., February 15, 2010[128]. The Claimant does not dispute that date as the final delivery date of the goods.

[122]Attachment DC-8 (Respondent), para.6.
[123]Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 931, para. 1.
[124]Attachment DC-6, p.5, para.21.
[125]Ingeborg Schwenzer, COMMENTARY ON THE UN CONVENTION OF THE INTERNATIONAL SALE OF GOODS (CISG), OUP, 2022, p. 938, para. 20.
[126]Response Brief, para.65.
[127]Attachment C-2 (Respondent).
[128]Attachment C-3 (Respondent).

181. Accordingly, pursuant to Article 39(2) CISG, Park Plus Inc. should have notified Sotefin SA of the non-conformity of the goods supplied to it by 15 February 2012 at the latest.

182. In reality, however, Article 39(2) (last sentence) provides that the 2-year period can be contractually modified by the parties. Consequently, as correctly stated by the Respondent[129], the 2-year term provided for by Article 39(2) CISG and, in this case, reduced to 18 months due to Article 6 of the Contract, which provides as follows:

> ***Supplier warrants that all Components, under normal use and operation, shall be free of defects in design, materials, and workmanship for a period of twelve (12) months after installation of the System, or eighteen (18) months after the Bill Of Lading, whichever date occurs first.*** *Supplier shall promptly repair or replace, without cost to Customer (including all costs of labor and travel for replacement), any Components found to be defective during the warranty period. If Supplier fails to promptly repair or replace the defective Components, Customer may repair or replace the Components and hold Supplier responsible for all reasonable costs thereof including labor and freight. Supplier shall assign to Customer any rights it may have arising out of the warranties given to it by any manufacturer of materials or component parts purchased by Supplier and sold to Customer hereunder*. (boldface added by Sole Arbitrator)

183. Since the last *bill of lading* is dated 17 January 2010, Park Plus Inc. should have notified any non-conformity defects of the goods supplied by Sotefin SA by 17 July 2011, in accordance with the deadline established by article 39(2) CISG reduced by the deadline provided for in article 6 of the Contract.

184. The Sole Arbitrator also considers that none of the exceptions to the application of Article 39 CISG listed above are valid in the present case. In particular, the Claimant (i) does not prove that Sotefin SA
acted in bad faith (Article 40 CISG) and (ii) does not even demonstrate the existence of a reasonable excuse for the failure to notify the non-conformity defect (Article 44 CISG). In any case, in the latter case, Park Plus Inc. should have invoked Article 44 CISG in the two years following the actual delivery of the goods. The Claimant does not adduce any evidence in this regard.

185. The Claimant merely asserts that *"the issues that arose, reported by Park Plus and which Sotefin somehow tried to remedy, by sending Sotefin technicians, were within their full knowledge and were always promptly communicated by Park Plus and somehow tried to be repaired by Sotefin."*[130] The Sole Arbitrator agrees with the Respondent that this statement by the Claimant is not supported by evidence or documentation and does not prove in any way that Park Plus Inc. complied with the requirements of Article 39 CISG.

[129]Response Brief, para.66.
[130]Reply Brief, p.5.

186. Moreover, as mentioned above, the 2-year term of Article 39(2) cannot be suspended or interrupted. Consequently, none of the circumstances referred to by the Claimant (particularly the U.S. arbitration and relative award of March 5, 2020, or even the settlement agreement of January 12, 2015) has an impact on the expiration of the term.

187. Finally, the Claimant states in its pleadings that *"Evidence that accurate and relevant communications of malfunctions and defects in the system called "APS," will also be provided in the course of the lawsuit ... "*[131]. The Sole Arbitrator notes that the Parties had agreed to divide the proceedings into two phases, with the first phase devoted to the suits raised by the Respondent about the peremption and statute of limitations of the Claimant's claims. The Parties had ample opportunity to develop their positions in this regard and to provide all relevant documentation, through the exchange of two briefs for each Party, as well as the Request for Arbitration and the Response to the Request. The Sole Arbitrator therefore concludes that, if the Claimant had been in possession of documents or communications proving notification to Sotefin SA of any defect in conformity within the timeframe required by applicable law and the Contract, it should have introduced them in the course of these proceedings as a source of evidence. However, the Claimant did not provide any.

188. **The Sole Arbitrator, therefore, grants the Respondent's claim and declares the Claimant's claims peremptory under Article 39 CISG.**

2. On the prescription of the Claimant's claims

189. The Sole Arbitrator is also called upon to respond to the Respondent's request that the Claimant's claims be deemed time-barred.

190. The institution of prescription is not regulated by the CISG. As indicated supra, whenever a matter is not regulated by the Convention, Swiss domestic law applies. Accordingly, since the Contract is a sales contract, Article 210 CO will apply to see whether the Claimant's claims are time-barred.

191. The Sole Arbitrator believes that, as argued by Respondent[132], in accordance with transitional law, the previous version of Article 210 CO should be applied, because, as will be explained in the following paragraphs, the statute of limitations for the Claimant's claims expired before January 1, 2013, the effective date of the CO reform. In its previous version, Article 210 CO provides that

[131]Reply Brief, p.4.
[132]Response Brief, paras.69-70; Attachment DC-11 (Respondent), para.40a.

> *1. Warranty actions for defects in the item are barred after one year from delivery of the item to the buyer, even if the latter did not discover the defects until later, unless the seller has expressly promised the warranty for a longer time.*
> *[..]*
> *2. The buyer's objections for defects in the item continue to exist when, within one year of delivery, the required notification has been made to the seller.*
> *3. The seller cannot invoke the one-year limitation period if it is proven that he deliberately misled the buyer.*

192. The one-year prescription period provided for in Article 210(1) CO can be contractually modified by the Parties who can agree on a longer or shorter prescription period[133]. In the present case, the Parties have contractually agreed on a prescription period longer than the legal prescription period. In fact, as indicated above, article 6 of the Contract provides that *"Supplier warrants that all Components, under normal use and operation, shall be free of defects in design, materials, and workmanship for a period of twelve (12) months after installation of the System, or* ***eighteen (18) months after the Bill Of Lading****, whichever date occurs first".* Since Article 6 of the Contract provides for a longer warranty period than the legal prescription period of Article 210 CO, the Sole Arbitrator believes that the term provided for in Article 6 of the Contract must also be interpreted as an expression of the Parties' desire to set a well-defined prescription period (and not just peremption)[134].

193. Since the last *bill of lading* is dated 17 January 2010, the warranty/prescription period provided for by the Contract therefore expired on 17 July 2011.

194. The Sole Arbitrator agrees with the Respondent's position on the fact that the Claimant has not produced any evidence or element demonstrating that there are acts suspending or interrupting the prescription period of 17 July 2011, pursuant to articles 134 and 135 CO[135]. In fact:

(i) Regarding the email dated February 1, 2010 in which Park Plus Inc. requests additional information from Sotefin SA for the APS system installation process, if notification of defects is not sufficient to interrupt the prescription period according to Article 210 CO, it is not clear how a simple request for information could be considered as such.
As mentioned above, the Claimant states in its pleadings that *"The demonstration that the precise and relevant communications of malfunctions and defects of the system called "APS"*

[133]Attachment DC-12 (Respondent), paras.7-9.
[134]Attachment DC-12 (Respondent), para.9.
[135]Response Brief, para.82.

will also be provided during the proceedings..."[136]. Beyond of the fact that, as explained above, such communications, if existing, should have been produced with the Parties' briefs already submitted, a notification of defect in conformity cannot in any case be considered as an act suspending or interrupting the statute of limitations[137].

The Claimant also produces a series of emails exchanged between the Parties in the context of the Langone Project. As explained above, this project does not fall within the scope of the Contract and the Sole Arbitrator has no jurisdiction to decide on the related requests and claims[138].

(ii) Furthermore, it is indicated in the award rendered in the US arbitration that, following the death of a Palisades technician during the installation process of the APS system supplied by Sotefin SA to Park Plus Inc., the latter initiated a legal action against Sotefin SA for compensation in the 139 *Circuit Court* of Baltimore County[139]. No indication is given regarding the date of the legal action brought by Park Plus against Sotefin SA and, in any case, it appears that Sotefin SA was never notified[140]. However, considering that the fatal accident occurred on February 13, 2014 and that the legal action brought by Park Plus Inc. against Sotefin SA was initiated after the date of the accident, there is no doubt that the action brought by Park Plus Inc. v. Sotefin SA cannot be considered as an act interrupting the statute of limitations, because in February 2014 the statute of limitations of July 17, 2011 had already expired.

(iii) In addition, the settlement agreement of January 12, 2015 cannot be considered as suspending or interrupting the prescription period since the agreement was signed 3 and a half years after the expiry of the prescription period.

(iv) Furthermore, US arbitration cannot be considered as interrupting the statute of limitations. Sotefin SA does not appear as a party involved in this procedure and claims to have become aware of the award upon receipt of the Request for Arbitration in this procedure. The Claimant does not adduce any evidence to demonstrate the contrary.

Furthermore, contrary to what was stated by the Claimant[141], the award in the US arbitration does not in any way demonstrate the existence of any joint liability between Sotefin SA and Park Plus Inc. towards Palisades. In fact, even though Sotefin SA is mentioned several times in the award in the sections where the arbitrator reports the facts as developed by Park Plus

[136]Reply Brief, p.4.
[137]Attachment DC-12 (Respondent), para.5.
[138]Attachments 7-8 second part (Claimant).
[139]Attachment 5 (Claimant) 'Arbitration Decision of March 5 2020', p.27, note no.28.
[140]Attachment 5 (Claimant) 'Arbitration Decision of March 5 2020', p.27, note no.28.
[141]Request for arbitration, pp.3 and 4; Statement of Claim, p.3.

Inc. in that procedure, or even in those in which the arbitrator refers to the settlement agreement of January 12, 2015[142], the arbitrator does not comment at all on the Sotefin SA's liability.

The Sole Arbitrator therefore agrees with the position of the Respondent and finds that none of the decisions made by the arbitrator in the US arbitration have any effect on Sotefin SA. In any case, the award in that arbitration was rendered on March 5, 2020, and the procedure had presumably begun in 2018-2019, well after the prescription period had expired. Contrary to what was asserted by the Claimant[143], the prescription period does not begin to run from the decision contained in the US arbitration award, but, in accordance with Article 210 CO and Article 6 of the Contract, this period begins to run from the delivery of the goods to Park Plus Inc.

(v) Finally, as argued by the Respondent, the only act that can potentially be qualified as interrupting the prescription period is the start of this arbitration procedure, which however was activated by the Claimant only in the month of September 2022, well after the expiry of the applicable prescription period.

195. Finally, the Claimant has not produced any evidence that could lead the Sole Arbitrator to believe that Sotefin SA acted in bad faith towards Park Plus Inc. pursuant to Article 210(3) CO.

196. **The Sole Arbitrator, therefore, accepts the Respondent's request and declares the Claimant's requests barred pursuant to Article 210 CO.**

F. The determination of costs

1. The Parties' advance payments as security for costs

197. On October 25, 2022, the Secretariat of the Swiss Arbitration Center confirmed having received, on October 24, 2022, CHF 6,000.00 from the Claimant as a non-refundable registration fee pursuant to Article 3(3)(i) of the Swiss Rules.

198. On December 5, 2022, pursuant to section 1.4 of Appendix B of the Swiss Rules, the Secretariat of the Swiss Arbitration Center asked the Claimant to make a provisional advance payment amounting to CHF 17,088.00, including CHF 11,088.00 (administrative fees) and CHF 6,000.00 (Sole Arbitrator's fees).

[142]Attachment 5 (Claimant) 'Arbitration Decision of March 5 2020', pp.2, 6, 8,13, and 27.
[143]Statement of Claim, p.4.

199. On February 8, 2023, the Secretariat of the Swiss Arbitration Center confirmed receipt of the provisional advance payment of CHF 17,088.00 from the Claimant, which occurred on February 1, 2023.

200. On February 15, 2023, the Secretariat of the Swiss Arbitration Center stated that it had determined a maximum preliminary advance payment of CHF 95,000.00 pursuant to section 4.2 of Appendix B of the Swiss Rules.

201. On February 22, 2023, the Sole Arbitrator asked each Party to pay half of the preliminary advance payments determined by the Secretariat of the Swiss Arbitration Centre, i.e. CHF 47,500.00, pursuant to Article 41(1) of the Swiss Rules.

202. The Claimant paid the sum of CHF 17,068 on February 1, 2023 as a provisional advance payment and the sum of CHF 30,412.00 on March 9, 2023. The Respondent paid the sum of CHF 47,500.00 on March 23, 2023. Accordingly, the Parties paid the following amounts as a security for costs: the Claimant paid CHF 47,480 and the Respondent paid CHF 47,500.

2. The position of the Parties

203. In its Costs Memorandum dated June 6, 2023, the Respondent requests compensation for the following costs:

203.1. CHF 36,491.85 (legal aid costs already billed and estimated up to the award)

203.2. CHF 47,500.00 (advance payment for the Sole Arbitrator's fees and expenses and the Swiss Arbitration Centre's administrative fees, minus any reimbursements directly from the Secretariat of the Swiss Arbitration Centre).

203.3. CHF 5,200.00 (reimbursement of the Respondent's direct expenditure)[144].

204. The Respondent also reiterated that the Claimant's conduct did not help to reach a linear and efficient resolution of the dispute due to the disorder and confusion of the pleadings and documents produced by the Claimant and the latter's lack of rules defined in the Procedural Ordinance no. [145].

[144]Respondent's Costs Memorandum, para.11.
[145]Respondent's Costs Memorandum, para.10.

205. The Claimant did not present her position on costs within the deadlines set by the procedural timetable. The Claimant produced her Costs Memorandum on June 14, 2023, at the request of the Sole Arbitrator.

206. In its Costs Memorandum, the Claimant requests payment of USD 33,000.00 (equivalent to CHF 29,623.00) as legal fees and CHF 47,500.00 as an advance payment for the Sole Arbitrator's fees and expenses and the Swiss Arbitration Centre's administrative fees[146]. Moreover, in the same Memorandum, the Claimant:

206.1. Objected to the claims for reimbursement raised by the Respondent in its Costs Memorandum of June 6, 2023, particularly regarding the amount of CHF 5,200.00 for which there is no invoice[147];
206.2. Argued that the Respondent's Costs Memorandum is not limited to costs, but also deals with aspects related to merit, particularly the statute of limitations and peremption of the Claimant's claims[148];
206.3. Pointed out that there are emails from about 10 years ago proving the presence of the technical defects in the parking system and the request for an intervention by the Respondent to provide repairs[149];
206.4. Stated that the prescription period is 10 years[150];
206.5. Stated that it will prove with future pleadings (and witness findings) that the contentions against the Respondent have persisted over time and that some problems are still not resolved[151];
206.6. Reiterated the similar problems that arose within the Langone Contract[152];
206.7. Reiterated its request that the dispute be decided in equity[153];
206.8. Rejected the criticism raised by the Respondent about the confusion and disorder of the pleadings and documents produced during the proceedings[154].

207. The Respondent responded to the Claimant's Costs Memorandum by email as follows[155]:

207.1. The Claimant's Memorandum is late and cannot be admitted;

[146]Claimant's Costs Memorandum, p.2.
[147]Claimant's Costs Memorandum, p.2.
[148]Claimant's Costs Memorandum, p.2.
[149]Claimant's Costs Memorandum, p.3.
[150]Claimant's Costs Memorandum, p.3.
[151]Claimant's Costs Memorandum, p.3.
[152]Claimant's Costs Memorandum, p.4.
[153]Claimant's Costs Memorandum, p.4.
[154]Claimant's Costs Memorandum, p.5.
[155]Claimant's Email of June 17, 2023.

207.2. The Claimant's comments regarding the Respondent's internal costs (CHF 5,200.00) have no basis, because it is clear that a company's staff does not invoice the company itself. The Respondent also pointed out that the Claimant did not dispute the time spent and rates applied by the company's personnel;

207.3. Non-cost-related allegations cannot be accepted in the procedure;

207.4. If these allegations were to be taken into consideration by the Sole Arbitrator, the assessment of the case would not change since the Claimant does not produce any evidence to subvert the conclusion that the claims would be peremptory and time-barred.

208. Finally, on June 18, 2023, the Claimant responded to the Respondent's comments of June 17, as follows[156]:

208.1. The Respondent's request for non-admission of the Claimant's Costs Memorandum should be rejected;

208.2. The Respondent itself did not merely discuss the costs of the procedure in its June 6, 2023 Memorandum;

208.3. The arbitration procedure should continue in order to give the Claimant an opportunity to prove its case on the merits.

3. The decision of the Sole Arbitrator

(a) The provisions of the Swiss Rules applicable to the determination and distribution of costs

209. Article 38 of the Swiss Rules provides that

> *The arbitral award or the decision closing the procedure shall contain the determination of arbitration costs ... The term "costs" only includes:*
> *(a) the fees of the arbitral tribunal...*
> *(b) travel and other expenses incurred by the arbitrators...*
> *…*
> *(e) legal fees...*
> *(f) the registration fee and administrative fees according to Appendix B*
> *…*

[156]Claimant's Email of June 18, 2023.

210. Article 39(1) of the Swiss Rules states that

> *The fees and expenses of the arbitral tribunal shall be reasonable, taking into account the value of the case, the complexity of the arbitration dispute, the time spent on the case, and any other relevant circumstances, including the diligence and efficiency of the arbitral tribunal.*

211. Article 40 of the Swiss Rules states that

> *The costs of arbitration shall in principle be borne by the losing party. The arbitral tribunal may allocate the costs of arbitration between the parties if it deems it reasonable, taking into account the circumstances, including what the parties have undertaken to conduct the proceedings efficiently and to avoid unnecessary expenses and delays.*

212. Article 41(5) of the Swiss Rules reads as follows:

> *In the final award, or in its decision closing the procedure, the arbitral tribunal shall issue to the parties an account of the advance payments received. Any unused amount shall be returned to the parties in proportion to their respective contributions, unless the parties have agreed otherwise.*

(b) Preliminary considerations of the Sole Arbitrator

213. Before ruling on the determination and allocation of arbitration costs, the Sole Arbitrator considers it appropriate to address some of the suits raised by the Claimant in its Costs Memorandum of June 14, 2023, and the subsequent comments exchanged by the Parties regarding arbitration costs[157].

214. First, contrary to the Claimant's attachment, the Sole Arbitrator believes that in its Costs Memorandum the Respondent merely discussed the costs of the proceedings without developing discussions on the merits of the dispute. Indeed, the Respondent referred to the suit of peremption/prescription as merely a factual element in support of its position regarding the costs of arbitration.

215. Second, the Sole Arbitrator believes that the Claimant's Costs Memorandum contains not only arguments about its position on costs, but also deals with substantive issues, and also includes points that were never raised during the proceedings. The purpose of a Costs Memorandum should be limited to the parties' position on the costs of arbitration, without delving into suits related to the merits of the case, which the parties should analyze in the pleadings intended for such suits, as provided in the procedural timetable. **Therefore, the Sole Arbitrator accepts the Respondent's request that the arguments on the merits that the Claimant raised in its Costs Memorandum should not be admitted to the proceedings.** This decision is all the more necessary in view of the fact that (i) the

[157] See above, paras.206-208.

Claimant's Costs Memorandum was produced late and (ii) the procedural timetable did not provide for the Parties to produce Costs-Reply Memos in which each Party could have responded to the arguments raised by the other Party in the first exchange of Costs Memos.

216. Third, the Sole Arbitrator considers that even if the allegations that the Claimant raised in its Costs Memorandum were accepted in their entirety, they could not be considered as sufficient to support its position on the merits of the dispute. Indeed, these allegations are not accompanied by any documents or other means of proof. The Claimant argues that such evidence will be produced as an attachment to its future pleadings. The Sole Arbitrator, however, recalls that the Parties have expressed their agreement on the schedule of the proceedings and the Claimant has expressed its explicit agreement about the division of the procedure into two phases, with a first phase (the present one) limited to questions on peremption and the prescription for the Claimant's action. Accordingly, the Claimant should have developed its position on the suits relating to the peremption and prescription of its claims in its pleadings produced in the first phase of the proceedings.

(c) The determination of the Sole Arbitrator's fees and administrative fees

217. Pursuant to Article 38, the Sole Arbitrator shall determine the fees and expenses of the Sole Arbitrator and the administrative fees of the Swiss Arbitration Center as follows:

Registration fee (non-refundable)	CHF 6,000
Administrative fees:	CHF 11,088.00 (as determined by the Swiss Arbitration Centre Court)
Bank fees:	CHF 80.00
Sole Arbitrator's fees:	CHF 58,500.00
Sole Arbitrator's costs:	CHF 400.00
TOTAL:	**CHF 70,068.00**

218. The arbitration costs indicated above, excluding the registration fee already paid by the Claimant separately, are covered by the advance payment made by the Parties. Since the Claimant paid CHF 47,480 and the Respondent CHF 47,500 (for a total of CHF 94,980.00) as an advance payment on the arbitration costs, pursuant to Article 41(5) of the Swiss Rules, **the Secretariat of the Swiss Arbitration Centre will reimburse as unused advance payment CHF 12,446.00 to the Claimant and CHF 12,466.00 to the Respondent.**

(d) The distribution of expenses between the Parties

219. The Swiss Rules, in Article 40, suggest that the "costs follow the event" method be applied by arbitrators in deciding on the allocation of arbitration costs between the parties, subject to exceptions. The Sole Arbitrator believes that this method is appropriate to the present case and that there is no evidence to suggest that another method of apportioning costs is more reasonable.

220. In this case, as decided by the Sole Arbitrator in the previous sections of this Award, the Claimant has failed in regard to all the requests and suits it has raised. In particular, the Sole Arbitrator accepted the jurisdictional objection raised by the Respondent regarding the Langone Contract and accepted the Respondent's requests to declare the Claimant's claims perempt and time-barred.

221. Furthermore, the Sole Arbitrator notes that the Claimant's conduct has repeatedly deviated from the procedural rules established by the Sole Arbitrator in Procedural Order no.1. For example, the paragraphs of the Claimant's pleadings are not numbered, the organization of the attached documents is confusing, the Respondent did not appear at the first initial meeting and did not inform the Sole Arbitrator of its inability to attend, and the Costs Memorandum was produced late, at the request of the Sole Arbitrator.

222. Therefore, pursuant to Article 40 of the Swiss Rules**, the Sole Arbitrator decides that the Claimant will have to reimburse the Respondent the following sums:**

222.1. **CHF 36,491.85**, corresponding to the legal costs incurred by the Respondent in this procedure. The Sole Arbitrator believes these costs to be reasonable, considering the value of the case, the complexity of the dispute and the Claimant's conduct during the proceedings.

222.2. CHF **35,034.00**, corresponding to the portion of the arbitration costs incurred by the Respondent (i.e. CHF 47,500.00 paid by the Respondent as advance payment - CHF 12,466.00 which will be reimbursed by the Secretariat of the Swiss Arbitration Centre, as indicated in paragraph 218 above).

223. **The Sole Arbitrator also decides that all costs incurred by the Claimant in this arbitration procedure**, including legal fees and advance payments to guarantee the arbitration costs, **remain entirely at its expense.**

224. Regarding the Respondent's request for reimbursement of CHF 5,200.00 as internal company expenses, the Respondent indicated that they correspond to the *"time invested by its representatives*

in gathering long-standing documentation, instructing the counselor, and attending the two hearings via videoconference at the lawyer's office"[158]. Regarding the calculation of the requested amount, the Respondent indicated 13 hours for the Engineer Giovanni Valli at an hourly rate of CHF 330, and 7 hours for Dr. Andrea Valli at an hourly rate of CHF 130[159].

225. The Sole Arbitrator emphasizes that it is difficult to accurately substantiate the internal costs that a company has incurred in an arbitration procedure, and to provide the necessary evidence. Indeed, the time spent by a company's internal staff is difficult to quantify, evaluate and allocate.

226. The Sole Arbitrator further considers that the time spent by the Respondent's internal staff could have been included in the costs of arbitration to the extent that such staff were assigned tasks which would otherwise have had to be assigned to external experts, and said internal organization had allowed for cost savings. Based on the information provided by the Respondent, the Sole Arbitrator concludes that this did not occur in the present case. Furthermore, the Respondent did not provide any details regarding the necessity of the number of hours employed by the Engineer Giovanni Valli and Dr. Andrea Valli or the hourly rate chosen for the calculation of internal costs.

227. Consequently, **the Sole Arbitrator rejects the Respondent's request for reimbursement of internal expenses amounting to CHF 5,200.00.**

[158]Respondent's Costs Memorandum, para.7.
[159]Respondent's Costs Memorandum, footnote no.1.

IX. RULING

228. Based on the aforementioned reasons, the Sole Arbitrator orders the following:

a) Declares that he does not have the power to decide on relevant suits relating to the Langone Contract;

b) Confirms his jurisdiction on suits relating to the Towson Contract;

c) Decides that the applicable law to the merit of the dispute is Swiss law, including the CISG;

d) Decides that the Towson Contract is an international sales contract;

e) Declares that Park Plus Inc.'s claims are forfeited pursuant to Article 39 CISG;

f) Declares that Park Plus Inc.'s claims are time-barred pursuant to Article 210 CO;

g) Orders Park Plus Inc. to pay Sotefin SA CHF 36,491.85 in legal and defense costs;

h) Orders Park Plus Inc. to pay Sotefin SA CHF 35,034.00 as arbitration costs (Sole Arbitrator's fees and expenses and administrative fees);

i) Any other further claim and/or request made by the Parties in this arbitration proceeding is rejected.

Seat of arbitration: Lugano, Switzerland.
Date: SEPTEMBER 21, 2023

[SIGNATURE]
Sole Arbitrator
J.D. Gabriele Ruscalla