

**RUSSIAN FOREIGN TRADE ACADEMY OF THE MINISTRY FOR THE ECONOMIC DEVELOPMENT OF THE RUSSIAN FEDERATION**

**CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION**

**INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE CHAMBER OF COMMERCE OF THE RUSSIAN FEDERATION**

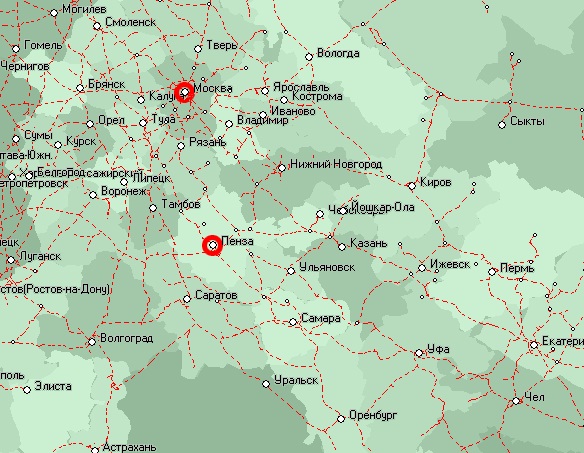
THE SEVENTH M.G. ROZENBERG

INTERNATIONAL COMMERCIAL ARBITRATION MOOT COURT

***“RFTA 2020 – INTERNATIONAL SALE OF GOODS”***

****

**Moscow, November 2019**





Penza, Russia





Bolzano, Italy

**The International Commercial Arbitration Court**

**at the Chamber of Commerce and Industry of the Russian Federation**

5/2 Ilyinka street, Moscow, 109012

Tel.: 8-495-62-0171, Fax: 8-495-620-0153

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**Claimant: LLC “StanKomash”**

**49 Petrova street, Penza, Russia, 440028**

**Respondent: SRL “Italotornio”**

**Via Rencio, 126, Bolzano 4538, Italy**

**STATEMENT OF CLAIM**

1. During 2015-2016 OOO “StanKomash” received European Union certificates for CNC lathes series ST 16A25 and universal lathes series ST 16k20 of its own production. Given the interest in the Italian market for abovementioned lathes, on January 20, 2016 the parties signed an Agreement on the distribution of CNC lathes in 2017-2020.
2. The Agreement is further developed on July 30, 2016 OOO “StanKomash” and SRL “Italotornio” signed a contract for the supply to Italy of five CNC lathes series ST 16A25 at a price of 86 500,00 euros per item, the total value is 432 500,00 euros. The delivery time is August 2016 on the terms of DPU Bolzano, Italy, Incoterms 2020[[1]](#footnote-1). Delivery time by road amounts to 10 days. The date of CMR consignment note is August 20, 2016.
3. The Claimant fulfilled its contractual obligations in good faith and shipped the goods on August 20, 2016 according to the invoice No. 363443 dated August 18, 2016 and the CMR consignment note dated August 20, 2016. The stamp on the customs declaration “Release is allowed” dated August 21, 2016. The product was received by the Buyer in Bolzano on August 30, 2016.
4. Under the terms of the Contract, payment for the goods is to be effected by the Respondent in the form of a direct bank transfer to the Claimant's account. The currency of the Contract and the currency of payment under the Contract is euro (Article 2 of the Contract).
5. Payment for the goods is to be effected as follows: 10 % of the value of the goods - by money transfer within 10 days from the date of signing the Contract (i.e., from July 30, 2016), 90 % of the value of the goods - no later than 60 calendar days from the date of export of the goods from the customs territory of the EAEU. The date of the stamp "Release is allowed" on the customs declaration shall be considered as the date of export of goods. The date of the customs declaration is August 21, 2016.
6. The Respondent effected the first part of the payment (10 %) on August 09, 2016 in the amount of 43,200 euros.
7. The remaining part of 90 % of the value of the goods, which amounts to 388 800 euros, has not been paid by the Respondent up to the present date. The Claimant sent to the Respondent several claims, in particular, dated September 6, 2016 and February 6, 2017.
8. Article 2 of the Contract provides that in case of late payment for the goods the Respondent shall pay a penalty of 0.1 % of the value of the unpaid goods for each day of delay.
9. Thus, as of November 6, 2017 the Respondent is to pay a contractual penalty in the amount of 176 904 euros.
10. As it follows from Article 53 of the United Nations Convention on Contracts for the International Sale of Goods 1980, the buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.
11. As follows from article 309 of the Civil code of the Russian Federation, obligations shall be performed duly in accordance with the terms of the obligation and the requirements of the law. Unilateral refusal to perform an obligation and unilateral amendment of its terms shall not be allowed (article 310 of the Civil code of the Russian Federation).
12. Under Article 6 of the Contract of July 30, 2016, all disputes and disagreements which may arise between the parties in the course of the performance of the Contract shall be settled as far as possible by means of negotiations. If the parties fail to reach an agreement, the disputes shall be submitted for the settlement to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow in accordance with the Rules of arbitration of international commercial disputes. The arbitration shall be held in Moscow. The law applicable to the substance of the disputes is the law of the Russian Federation. The language of the proceedings shall be Russian.
13. Based on the abovementioned, guided by the Rules of arbitration of international commercial disputes (Annex 2 to the order of the Chamber of Commerce and Industry of the Russian Federation dated 11.01.2017 No. 6) and Articles 15, 309, 310, 330, 516 of the Civil code of the Russian Federation, Article 53 of the United Nations Convention on Contracts for the International Sale of Goods 1980
14. The Complaint claims for:

* recovering from   the SRL “Italotornio”, Italy, in favor of OOO “StanKomash” Russia, 176 904 euros as contractual penalty, 388 800 euros as payment for goods delivered and 31723 US dollars as compensation for the Claimant's costs for payment of the registration (1 000 US dollars) and arbitration (30 723 US dollars)[[2]](#footnote-2) fees.

1. We inform you that for the settlement of the present dispute we have appointed Mr. Seliverstov Ivan Nikolaevich as an arbitrator, and Mr. Cheremukhovo Boris Nikodimovich as reserve arbitrator.

Director of LLC “StanKomash” Tokarev P. E. (signature)

November 6, 2017

Annexes:

1. Copy of the contract dated July 30, 2016

2. Copy of CMR consignment note

3. Copy of the Customs Declaration on the export of goods from the customs territory of the EAEU

4. Copies of the Claimant's claims dated September 6, 2016, dated February 6, 2017.

5. A copy of the power of attorney to sign the statement of claim issued in the name of Mr. Paragrafov Anatoly Alexandrovich

6. 5 copies of the Claim with attachments[[3]](#footnote-3)

**Annex C 1**



The monument to the turner in Penza, Russia



Bolzano, Italy

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| --- | --- |
| **КОНТРАКТ**  г. Больцано 30 июля 2016  **ООО «СтанКомаш»,** юридическое лицо созданное и функционирующее в качестве юридического лица российского права, и именуемое в дальнейшем Продавец, в лице директора Общества Токарева П.Э., с одной стороны, и **лSRL «Italotornio**», юридическое лицо созданное и функционирующее в качестве юридического лица итальянского права, именуемое в дальнейшем Покупатель, в лице директора Общества Giuseppe Monati, действующего на основании устава общества, с другой стороны, совместно именуемые Стороны, заключили настоящий контракт о нижеследующем.  . Академика Туполева, 12гор.  **Статья 1. Предмет и цена контракта**  Покупатель оплачивает, а Продавец поставляет пять токарных станков с ЧПУ серии СТ 16А25 по цене 86.500,00 евро общей стоимостью 432.500,00 евро.  **Статья 2. Условия оплаты товара**  Оплата за товар производится в форме прямого банковского перевода на счет Продавца. Валютой платежа по контракту является евро.  Оплата товара производится в следующем порядке:  -10 процентов стоимости товара - путем перечисления денежных средств в течение 10 дней с даты подписания контракта,  - 90 процентов стоимости товара не позднее 60 календарных дней с даты вывоза товара с таможенной территории ЕАЭС. Датой вывоза товара считается дата в штампе «Выпуск разрешен» Таможенной декларации на товары».  В случае несвоевременной оплаты товара Покупатель уплачивает Продавцу пеню в размере 0,1% стоимости неоплаченного товара за каждый день просрочки.  Срок уплаты штрафа – в течение 20 дней с даты соответствующей претензии. Уплата штрафа не освобождает Покупателя от исполнения обязательств, предусмотренных договором.  При задержке оплаты Покупателем более чем на 120 дней, Продавец вправе в одностороннем порядке расторгнуть контракт в части неоплаченного товара или потребовать возврата неоплаченного товара. Товар должен быть возвращен Продавцу за счет Покупателя в течение 20 дней с момента расторжения контракта на условиях CPT Пенза. ул. Петрова, 49**.**  **Статья 3. Условия поставки**  Поставка товара осуществляется на условиях DPU Инкотермс 2020. Датой вывоза считается дата в штампе «Выпуск разрешен» таможенной декларации.  **Статья 4. Приемка товара**  Качество поставляемого товара должно соответствовать ТУ предприятия-изготовителя. Гарантийный срок на товар составляет 12 месяцев с даты отгрузки.  При выявлении дефектов, недостачи и/или некомплектности поставленного товара и после предъявления рекламации Покупателем Продавец производит замену дефектного товара и/или доукомплектование товара при условии предоставления подтверждающего документа в виде сертификата Торговой палаты г. Больцано и признания претензии Покупателя обоснованной. Поставка комплектующих или недостающих деталей производится в течение 60 дней на условиях DPU Больцано, Италия, Инкотермс 2020. Продавец обязан возвратить некачественный товар в течение 30 дней на условиях CPT Пенза, Инкотермс 2020.  **Статья 5. Форс-мажор**  При наступлении форс-мажорных обстоятельств стороны освобождаются от своих обязательств до окончания указанных обстоятельств, если сторона, для которой они наступили, в течение 5-ти дней в письменной форме уведомляет другую сторону о причинах невыполнения контракта с предоставлением документов, заверенных Торговой палатой.  Под форс-мажорными обстоятельствами следует понимать обстоятельства непреодолимой силы или чрезвычайного характера, которые стороны не могли предвидеть и предотвратить, в частности, землетрясения, наводнения, пожары, стихийные бедствия, запретительные действия властей, военные действия, забастовки, крое как на предприятиях сторон. В этом случае контракт считается продленным на период действия форс-мажорных обстоятельств.  В случае если форс-мажорные обстоятельства будут продолжаться свыше 6-ти месяцев, любая сторона вправе в одностороннем порядке расторгнуть контракт без возмещения.  **Статья 6. Порядок урегулирования возможных споров**  Все споры и разногласия, возникшие между сторонами в ходе выполнения контракта, разрешаются, по возможности, путем переговоров. При недостижении согласия между сторонами спорные вопросы подлежат рассмотрению в Международном коммерческом арбитражном суде при Торгово-промышленной палате Российской Федерации в г. Москве в соответствии с Правилами арбитража международных коммерческих споров. Место рассмотрения спора - г. Москва. Стороны согласны с тем, что для решений их споров, возникших из настоящего контракта или по его поводу, будет применяться материальное и процессуальное право Российской Федерации, Конвенция ООН о договорах международной купли – продажи товаров 1980 г., Принципы международных коммерческих договоров УНИДРУА 2016 г. Язык разбирательства - русский.  **Статья 7. Язык контракта и корреспонденции**  Настоящий контракт составлен и подписан в двух экземплярах на русском и английском языках, имеющих одинаковую юридическую силу. Каждой стороне принадлежит по одному экземпляру.  Вся переписка по поводу настоящего контракта ведется на русском и английском языках.  **Статья 8. Вступление контракта в силу**  Настоящий контракт вступает в силу с даты его подписания и действует до исполнения сторонами обязательств.  **Статья 9**  Все изменения и дополнения к настоящему контракту действительны, если они составлены в письменной форме и подписаны обеими сторонами.  ЮРИДИЧЕСКИЕ АДРЕСА И РЕКВИЗИТЫ СТОРОН  «Продавец»:  ООО «СтанКомаш»,.гор. Пенза ул. Петрова, 49, 440028 Россия  «»  Директор Общества Токарев П.Э.  «Покупатель» SRL «Italotornio»,  Via Rencio, 126, Bolzano 4538, Italy **я**  Директор Общества Giuseppe Monati | **CONTRACT**  Bolzano July 30, 2016  **OOO “StanKomash”**, the legal entity incorporated and functioning as a legal entity under Russian law, hereinafter referred to as the “Seller”, represented by the Director Mr. Tokarev P.E., on the one hand, and **SRL “Italotornio”**, the legal entity incorporated and functioning as a legal entity under Italian law, hereinafter referred to as the “Buyer”, represented by the Director Mr. Giuseppe Monati, acting on the basis of the bylaws of the company, on the other hand, jointly referred to as the “Parties”, have concluded this Contract as follows.  **Article 1. Subject and Value of the Contract**  The Buyer pays and the Seller delivers five CNC lathes series ST 16A25 at the price of 86 500,00 euros per item, the total value amounts to 432 500,00 euros.  **Article 2. Payment**  The payment for the goods is to be effected in the form of a direct bank transfer on the Seller’s account. The currency of payment under the Contract is euro.  Payment for the goods is to be effected as follows:  - 10 % of the value of the goods - by money transfer within 10 days from the date of signing the Contract,  - 90 % of the value of the goods - no later than 60 calendar days from the date of export of the goods from the customs territory of the EAEU. The date of the stamp "Release is allowed" on the customs declaration shall be considered as the date of export of the goods.  In case of late payment for the goods the Buyer shall pay to the Seller a penalty of 0.1 % of the value of the unpaid goods for each day of delay.  The penalty is to be paid within 20 days from the date of the relevant claim. Payment of penalty does not release the Buyer from the performance of its obligations under the Contract.  If the Buyer delays payment for more than 120 days, the Seller has the right to unilaterally rescind the Contract regarding the unpaid goods or demand the return of the unpaid goods. The goods must be returned to the Seller at the Buyer’s expense within 20 days from the date of termination of the Contract on the basis of CPT Penza, 49 Petrov street.  **Article 3. Terms of Delivery**  Delivery of goods is to be carried out on the terms of DPU Incoterms 2020. The date of the stamp "Release is allowed" on the customs declaration shall be considered as the date of export of the goods.  **Article 4. Acceptance of the Goods**  The quality of the delivered goods is to correspond to the technical conditions of the manufacturing plant. The guarantee period is 12 months from the date of shipment.  In case of defects, shortages and/or incompleteness of the delivered goods and after a complaint by the Buyer, the Seller shall replace the defective goods and/or understaff the goods subject to the provision of a supporting document in the form of a certificate from the Chamber of Commerce of Bolzano and recognition of the Buyer's claim as justified. Delivery of components or missing parts is to be effected within 60 days on the terms of DPU Bolzano, Italy, Incoterms 2020. The Seller shall return the defective goods within 30 days on the terms of CPT Penza, Incoterms 2020.  **Article 5. Force Majeure**  In the event of force majeure, the parties shall be released from their obligations before the end of the circumstances, if the party for which they have come up, within 5 days in writing notifies the other party of the reasons for failure to comply with the Contract with the provision of documents certified by the Chamber of Commerce.  Force majeure circumstances should be understood as force majeure or emergency circumstances that the parties could not have foreseen and prevented, in particular, earthquakes, floods, fires, natural disasters, prohibitive actions of the authorities, military operations, strikes, such as at the enterprises of the parties. In this case, the Contract is considered extended for the period of force majeure.  Should the duration of the force-majeure circumstances exceed 6 months, each party will have the right to unilaterally rescind the Contract without compensation.  **Article 6. Dispute resolution procedure**  All disputes and differences which may arise between the Parties in the course of the performance of the Contract shall be settled as far as possible by means of negotiations. If the parties fail to reach an agreement, the disputes shall be submitted for the settlement to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow in accordance with the Rules of arbitration of international commercial disputes. The arbitration shall be held in Moscow. The Parties agree that law applicable to the substance of the disputes is the substantive and procedural law of the Russian Federation, the UN Convention on Contracts for the International Sale of Goods 1980, the Principles of International Commercial Contracts UNIDROIT 2016. The language of proceedings shall be Russian.  **Article 7. Language of contract and correspondence**  This Contract is made in two copies, each in Russian and in English, both texts having equal force. Each party owns one copy.  All correspondence in respect of this Contract is in Russian and English.  **Article 8. Entry into force**  This Contract comes into force from the date of its signing and is valid until the Parties fulfill their obligations.  **Article 9**  All amendments and addenda to this Contract are valid only when made in writing and signed by both Parties.  LEGAL ADDRESSES OF THE PARTIES  “Seller”:  LLC “StanKomash”  49 Petrova street, Penza, Russia, 440028  Director P. Tokarev  “Buyer”: SRL “Italotornio”  Via Rencio, 126, Bolzano 4538, Italy    Director Giuseppe Monati |
| **Приложение к контракту от 30 июля 2016**  **Комплектация токарных станков с ЧПУ серии СТ 16А25**   * 3-кулачковый патрон и адаптер (механический) Ø250 мм - 1 шт.; * Центр МТ5" - 2 шт.; * Центральный переходной конус Ø90; 1:20/5; * Виброопоры; * Ключ для снятия адаптера - 6 шт.; * Шприц для смазки 100 см3 - 1 шт.; * Крючковой гаечный ключ S93-1 45-52 - 1 шт.; * Крючковой гаечный ключ S93-1 135-165 - 1 шт.; * Зубчатый ремень HTD-375-5M-25; * Предохранители; * Документация. | **Annex to the Contract of July 30, 2016 Complete set of CNC lathes series ST 16A25**   * 3-jaw holder and adapter (mechanical) Ø250 mm - 1 pc.; * Center MT5"- 2 pcs.; * Central transitional cone Ø90; 1: 20/5; * Vibration mounts; * Key for removing the adapter - 6 pcs.; * Grease gun 100 cm3 - 1 pc.; * Hook wrench S93-1 45-52 - 1 pc.; * Hook wrench S93-1 135-165 - 1 pc.; * Toothed belt HTD-375-5M-25; * Circuit breakers; * Documentation. |

**Annex C2**

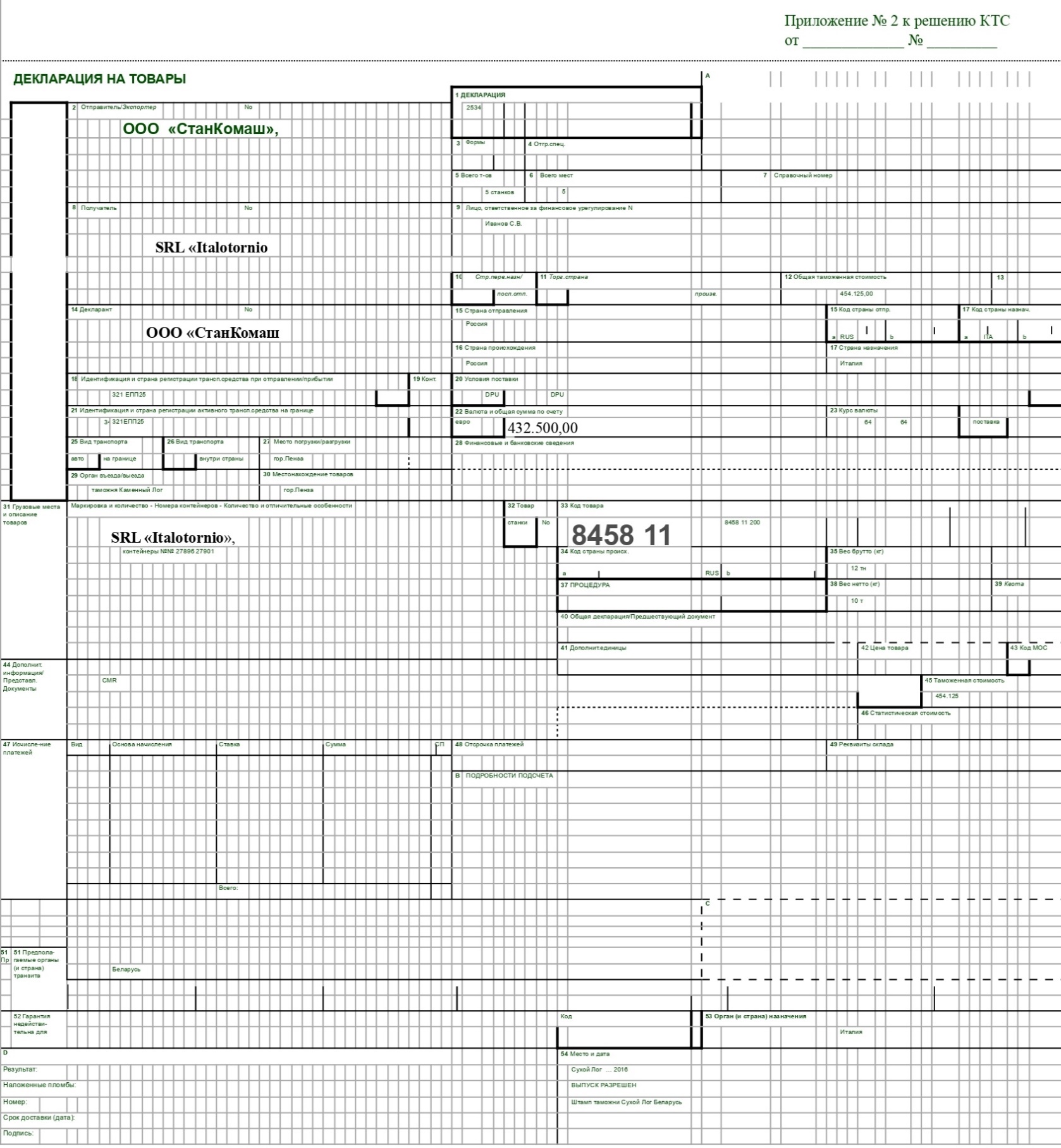


**СMR**

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| **1** | | Отправитель (наименование, адрес, страна)  Absender (Name, Anschrift, Land) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | **Международная**  **товарно-транспортная**  **накладная**  **Internationaler**  **Frachtbrief** | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | |
| ООО «СтанКомаш»,.гор. Пенза ул. Петрова, 49, Россия  440028 Россия  «» | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | **CMR** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | При перевозке опасного груза указывать кроме возможного разрешения класс, цифру а также, в случае необходимости, букву опасного груза.  Bei gefährlichen Gütern ist, außer der eventuellen Bescheiniging auf der letzten Linie der Rubrik anzugeben: die Klasse, die Ziffer sowie gegebenenfalls der Buchstabe. | | | | | | | | | | | | | | | | | | | | |
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| **2** | | Получатель (наименование, адрес, страна)  Empfänger (Name, Anschrift, Land) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | **16** | | | | | Перевозчик (наименование, адрес, страна)  Frachtführer (Name, Anschrift, Land) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| SRL «Italotornio», Via Rencio, 126, Bolzano 4538, Italy  С  Via Rencio, 126, Bolzano 4538, Italy **ья** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Заполняются отправителем 1-15 включая 21+22 Позиции, выделенные рамкой, заполняются перевозчиком.  Auszufüllen unter der Verantwortung des Absenders einschlieBlich Die mit fett gedruckten Linien eingerahmten Rubriken müssen vom Frachtführer ausgefüllt werden. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **3** | | Место разгрузки груза | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | **17** | | | | | Последующий перевозчик (наименование, адрес, страна)  Nachfolgende Frachtführer (Name, Anschrift, Land) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Место / Ort | | | | | | | Bolzano 4538 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | нет | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| **4** | | Место и дата погрузки груза 20 августа 2016 г  Ort und Tag der Ubernahme des. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Место / Ort | | | | | | | Пенза | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Страна / Land | | | | | | | Россия | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | **18** | | | | | Оговорки и замечания перевозчика  Vorbehalte und Bemerkungeh der Frachtführer | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Дата / Datum | | | | | | | 20 августа 2016 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | нет | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **5** | | Прилагаемые документы спецификация  Beigefügte Dokumente | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| **CMR** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| **6** | | Знаки и номера | | | | | | | | | **7** | | | Количество мест | | | | | | | | | | **8** | | Род упаковки | | | | | | | | | | | **9** | | Наименование груза | | | | | | | | | | | | **10** | | Статист. № | | | | | | | | **11** | Вес брутто, кг  Bruttogew., kg | | | | | **12** | | | | | | Объем, м3 | | | | |
| Пять мест станки. упаковка деревянные ящики | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | |  | | | | | |  | | | | | | | | | | |
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| **13** | | | Указания отправителя (таможенная и прочая обработка)  Anweisungen des Absenders (Zoll-und sonstige amtliche Behandlung) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | **19** | | | | | Подлежит оплате:  Zu zahlen vom: | | | | | | | Отправитель | | | | | | | | | | Валюта | | | | | | Получатель | | | | | | | | | | |
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| Объявленная стоимость груза  Adgabe des Wertes des Gutes | | | | | | | | | | | 432.500,00 евро | | | | | | | | | | | | | | | | | | | | | | | | | | | | Дополнительные сборы | | | | | | | | | | | |  | | | | | | |  | | |  | |  | | | |  | | | | | | | |  | | |
| (при превышении предела ответственности, предусмотренного гл. IV, ст. 23,  п. 3 указывается только после согласования дополнительной платы к фракту) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | Прочие | | | | | | | | | | | |  | | | | | | |  | | |  | |  | | | |  | | | | | | | |  | | |
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| **14** | | | Возврат  Rückerstattung | | | | | | |  | | | | | | | | | | |  | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **15** | | | Условия оплаты  Frachtzahlungsanweisungen | | | | | | | | | Инкассо | | | | | | | | | | | | | | | | | | | | | | | | | | | **20** | | | | | Особые согласованные условия  Besondere Vereinbarungen | | | | | | | | | | | Не кантовать | | | | | | | | | | | | | | | | | | | | | | |
| франко | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| нефранко | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **21** | | | | | Составлена в | | | | | | | | | | 3 экз | | | | | | | | | | | | | | Дата | | | | | 20 августа 2016 | | | | | | | | | | | | | | | | | | | | **24** | | | | | Груз получен Больцано  Gut empfangen | | | | | | | Дата 30.08.2016  Datum | | | | | | | | | | | |
| **22** | | | | |  | | | | | | | | | | | | | | | | | | | | | | **23** | | | |  | | | | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | |  |  | |  | | | | | |  |
| Прибытие под погрузку  Ankunft für Einladung | | | | | | | | | | | | 20.08.16 августа 20 | | | | | час.  Uhr | |  | | | | | | мин.  Min. | | Путевой лист № | | | | | | | | 54321 | | | | | | | “ | 18.06. | | | ” |  | | 19 | | | | | Прибытие под разгрузку  Ankunft für Ausladung | | | | | | | | | | 09.20 | | | час.  Uhr | | | | |  | | | | мин.  Min. | |
| Убытие  Abfahrt | | | | | | | | | | | | 20.08.16 | | | | | час.  Uhr | |  | | | | | | мин.  Min. | | Фамилии | | | | | | Крестовников И.А. | | | | | | | | | | | | | | | | | | |  | | Убытие  Abfahrt | | | | | | | | | | 15.40 | | | час.  Uhr | | | | |  | | | | мин.  Min. | |
|  | | | | | | | | | | | | | | | | | | | | | | | | | | | водителей | | | | | | Веревкин Р.О. | | | | | | | | | | | | | | | | | | |  | |  | | | | | | | | | | | | | | | | | | | | | | | |
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| Подпись и штамп отправителя  Unterschrift und Stempel des Absenders | | | | | | | | | | | | | | | | | | | | | | | | | | | Подпись и штамп перевозчика Крестовников И.А.  Unterschrift und Stempel des Frachtführers | | | | | | | | | | | | | | | | | | | | | | | | | | | Подпись и штамп получателя Луиджи Панко  Unterschrift und Stempel des Empfängers | | | | | | | | | | | | | | | | | | | | | | | |
| **25** | | | | | Регистрац. номер | | | | | | | | | | | | | | **26** | | Марка | | | | | | | | | | | | | | | | **27** | | | Тариф  за 1 км | | | | | | | Тарифное  расстояние | | | | | | | | % за испол.  тягача/п/пр. | | | | Поясной  коэфф. | | | | | Прочие  доплаты | | | | | | | | | Сумма | | | | |
| **28** | | | | | | | Тарифное  расстояние, км | | | | | Схема | | | | |  | | | | | Тариф  за 1 т | | | | | | | | | Надбавки | | | | Скидки | | | | | | | | | Прочие  доплаты | | | | | К оплате | | | | | | | | | | Отчисления | | | | | | | | | |  | | | | | | | | |
| Тариф  II | | | | | | |  | | | | |  | | | | |  | | | | |  | | | | | | | | |  | | | |  | | | | | | | | |  | | | | |  | | | | | | | | | | Оплачено  заказчиком | | | | | | | | | |  | | | | | | | | |
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| **29** | | | | | | |  | | | | |  | | | | |  | | | | |  | | | | | | | | |  | | | |  | | | | | | | | |  | | | | |  | | | | | | | | | | Валюта | | | | | | | | | | Код плательщика | | | | | | | | |
| Тариф  III | | | | | | |  | | | | |  | | | | |  | | | | |  | | | | | | | | |  | | | |  | | | | | | | | |  | | | | |  | | | | | | | | | |  | | | | | | | | | | | | | | | | | | |
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As the seller paid for the carriage, no payment details are given.

**Annex C3**

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**Annex C4 Claims**

**Claim 1**

**Mr. Giuseppe Monati**

**SRL «Italotornio»,**

Via Rencio, 126, Bolzano 4538, Italy

Dear Giuseppe,

Our companies have long-term intentions to cooperate in the distribution of Russian CNC lathes on the Italian market, for which we have signed an Agreement on cooperation and distribution of these products in your country. For more detailed research of the consumers' demand, we signed a Contract for supply of five CNC lathes of series ST 16A25 on July 30, 2016. We have fulfilled our obligations under the Contract duly, these lathes have been delivered and arrived in Bolzano on August 30, 2016.

The payment of 10% of the price of the Goods in the amount of EUR 43,200 has been made by You properly. 90% of the value of the Goods, which is 388,800 EUR, however, has not been paid.

We kindly ask You to transfer this amount to our account to 11 September 2016.

We would like to pay Your attention that according to Art. 2 of the Contract, the Sellers are entitled to charge a penalty for the delay in payment for the Goods.

Yours sincerely,

Tokarev P.E.

06 September 2016

**Annex C4 Claims**

**Claim 2**

**Mr. Giuseppe Monati**

**SRL «Italotornio»,**

Via Rencio, 126, Bolzano 4538, Italy

Dear Giuseppe,

We are forced to remind You that You have not paid 90% of the cost of five CNC lathes of series ST 16A25 under the Contract from July 30, 2016. The Claim from 06 September 2016, along with the claim for payment of these Goods, drew Your attention to the right of the Seller in accordance with Art. 2 of the Contract to charge a penalty for late payment of the Goods.

Since you have not paid for the Goods for a long time and the delay in payment consists 109 days, we hereby file a claim for payment of 388,800 EUR and late payment interest at the rate of 42,379.42 EUR.

We offer You to settle the demands within 30 days from the date of this Claim. Otherwise, we will have to submit this dispute to arbitration. In this case, you will also have to bear the costs of the arbitration, which we will have to bear.

Yours sincerely,

Tokarev P.E.

06 February 2017

**The International Commercial Arbitration Court**

**at the Chamber of Commerce and Industry of the Russian Federation**

5/2 Ilyinka street, Moscow, 109012

Tel: 8-495-62-0171, Fax: 8-495-620-0153

E-mail: [mkac\_arbitration@tpprf.ru](mailto:mkac_arbitration@tpprf.ru)

**Respondent: SRL “Italotornio”**

Via Rencio, 126, Bolzano 4538, Italy

**Claimant: OOO “StanKomash”**

49 Petrova street, Penza, Russia, 440028

**COUNTERCLAIM AND RESPONSE TO THE STATEMENT OF CLAIM**

**OF OOO «StanKomash»**

1. On 6 November, 2017 a Claim concerning the recovery of 176 904 EUR as penalty for the late payment of the Goods, 388 800 EUR as payment for the delivered Goods and 39 723 USD as reimbursement of the Claimant's registration (1,000 USD) and arbitration (38,723 USD) fees was filed by OOO “StanKomash”.

2. We do not accept the demands claimed by OOO StanKomash, moreover, we hereby file a Counterclaim with OOO StanKomash for the recovery of 1 000 000 000 EUR as compensation for the losses incurred by SRL Italotornio due to failure to comply with the terms and conditions of the Agreement on the Distribution of the Machine Tools in Italy concluded by the Parties on 20 January, 2016.

3. Demanding to pay the debt for five lathes and penalty for the late payment for these lathes, OOO “StanKomash” ignores that the Parties have concluded an exclusive distribution Contract for distribution and sale of StanKomash lathes in Italy, rather than an ordinary contract on international sale of Goods.

4. In the pursuance of the terms and conditions of the Distribution Agreement of SRL lathes, Italotornio has fulfilled its obligations under this Agreement duly, while OOO StanKomash has violated its obligations, namely: it has opened its subsidiary SRL Penzastan in Palermo. It means a breach of the condition of the Distribution Agreement of SRL lathes to grant SRL Italotornio the exclusive right to sell lathes manufactured by OOO StanKomash. We emphasize that OOO StanKomash has undertaken a negative obligation under this Agreement (Article 393(b) of the Civil Code of the Russian Federation) to refrain from establishing a subsidiary in Italy that competes with Italotornio SRL during the term of the Agreement until December 31, 2020. Therefore, the establishment a subsidiary for the sale of similar goods in Italy by OOO StanKomash is a violation of its obligation under Art. 1.1 of the Agreement.

5. As a result of this violation on the part of OO StanKomash, we have not only stopped receive new orders from consumers of the lathes in Italy, but we have actually lost the prospect of receiving them, and therefore we are unable to recover the income necessary to pay for the lathes referred to in the Statement of Claim of OOO StanKomash and to recover the costs that we have already incurred for the development of the brand of this company in Italy. The list of costs of SRL Italotornio is provided in the Claim attached to this Counterclaim.

**RESPONSE TO THE STATEMENT OF CLAIM**

**OF OOO «StanKomash»**

**Demand concerning the payment for the Goods**

6. Indeed, OOO “Stankomash” has supplied us with five CNC lathes of ST 16A25 series at a price of 86.500.00 EUR with a total cost of 432.500.00 EUR. Upon receipt of the Goods in Bolzano on August 30, 2016, the specialists of SRL “Italotornio” with the invitation of the experts of the Chamber of Commerce of Bolzano Casimiro Santoro and Matteo Vitale accepted the received five machines.

7. During the inspection damage of the packaging of all lathes and the absence of Vibro-support, Fuses and Documentation stipulated in the Contract Specification were discovered, which was drawn up by the corresponding Act from 30 August, 2016. Thus, we acted in accordance with the Article 38 of the UN Convention on Contracts for the International Sale of Goods, 1980. (Vienna Convention).

8. A claim for incomplete delivery and additional delivery of missing parts and documentation was filed by OOO StanKomash on September 1, 2016. However, instead of a positive response to this claim, we received a claim from 06 September 2016 for payment for incomplete Goods. We believe that the claim of OOO StanKomash for payment for the incomplete Goods is unfounded. The Goods were delivered DPU Bolzano, Italy, the Sellers are responsible for delivery of the Goods and unloading them from the arriving vehicle to the place of destination.

9. According to Art. 35 CISG the seller must deliver goods which are of the quantity, quality and description required by the contract. The goods do not conform with the contract unless they, in particular, are fit for the purposes for which goods of the same description would ordinarily be used or are fit for any particular purpose expressly or impliedly made known to the seller. Incomplete goods obviously cannot be used for their intended purpose and thus SRL “Italotornio” cannot fulfil its obligations under the Distribution Agreement.

10. In accordance with the Art. 36 CISG the seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time. In this case, the lack of conformity (incompleteness) of the goods became apparent when accepting the goods in Bolzano and was confirmed by the Act of Acceptance of Goods with the participation of representatives of the Chamber of Commerce and Industry of the Russian Federation in Bolzano.

11. Since our claim to remedy the incompleteness of the goods is justified and constitutes a counterclaim, SRL Italotornio was therefore entitled to suspend the fulfilment of counterclaims for payment of machine tools on the basis of Article 71. (Vienna Convention) and Article 328 of the Civil Code of the Russian Federation (Russian Civil Code).

12. According to Art. 71 (para. 1) CISG A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of (a) a serious deficiency in his ability to perform or in his creditworthiness; or (b) his conduct in preparing to perform or in performing the contract.

13. According to Article 328 (para. 1) of the Civil Code of the Russian Federation, the fulfillment of the obligation of one of the parties, which is conditioned by the fulfillment of the other party's obligations, is considered to be a counter performance. In accordance with para. 2 of Art. 328 of the Civil Code of the Russian Federation in the event of failure of the obliged party to provide the performance of the obligation provided for in the contract or in the presence of circumstances that clearly indicate that such performance will not be made in due time, the party on which the counter performance has the right to suspend the performance of its obligation or refuse to perform this obligation and claim damages.

14. According to para. 3 of Art. 328 of the Civil Code of the Russian Federation, neither party to the obligation on which the counter-performance lies shall have the right to demand in court the performance of the obligation without providing the other party with the obligation due from it.

15. Thus, the claim of OOO StanKomash for payment by us of the cost of the machines is not justified and cannot be satisfied by the respected arbitrators.

**16. The demand for penalty for late payment of the Goods**

17. As shown above, OOO StanKomash violated its counterobligations, which prevented SRL Italotornio from fulfilling its obligations.

18. Firstly, OOO StanKomash violated its negative obligation to refrain, during the period of the Agreement from 20 January 2016 on the Distribution of Machine Tools in Italy, from establishing a subsidiary in Italy competing with Italotornio SRL, and the corresponding right of Italotornio SRL to exclusively sell the Claimant's products in Italy.

19. Secondly, OOO StanKomash has violated the obligation to deliver the Goods to Italotornio SRL that fully mirror terms and conditions of the Contract, has not delivered the missing parts within a reasonable period of time, thus depriving Italotornio SRL of possibility to sell the machines in the contract area. Thus, OO StanKomash has violated the obligations set forth in Articles 35 and 36 of the Vienna Convention and Article 478 of the Civil Code of the Russian Federation.

20. In accordance with Art. 80 CISG a party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission. In the interpretation of  CISG according to Art. 7 CISG regard is to be had to the observance of good faith in international trade.

21. In accordance with para. 4 of Art. 1 of the Civil Code of the Russian Federation, no one has the right to benefit from their illegal or dishonest conduct. As provided for in Article 1(para. 3) of the Civil Code of the Russian Federation, participants in civil legal relations must act in good faith in the establishment, exercise and protection of civil rights and in the performance of civil duties.

22. These violations of OOO StanKomash impede the fulfillment of contractual obligations and therefore deprive it of the possibility to invoke the failure of SRL Italotornio to pay a penalty as a measure of liability.

23. OOO StanKomash delayed the lender's payment because until the Claimant fulfilled its counterobligations on the main claim of SRL Italotornio was entitled to suspend payment for the delivered machines. According to part 3 of article 405 of the Civil Code of the Russian Federation, the debtor was not considered to be in default until the obligation could not be fulfilled due to the delay of the creditor. The debtor does not have to pay interest on the monetary obligation for the duration of the creditor's delay.

24. Taking into account all stated above, the demand of OOO StandKomash for recover of penalty is subject to rejection.

25. But even if demand of OOO StanKomash for recovery of penalty was legitimate (which is not the case), it is clearly disproportionate to the consequences of the breach of obligation (Art. 333 of the Civil Code of the Russian Federation). Taking into account the violations and omissions of the Claimant set forth above it is obvious that recovery of penalty in the amount claimed by the Claimant may lead to obtaining an unjustified enrichment.

26. In particular, too high a percentage of the penalty may be considered as a common criterion for determining the disproportionality of the penalty. Thus, if a penalty of 0.1% per day of delay is applied, it is actually a penalty of 36.5% per annum (= 0.1% X 365 days) to a debt in euros. If the legal interest rate provided for by Article 395 of the Civil Code of the Russian Federation had been applied, the amount of the sanction would have been significantly lower.

27. Everything stated herein is without prejudice to the right of SRL Italotornio to supplement, refine or modify its arguments and requirements on any matter relating to the position of SRL Italotornio in this case.

28. On the basis of the arguments stated above, SRL “Italotornio” asks the Court of Arbitration to collect from OOO StanKomash:

- 1 000 000 EUR as damages incurred by Italotornio SRL due to the breach of obligations by OOO StanKomash under the Agreement on the Distribution of Machine Tools in Italy, signed by the Parties on 20 January 2016;

- 40 522 UD ($40,522) registration and arbitration fees paid by SRL Italotornio;

- dismiss the claim of OOO StanComash in full.

29. We appoint Ms. Loretta Malintoppi as an arbitrator.

On behalf of SRL "Italotornio" Director Giuseppe Monati (signature)

12 December, 2017

Annexes:

1.Copy of the Agreement on Distribution of Machine Tools in Italy from 20 January 2016.

2. The Claim of SRL "Italotornio" from 01 September 2016.

**Annex R1**

|  |  |
| --- | --- |
| **Соглашение**  **о дистрибуции станков на территории Италии**  20 января 2016 гор. Больцано  ООО «СтанКомаш», именуемое в дальнейшем Экспортер, в лице Директора Департамента новых рынков Рыночникова Д.А., действующего на основании доверенности № С-142 от 13.09.2015, с одной стороны, и SRL «Italotornio»,именуемое в дальнейшем Дистрибьютор, в лице директора Giuseppe Monati, действующего на основании Устава общества, с другой стороны, в дальнейшем совместно именуемые «Стороны», заключили настоящее Соглашение о нижеследующем.  **Статья 1. Предмет Соглашения**  Предметом настоящего Соглашения является сотрудничество Сторон по продвижению на территории Италии (Договорная территория), реализации токарных станков с ЧПУ различных марок (Продукция) Экспортера, и их гарантийному обслуживанию дистрибьютором в период с 20 января 2016 г. по 31 декабря 2020 г. (Договорный период).  Для наилучшего представительства Продукции Экспортера и ее сбыта Дистрибьютору предоставляется на Договорной территории исключительное право рекламировать, распространять и продавца Продукцию Экспортера. в течение Договорного периода.  **Статья 2. Условия поставки Продукции**  Поставки Продукции в счет реализации запланированного сотрудничества осуществляются согласно дополнительно заключаемым Контрактам, в которых предусматриваются типы и количество токарных станков с ЧПУ. Условия поставки, условия отгрузки, сроки отгрузки, количество Продукции, комплектация Продукции, цена Продукции, реквизиты грузополучателя указываются в спецификациях к дополнительно заключаемым Контрактам с использованием любого из терминов Инкотермс 2020, определяющих обязанности сторон по поставке Продукции.  Право собственности на Продукцию, проданную Дистрибьютором в ходе сотрудничества, переходит от Экспортера к Дистрибьютору в момент перехода рисков утраты или порчи Продукции согласно условиям Инкотермс 2020, указанным в соответствующих Контрактах по каждому Контракту отдельно.  **Статья 3. Обязанности Экспортера**  С момента подписания настоящего Соглашения Экспортер принимает на себя обязательство по предоставлению Дистрибьютору информации, необходимой для распространения Продукции на Договорной территории: коммерческих брошюр, руководств по эксплуатации, каталогов запчастей, руководств по сервису и другую литературу, относящуюся к Продукции.  Экспортер для повышения эффективности сотрудничества обязуется знакомить Дистрибьютора с новыми методами продажи и новыми видами применения Продукции, рекомендованными Предприятием, а также информировать Дистрибьютора о намерении Экспортера прекратить производство любой Продукций для продажи на Договорной территории.  Экспортер обязуется также оказывать Дистрибьютору всю необходимую информацию и помощь, объективно необходимую для того, чтобы Дистрибьютор мог должным образом выполнять на Договорной территории свои обязательства по настоящему Соглашению для модификации, усовершенствования, выпуска новой версии или дополнений к Продукции.  **Статья 4. Обязанности Дистрибьютора**  Дистрибьютор в интересах обеих Сторон настоящего Соглашения организует мероприятия по продвижению продукции, согласно отдельно заключаемым сторонами Контрактам.  Для полного представления Продукции Экспортера Дистрибьютор обязан постоянно иметь на каждой своей демонстрационной площадке по одной модели каждого вида Продукции, распространение и сбыт которой он осуществляет в рамках настоящего Соглашения.  В течение срока действия настоящего Соглашения Дистрибьютор принимает обязательства в области развития и обязуется:  -выполнять принятые в рамках согласованного плана развития мероприятия и обязательства;  - содействовать проводимым на его территории аудитам со стороны Экспортера;  - предоставлять по запросу Экспортера отчеты, связанные с деятельностью по распространению и сбыту Продукции;  - осуществлять обучение персонала, необходимое для сбыта Продукции на Договорной территории.  **Статья 5. Порядок реализации договоренностей, достигнутых в настоящем Соглашении**  Взаимодействие Сторон, связанное с маркетинговыми исследованиями рынка, оказанием услуг Дистрибьютором по продвижению Продукции регулируется дополнительно заключаемыми сторонами договорами.  **Статья 6. Форс - мажор**  При наступлении форс-мажорных обстоятельств, стороны освобождаются от своих обязательств до окончания указанных обстоятельств, если сторона, для которой они наступили, в течение 5-ти дней в письменной форме уведомляет другую сторону о причинах невыполнения настоящего Соглашения с предоставлением документов, заверенных Торговой - промышленной палатой.  Под форс-­мажорными обстоятельствами следует понимать обстоятельства непреодолимой силы или чрезвычайного характера, которые стороны не могли предвидеть и предотвратить, в частности; землетрясения, наводнения, стихийные бедствия, запретительные действия властей, военные действия, аварии на транспорте, забастовки, кроме как на предприятиях сторон.  **Статья 7. Заключительные положения**  На дату вступления настоящего Соглашения в силу все предыдущие договоренности, которые ему противоречат, считаются утратившими силу.  Существенным условием настоящего Соглашения является обеспечение конфиденциальности. Стороны никаким образом не раскрывают третьей стороне предоставленной друг другу информации, о конфиденциальности которой были предупреждены.  Все дополнения и изменения к настоящему Соглашению действительны, если они составлены в письменной форме и подписаны обеими сторонами.  Настоящее Соглашение составлено и подписано в двух экземплярах на русском и английском языке, имеющих одинаковую юридическую силу, Каждой стороне принадлежит па одному экземпляру.  **Статья 8. Срок действия Соглашения**  Настоящее Соглашение действует с 20 января 2016 г. по 31 декабря 2020 г. с возможностью пролонгации, путем подписания дополнительных соглашений,  Досрочное расторжение настоящего Соглашения возможно в соответствии с обоюдным решением сторон либо в одностороннем порядке Экспортером в случае, если Дистрибьютор нарушает условия настоящего Соглашения.  **Статья 9. Порядок урегулирования возможных споров**  Все споры, разногласия или требования, возникающие из настоящего Соглашения или в связи с ним, в том числе касающиеся его исполнения, нарушения, прекращения или недействительности, подлежат разрешению в Арбитражном Суде при Торгово­-промышленной палате Российской Федерации в соответствии с его Регламентом. Место рассмотрения г. Москва (Россия).  При рассмотрении споров применимым является право Российской Федерации, Конвенция ООН о договорах международной купли – продажи товаров 1980 г., Принципы международных коммерческих договоров УНИДРУА 2010 г.  Язык судебного разбирательства – русский.  **Уполномоченные лица:**  Директор Департамента новых рынков ООО «СтанКомаш» Рыночников Д.А., по доверенности № С-142 от 13.09.2015  Директор SRL «Italotornio»Giuseppe Monati, действующий на основе Устава SRL | **Agreement**  **on the distribution of machine tools in Italy**  20 January 2016 Bolzano  LLC “StanKomash”, hereinafter referred to as the Exporter, represented by the Director of the Department of New Markets DA Rynochnikov, acting on the basis of power of attorney No. С-142 dated 09/13/2015, on the one hand, and SRL “Italotornio”, hereinafter referred to as the Distributor, represented by the Director Giuseppe Monati, acting on the basis of the Charter of the company, on the other hand, hereinafter collectively referred to as the "Parties", have concluded this Agreement as follows.  **Article 1.Subject of the Agreement**  The subject of this Agreement is the cooperation of the Parties on the promotion in Italy (Contracted Territory), the sale of CNC lathes of various brands (Products) of the Exporter, and their warranty service by the Distributor from January 20, 2016 to December 31, 2020 (Contract period )  For the best representation and sale of the Products of the Exporter, the Distributor is granted on the Contract Territory the exclusive right to advertise, distribute and sell the Products of the Exporter to the seller. during the contract period.    **Article 2. Terms of Delivery of Products**  Deliveries of Products for the implementation of the planned cooperation are carried out in accordance with additionally concluded Contracts, which stipulate the types and number of CNC lathes. Terms of delivery, terms of shipment, terms of shipment, the number of Products, the complete set of Products, the price of Products, the details of the consignee are indicated in the specifications for additionally concluded Contracts using any of the Incoterms 2020 terms that define the obligations of the parties to supply the Products.  Ownership (Title) of the Products sold by the Distributor in the course of cooperation passes from the Exporter to the Distributor at the time of transfer of the risk of loss or damage to the Products in accordance with the Incoterms 2020 conditions specified in the respective Contracts for each Contract separately.  **Article 3. Obligations of the Exporter**  From the moment of signing this Agreement, the Exporter undertakes to provide the Distributor with the information necessary for the distribution of the Products on the Contracted Territory: commercial brochures, manuals, spare parts catalogs, service manuals and other literature related to the Products.  To increase the effectiveness of cooperation, the Exporter undertakes to acquaint the Distributor with new methods of sale and new uses of the Products recommended by the Company, as well as inform the Distributor of the Exporter's intention to stop the production of any Products for sale on the Contracted Territory.  The Exporter also agrees to provide the Distributor with all the necessary information and assistance that is objectively necessary so that the Distributor can properly fulfill its obligations under this Agreement on the Contracted Territory to modify, improve, issue a new version or additions to the Products.    **Article 4. Obligations of a Distributor**  The distributor, in the interests of both Parties to this Agreement, organizes product promotion activities in accordance with the Contracts concluded separately by the parties.  In order to fully present the Products of the Exporter, the Distributor is obliged to constantly have on each of its demonstration sites one model of each type of Products, the distribution and sale of which he carries out under this Agreement.  During the term of this Agreement, the Distributor accepts development commitments and undertakes:       -to fulfill the measures and obligations adopted within the framework of the agreed development plan;       - to facilitate the audits conducted on its territory by the Exporter;     - provide, at the request of the Exporter, reports related to the distribution and marketing of the Products;       - carry out staff training necessary for the sale of Products on the Contracted Territory.  **Article 5. Implementation of the agreements reached in this Agreement**  The interaction of the Parties related to market research and the provision of services by the Distributor for the promotion of Products is governed by additional agreements concluded by the parties.  **Article 6. Force Majeure**  In the event of force majeure, the parties are released from their obligations before the end of the circumstances, if the party for which they have come up, within 5 days in writing notifies the other party of the reasons for the failure to comply with this Agreement with the provision of documents certified by the Chamber of commerce and Indusrty.  Force majeure circumstances should be understood as force majeure or extraordinary circumstances that the parties could not have foreseen and prevented, in particular; earthquakes, floods, natural disasters, prohibitive actions of the authorities, military operations, transport accidents, strikes, except at the enterprises of the parties.  **Article 7. Final Provisions**  At the date of entry into force of this Agreement, all previous agreements that conflict with it shall be deemed null and void.  A fundamental condition of this Agreement is confidentiality. The parties shall in no way disclose to a third party information provided to each other, the confidentiality of which has been warned.  All amendments and changes to this Agreement are valid if they are made in writing and signed by both parties.  This Agreement is drawn up and signed in duplicate in Russian and English, having the same legal force. Each party owns one copy.  **Article 8. Agreement validity period**  This Agreement is valid from January 20, 2016 to December 31, 2020 with the possibility of extension, by signing additional agreements.  Early termination of this Agreement is possible in accordance with the mutual decision of the parties or unilaterally by the Exporter in case the Distributor violates the terms of this Agreement.  **Article 9. Procedure for the settlement of possible disputes**  All disputes, disagreements or claims arising from or in connection with this Agreement, including those related to its execution, violation, termination or invalidity, shall be resolved in the Arbitration in Moscow in accordance with its Rules. Place of arbitration - Moscow (Russia).    When considering disputes, the law of the Russian Federation, the UN Convention on Contracts for the International Sale of Goods of 1980, the Principles of International Commercial Contracts of UNIDROIT 2010 are applicable.  The language of the proceedings is Russian.  **Authorized persons:**  Director of the New Markets Department of StanKomash LLC D.A. Rynochnikov, by power of attorney No. С-142 of 09/13/2015    Director of SRL «Italotornio»» Giuseppe Monati, acting on the basis of the Statutes of SRL |

**OOO “StanKomash”**

**49 Petrova street, Penza, Russia, 440028**

City of Penza 13 September 2015

**Power of attorney № С-142, 13 September, 2015**

Obshestvo s ogranichennoy otvetstvennosty “StanKomash” in the name of Director Tokarev Petr Eduardovich acting upon the Charter, by this Power of attorney authorizes the Director of the New Markets Department of OOO “StanKomash” Rynochnikov Dmitry Alexeevich, passport No. 35 38 No. 358700, issued by the Police Department No. 32 of Tobolsk on 02.02.2000, to sign an Agreement with SRL “Italotornio” on the Distribution of Machine Tools in Italy.

This Power of Attorney is valid until December 30, 2015.

Director of OOO “StanKomash” Tokarev P.E.

(signature, seal imprint)

**Annex R2**

**Respondent’s claim**

**OOO “StanKomash”**

**City of Penza, Petrova str., 49, 440028 Russia**

**To General Director Tokarev P. E.**

Dear Petr Eduardovich

1. We were very disappointed to learn that you have failed to follow the provisions of the Agreement on the distribution of machine tools in Italy made on January 20, 2016.

Concluding this Agreement and considering the quality of the machine tools your enterprise produces as well as the necessity in such tools in Italian factories, we have been taking into account our friendly cooperation during the agreed time. That is why we have made serious efforts to promote your brand in Italy by advertising in the media, buying a special premise for demonstration and sale of the machine tools, the value of which is 150 000 euro. We also have concluded several contracts for the delivery of 20 of your machine tools within 3 years with six Italian enterprises, the total value of these contracts is 1 730 000 euro. You have visited our Center, participated in its opening and have been convinced of the fulfillment of our obligations and you have seen what costs were incurred by us.

However, having learned about the opening of your subsidiary company in Palermo, three companies refused to sign contracts for 10 machines, which means that we did not receive a profit of 865 000 euros. The inability to perform such contracts arose precisely because of your fault due to the opening of a subsidiary company in Palermo. All this required not only financial investments, but also the enthusiasm of employees, their distraction from other tasks of the company, which increased the costs of the company.

Your opening of a subsidiary company in Palermo has resulted in the loss of our clients and the loss of our commercial reputation as a reliable firm. After assessing these losses, we came to the conclusion that these losses amount to 200,000 euros.

Moreover, we have lost a favorable opportunity for the successful implementation of the agreement concluded with you on January 20, 2016 on the distribution of of machine tools in Italy (art. 7. 4. 3 of the Principles of international commercial contracts UNIDROIT 2010).

We would like to draw your attention that according to art. 393 of Russian civil code, compensation of losses in full means that as a result of their compensation, the creditor must be put in the position in which the creditor would be if the obligation was performed properly.

Based on the stated above, we estimate the damage caused by you as a result of violation of this Agreement in 1 million euros and ask you to transfer this amount to our account within 30 days from the date of the claim.

2. Upon receipt of the goods in Bolzano on August 30, 2016 by specialists of SRL "Italy torino" Adrian Grasso, Ettore Sarto and Cesare Carbone with the invitation of experts of the chamber of Commerce of the mountains. Bolzano Casimiro Santoro and Matteo Vitale received the acceptance of five machine tools. During the inspection the damage to the packaging of all the machine tools was found, as well as the absence of vibration Supports, Fuses and Documentation specified in the specification to the Contract, as was drawn up by the relevant Act of August 30, 2016 (attached).

Under article 35 of the Vienna Convention, the seller is obliged to deliver goods that meet the requirements of the contract in quantity, quality and description. The goods are not in conformity with the contract, in particular if they are not suitable for the purposes for which the goods of the same description are normally used or if they are not suitable for any particular purpose of which the seller has been made aware. Obviously, incomplete goods cannot be used for their intended purpose and thus SRL "Italotornio" cannot fulfill its obligations under the distribution Agreement. Thus, OOO "StanKomash" violated the counter-obligations that prevented the execution of SRL "Italotornio" of its obligations.

As our claim for elimination of incompleteness of goods is reasonable and represents the requirement of counter performance therefore SRL "Italotornio" had the right to suspend performance of counter obligations on payment of machine tools under article 71. (Vienna Convention) and article 328 of the Russian civil code.

According to point 3 of Art. 328 of the civil code of the Russian Federation any of the parties of the obligation on which counter performance lies, has no right to demand on court of execution, without having provided due from it under the obligation to other party.

Therefore, we ask you to deliver the missing parts within 20 days from the date of this letter under the same conditions as the machine tools were delivered.

Under article 80 of the Vienna Convention, a party may not invoke the default of the other party to the extent that the default is caused by the acts and omissions of the first party.

The above-mentioned violations of OOO “StanKomash” prevent the performance of contractual obligations and therefore deprive it of the opportunity to refer to the failure of SRL "Italotornio" for justifying the penalty as a measure of responsibility.

3. Your company has allowed the creditor's delay, as before the fulfillment of the Claimant's counterclaims in the main claim SRL "Italotornio” had the right to suspend the payment of the delivered machines. According to part 3 of article 405 of the civil code, the debtor is not

considered overdue until the obligation cannot be fulfilled due to the delay of the creditor. Under the monetary obligation, the debtor must not pay interest for the time of the creditor's delay.

In such circumstances, SRL "Italotornio" is not responsible for late payment of the goods.

Appendix: Act of acceptance of goods from August 30, 2016

With respect, Giuseppe Zanotti

(signature)

01 September, 2016

**Annex to the letter of SRL "Italotornio dated 01 September 2016**

**Act on the detected shortcomings**

**City of. Bolzano 30 August 2016**

**This Act is based on the inspection of machines that arrived in Bolzano on August 30, 2016 under the contract of July 30, 2016.**

This Act was drawn up by a Commission consisting of specialists SRL "Italotornio " Adrian Grasso, Ettore Sarto and Cesare Carbone and experts of the chamber of Commerce of the city of Bolzano Casimiro Santoro and Matteo Vitale.

During the check damage of packing of all machine tools and absence in all boxes of Vibroopor, safety Locks and the Documentation specified in the specification to the Contract was revealed thus this Act was made.

This act is made in two copies on 5 sheets in Russian and English for each of the parties

Signatures:

from SRL “Italotornio”

Adrian Grasso (signed)

Ettore Sarto (signed)

Cesare Carbone (signed)

from the Chamber of Commerce of Bolzano

expert Casimira Santoro (signed)

Matteo Vitale (signed)

**THE INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION**

№ 1800-М-134/2518 14 November, 2017

**Claimant: OOO “StanKomash”**

49 Petrova street, Penza, Russia, 440028

**Respondent: SRL “Italotornio”**

Via Rencio, 126, Bolzano 4538, Italy

**Concerning Case of the ICAC № М-134/17**

The ICAC at the CCI of the Russian Federation received on 13 November, 2017 a Statement of claim of OOO “StanKomash”,49 Petrova street, Penza, Russia, 440028 against SRL “Italotornio”, Via Rencio, 126, Bolzano 4538, Italy concerning the recovery of 565 704 EUR for improper performance of contractual obligations, 31723 USD as a recover of the costs of arbitration and registration fees.

We propose you, in accordance with § 6 of the Rules of Arbitration of International Commercial Disputes, within 30 days from the date of receipt of the statement of claim to submit a response to the statement of claim and report on the election of the main and reserve arbitrators.

We inform You that the Claimant has elected Seliverstov Ivan Nikolaevich as a main arbitrator, and Boris Nikodimovich Cheremukhov as a reserve arbitrator.

Annex: statement of claim dated November 6, 2017 (text not provided)

Yours faithfully,

Deputy Executive Secretary of the ICAC for Corporate and International Commercial Disputes

A.G. Benov

(signature)

**THE INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION**

№ 1800-М-134/2518 20 December, 2017

**Claimant: OOO “StanKomash”**

49 Petrova street, Penza, Russia, 440028

**Respondent: SRL “Italotornio”**

Via Rencio, 126, Bolzano 4538, Italy

**Concerning Case of the ICAC № М-134/17**

The ICAC at the CCI of the Russian Federation received on 12 December 2017 a Counterclaim and Response to the Statement of claim of SRL “Italotornio” against You concerning the recovery of 1 000 000 000 EUR damages arising out of the Agreement on the Distribution of lathes in Italy from 20 January, 2016 and 39 723 USD as a recover of the costs of arbitration and registration fees.

We propose you, in accordance with § 6 of the Rules of Arbitration of International Commercial Disputes, within 30 days from the date of receipt of the statement of claim to submit a response to the statement of claim and report on the election of the main and reserve arbitrators.

We inform You that SRL “Italotornio” has elected Ms. Loretta Malintoppi as a main arbitrator.

Annex: Counterclaim Statement of 12 December 2017. (text not included)

Yours faithfully,

Deputy Executive Secretary of the ICAC for Corporate and International Commercial Disputes

A.G. Benov

(signature)

**THE INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION**

**Claimant: OOO “StanKomash”**

49 Petrova street, Penza, Russia, 440028

**Respondent: SRL “Italotornio”**

Via Rencio, 126, Bolzano 4538, Italy

**Concerning Case of the ICAC № М-134/17**

We would like to inform You that Seliverstov Ivan Nikolaevich, arbitrator of the ICAC, was appointed as the Chairman by the Arbitration Committee for International Commercial Disputes (he does not need to pay for travel and other expenses).

The hearing will take place on 25 January 2018 at 11:00 p.m. at 5/2, Ilyinka St., Moscow.

The composition of the panel of arbitrators:

Chairman: Stanimir Alexandrov

Arbitrators: I.I. Seliverstov

L. Malintoppi

The representatives of the parties should be duly authorized to handle the case.

Yours faithfully,

Deputy Executive Secretary of the ICAC for Corporate

and international commercial disputes

A.G. Benov

(signature)

29 December, 2017.

**INCOTERMS® 2020**

DPU

DPU Delivered at Place Unloaded

DPU (insert named place of destination) Incoterms® 2020

EXPLANATORY NOTES FOR USERS

1. Delivery and risk - “Delivered at Place Unloaded” means that the seller delivers the goods—and transfers risk—to the buyer ``when the goods,

``once unloaded from the arriving means of transport,

``are placed at the disposal of the buyer

``at a named place of destination or

``at the agreed point within that place, if any such point is agreed.

The seller bears all risks involved in bringing the goods to and unloading them at the named place of destination. In this Incoterms® rule, therefore, the delivery and arrival at destination are the same. DPU is the only Incoterms® rule that requires the seller to unload goods at destination. The seller should therefore ensure that it is in a position to organise unloading at the named place. Should the parties intend the seller not to bear the risk and cost of unloading, the DPU rule should be avoided and DAP should be used instead.

2. Mode of transport - This rule may be used irrespective of the mode of transport selected and may also be used where more than one mode of transport is employed.

3. Identifying the place or point of delivery/destination precisely - The parties are well advised to specify the destination place or point as clearly as possible and this for several reasons. First, risk of loss of or damage to the goods transfers to the buyer at that point of delivery/destination—and it is best for the seller and the buyer to be clear about the point at which that critical transfer happens.

Secondly, the costs before that place or point of delivery/destination are for the account of the seller and the costs after that place or point are for the account of the buyer.

Thirdly, the seller must contract or arrange for the carriage of the goods to the agreed place or point of delivery/destination. If it fails to do so, the seller is in breach of its obligations under this rule and will be liable to the buyer for any ensuing loss. The seller would, for example, be responsible for any additional costs levied by the carrier to the buyer for any additional on-carriage.

4. ‘or procuring the goods so delivered’—The reference to “procure” here caters for multiple sales down a chain (string sales), particularly common in the commodity trades.

5. Export/import clearance—DPU requires the seller to clear the goods for export, where applicable. However, the seller has no obligation to clear the goods for import or for post-delivery transit through third countries, to pay any import duty or to carry out any import customs formalities. As a result, if the buyer fails to organise import clearance, the goods will be held up at a port or inland terminal in the destination country. Who bears the risk of any loss that might occur while the goods are thus held up at the port of entry in the destination country? The answer is the buyer: delivery will not have occurred yet, B3(a) ensuring that the risk of loss of or damage to the goods is with the buyer until transit to a named inland point can be resumed.

If, in order to avoid this scenario, the parties intend the seller to clear the goods for import, pay any import duty or tax and carry out any import customs formalities, the parties might consider using DDP.

A THE SELLER’S OBLIGATIONS

B THE BUYER’S OBLIGATIONS

A1 General obligations

The seller must provide the goods and the commercial invoice in conformity with the contract of sale and any other evidence of conformity that may be required by the contract.

Any document to be provided by the seller may be in paper or electronic form as agreed or, where there is no agreement, as is customary.

B1 General obligations

The buyer must pay the price of the goods as provided in the contract of sale.

Any document to be provided by the buyer may be in paper or electronic form as agreed or, where there is no agreement, as is customary.

A2 Delivery

The seller must unload the goods from the arriving means of transport and must then deliver them by placing them at the disposal of the buyer at the agreed point, if any, at the named place of destination or by procuring the goods so delivered. In either case the seller must deliver the goods on the agreed date or within the agreed period.

B2 Taking delivery

The buyer must take delivery of the goods when they have been delivered under A2.

A3 Transfer of risks

The seller bears all risks of loss of or damage to the goods until they have been delivered in accordance with A2, with the exception of loss or damage in the circumstances described in B3.

B3 Transfer of risks

The buyer bears all risks of loss of or damage to the goods from the time they have been delivered under A2.

If:

a) the buyer fails to fulfil its obligations in accordance with B7, then it bears all resulting risks of loss of or damage to the goods; or

b) the buyer fails to give notice in accordance with B10, then it bears all risks of loss of or damage to the goods from the agreed date or the end of the agreed period for delivery,

provided that the goods have been clearly identified as the contract goods.

A4 Carriage

The seller must contract or arrange at its own cost for the carriage of the goods to the named place of destination or to the agreed point, if any, at the named place of destination. If a specific point is not agreed or is not determined by practice, the seller may select the point at the named place of destination that best suits its purpose.

The seller must comply with any transport-related security requirements for transport to the destination.

B4 Carriage

The buyer has no obligation to the seller to make a contract of carriage.

A5 Insurance

The seller has no obligation to the buyer to make a contract of insurance.

B5 Insurance

The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, at the seller’s request, risk and cost, with information that the seller needs for obtaining insurance.

A6 Delivery/transport document

The seller must provide the buyer, at the seller’s cost, with any document required to enable the buyer to take over the goods.

B6 Delivery/transport document

The buyer must accept the document provided under A6.

A7 Export/import clearance

a) Export and transit clearance

Where applicable, the seller must carry out and pay for all export and transit clearance formalities required by the country of export and any country of transit (other than the country of import), such as:

``export/transit licence;

``security clearance for export/transit;

``pre-shipment inspection; and

``any other official authorisation.

a) Assistance with import clearance

Where applicable, the seller must assist the buyer, at the buyer’s request, risk and cost, in obtaining any documents and/or information related to all import clearance formalities, including security requirements and pre-shipment inspection, needed by the country of import.

B7 Export/import clearance

b) Import clearance

Where applicable, the buyer must carry out and pay for all formalities required by the country of import, such as:

``import licence;

``security clearance for import;

``pre-shipment inspection; and

``any other official authorisation.

A8 Checking/packaging/marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) that are necessary for the purpose of delivering the goods in accordance with A2.

The seller must, at its own cost, package the goods, unless it is usual for the particular trade to transport the type of goods sold unpackaged. The seller must package and mark the goods in the manner appropriate for their transport, unless the parties have agreed on specific packaging or marking requirements.

B8 Checking/packaging/marking

The buyer has no obligation to the seller.

A9 Allocation of costs

The seller must pay:

a) all costs relating to the goods and their transport until they have been unloaded and delivered in accordance with A2, other than those payable by the buyer under B9;

b) the cost of providing the delivery/transport document under A6;

c) where applicable, duties, taxes and any other costs related to export and any transit clearance under A7(a); and

d) the buyer for all costs and charges related to providing assistance in obtaining documents and information in accordance with B5 and B7(a).

B9 Allocation of costs

a) Assistance with export and transit clearance

Where applicable, the buyer must assist the seller at the seller’s request, risk and cost in obtaining any documents and/or information related to all export/transit clearance formalities, including security requirements and pre-shipment inspection, needed by the country of export and any country of transit (other than the country of import).

b) Import clearance

Where applicable, the buyer must carry out and pay for all formalities required by the country of import, such as:

``import licence;

``security clearance for import;

``pre-shipment inspection; and

``any other official authorisation.

The buyer must pay:

a) all costs relating to the goods from the time they have been delivered under A2;

b) the seller for all costs and charges related to providing assistance in obtaining documents and information in accordance with A7(b);

c) where applicable, duties, taxes and any other costs related to import clearance under B7(b); and

d) any additional costs incurred by the seller if the buyer fails to fulfil its obligations in accordance with B7 or to give notice in accordance with B10, provided that the goods have been clearly identified as the contract goods.

A10 Notices

The seller must give the buyer any notice required to enable the buyer to receive the goods.

B10 Notices

The buyer must, whenever it is agreed that the buyer is entitled to determine the time within an agreed period and/or the point of taking delivery within the named place of destination, give the seller sufficient notice.

1. Although Incoterms 2020 shall come into force on January 1, 2020, the term DPU, which replaced the term DAT Incoterms 2010, is used for educational purposes. The text of the DPU term is attached further. [↑](#footnote-ref-1)
2. For purposes of this educational case, registration and arbitration fees were calculated on the basis of the ICAC calculator on November 16, 2019. The fees were paid by the Claimant when filing the claim in an appropriate manner. [↑](#footnote-ref-2)
3. The names of cities given in this case are authentic. Names of the enterprises, surnames of the persons mentioned in the case are fictitious, except for the name of Mr. Benov A.G. Any coincidences are random. [↑](#footnote-ref-3)