

## **BOB BACHER LAW OFFICE**

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**Court of Arbitration at the  
Polish Chamber of Commerce  
in Warsaw**

**4 Trębacka Str.  
00-074 Warsaw  
Poland**

Castlewood, 21 December 2011

### **Subject: Request for Arbitration**

Dear Sir or Madam,

On behalf of my client, Fireproof Security – Service and Equipment, Sociedad Limitada (registered at 35 Otolan Str., 02-0202 Castlewood, Reinoland), I am filing this statement of claim in order to comply with § 27 para. (1) of the Rules of the Court of Arbitration at the PCC as a request to commence arbitral proceedings.

On 27 May 2008, Fireproof Security concluded a contract with Antylland Constructions, Société Anonyme (registered at 15 Chopin Str., 50-202 Capital City, Antylland), *inter alia*, regarding the delivery and installation of 243 fireproof windows (type F-90). This contract contains an arbitration clause submitting potential disputes for resolution by the Court of Arbitration at the Polish Chamber of Commerce (*see Exhibit C1*).

Attached to this letter, please find the following documents:

- Statement of claim (issued in five copies)
- Power of Attorney
- Court register excerpt of Fireproof Security – Service and Equipment, Sociedad Limitada
- Exhibit C1 (arbitration clause)
- Exhibit C2 (correspondence between Mr. Keisen and Ms. Cabra)
- Exhibit C3 (correspondence between Mr. Keisen and Mr. Prospe)
- Exhibit C4 (notice of cancellation)

Yours faithfully,

**BOB BACHER**

## STATEMENT OF CLAIM

### ***I. Claimant:*** *Fireproof Security – Service and Equipment, Sociedad Limitada*

Registered at 35 Otolan Str., 02-0202 Castlewood, Reinoland, European Union  
Phone: (0) 502 09 37  
Fax: (0) 466 30 98  
Mail: [office@fireproof.re](mailto:office@fireproof.re)  
Person in charge: José Keisen, General Manager

### ***II. Respondent:*** *Antylland Constructions, Société Anonyme*

Registered at 15 Chopin Str., 50-202 Capital City, Antylland, European Union  
Phone (0) 502 09 37  
Fax: (0) 466 30 98  
Mail: [office@antyllandconstructions.an](mailto:office@antyllandconstructions.an)  
Person in charge: David Prospe, Project Manager

### ***III. Facts***

1. Fireproof Security – Service and Equipment, Sociedad Limitada (hereafter “**Fireproof Security**”) is a medium-sized construction business which specialises in the installation of fireproof construction issues. Over the past few years, its reputation has spread across Europe from Reinoland, where it has its main place of business.  
Nevertheless, due to the ongoing financial crisis, which especially affected the branch of construction, the expansion has come to a halt and competition in the international market has increased.
2. Due to its specialisation in the instalment of products relating to the fire security of buildings, Fireproof Security is usually engaged by general contractors as a subcontractor. Fireproof Security buys its products from manufacturers, licensed suppliers or other distributors.
3. On 27 May 2008, Fireproof Security entered into a contract with Antylland Constructions, Société Anonyme (hereafter “**Antylland Constructions**”) concerning the delivery and installation of 243 fireproof windows of the type F-90. The windows were meant to be implemented in a prestigious project, the place of business of an Antyllish energy supplier. Antylland Constructions was the general contractor of this project hiring Fireproof Security as a subcontractor.
4. The contract concluded between the parties contained a schedule determining certain work stages. It was agreed that Fireproof Security would be paid the total amount of EUR 1,160,000 for the completion of the project. However, since Fireproof Security also had to make certain advanced payments to its various suppliers, the parties stipulated that Fireproof Security could send a payment notice, determining the current stage of progress, to Antylland Constructions so that it could be paid on the completion of each stage. The sum was supposed to be calculated as a percentage rate comparing the actual process in relation to the complete scope of the project. Two weeks after receiving such a payment notice, Antylland Constructions would have to send the accepted or adjusted notice back to Fireproof Security, which would then be the basis for the actual bill.
5. This practice, which is quite common in the construction business, was continued for the first stages of the project. However, in November 2010, Antylland Constructions refused to accept the state of progress in the project, but also denied further payment to Fireproof Security.

6. The acceptance was refused due to several alleged defects in the construction and/or implementation of the F-90 windows. Further, the payment was refused because Fireproof Security had allegedly tried to bill Antylland Constructions for works which fell outside the scope of the contract. However, Mr. Keisen, the General Manager of Fireproof Security, had explicitly asked for the permission to undertake necessary additional measures to ensure that the building would comply with the relevant safety regulations.
7. This request was answered by Ms. Cabra, the Deputy General Manager of Antylland Constructions. She was in charge at that time, because Mr. Prospe was on vacation. In her letter dated 4 August 2010 she explicitly confirmed that Fireproof Security should carry out the aforementioned steps (*see Exhibit C2*).
8. Notwithstanding several requests by Fireproof Security to accept the respective payment notice, Antylland Constructions persistently refused to return the accepted copy of it. Mr. Prospe alleged that there had been no agreement for the installation of the second layer of fireboards in spite of the clear and definite statement his deputy had given weeks before (*see Exhibit C3*).
9. This conduct put Fireproof Security in an economically severe situation. Due to the strict schedule stipulated in the contract, it had to continue the completion of the project without being paid for its work. Furthermore, it had to pay its suppliers and other subcontractors. This situation placed Fireproof Security under an enormous pressure. Some of the subcontractors had already filed claims against Fireproof Security concerning the payment of products delivered. Fireproof Security was almost on the edge of bankruptcy.
10. In December 2010, Antylland Constructions then proposed to renegotiate certain aspects of the formerly concluded contract. At that point in time, Fireproof Security felt as though "its back was against the wall". Although putting itself at a disadvantage, Fireproof Security saw no other option but to agree to the amendment of the original contract proposed by Antylland Constructions.
11. Regardless of the fact that a modification under the aforementioned circumstances in any case has to be regarded as null and void, Mr José Keisen, General Manager of Fireproof Security, explicitly cancelled the modifications to the original contract in his letter to Antylland Constructions dated 17 September 2011 (*see Exhibit C4*).

#### **IV. Amount of the dispute: PLN 851,711.68**

EUR 190,817 calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN 851,711.68.

#### **V. Applicable Law**

1. According to Clause 21 of the contract, all disputes arising out of the contract shall be finally settled by the Court of Arbitration at the Polish Chamber of Commerce in Warsaw pursuant to the Rules of the Court of Arbitration at the Polish Chamber of Commerce.
2. According to Clause 23 of the contract, the Draft Common Frame of Reference shall be the legal basis for the material issues<sup>1</sup>.

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<sup>1</sup> For the purpose of this Moot, the Draft Common Frame of Reference (DCFR) is deemed to have entered into force and to be the legal basis validly chosen by the parties (see para. 11 of the rules).

3. The UNCITRAL Model Law on International Commercial Arbitration in its amended version of 2006 was implemented by Reinoland, Antylland and Poland – the states where both parties are registered, have all their assets and where the arbitration proceeding takes place.

## ***VI. Arbitral Claims***

According to the above mentioned arguments, Fireproof Security respectfully requests the Arbitral Tribunal to find that:

- the alleged modification of the original contract is null and void or respectively was duly cancelled;
- Fireproof Security is entitled to full payment for the works executed in the outstanding amount of EUR 190,817.

-----(*Extracted from the contract between Fireproof Security, S.L. and Antylland Construction, S.A.  
concluded on 27 May 2008*)-----

**§ 21 Arbitration**

- (1) All disputes arising out of this contract shall be finally settled by the Court of Arbitration at the Polish Chamber of Commerce (PCC) in Warsaw.*
- (2) The proceedings shall be conducted pursuant to the Rules of the Court mentioned in section (1) of this provision.*
- (3) The version binding on the date of filing the statement of claim of the aforementioned rules shall be applied.*
- (4) The arbitral proceedings shall be conducted by three arbitrators selected in accordance with the Rules of the Court of Arbitration at the Polish Chamber of Commerce (PCC).*
- (5) The arbitration procedures, both written and oral, shall be conducted in English.*
- (...)*

**§ 23 Applicable Material Law**

*The Draft Common Frame of Reference shall govern this contract.*

***Fireproof Security, S.L.***  
***– Service and Equipment –***

**35 Otolan Str.**  
**02-0202 Castlewood**  
**Reinoland**

Antylland Constructions, S.A.

*In care of: Mr. Prospe*

15 Chopin Str.  
50-202 Capital City  
Antylland

25 July 2010

Dear Mr. Prospe,

Unfortunately I do not have good news. We wanted to continue our work in building complex C today, but we could not start attaching the windows there. As you know, the walls also have to comply with the F-90 standard. Otherwise it would not make sense to mount the F-90 windows with the G-90 vitrification that you ordered. Moreover, and this might be even more important, we would not meet the corresponding provisions regarding fire safety (EN 1634-1).

The problem is that the plasterboard panels have to be double-boarded with 1,000 °C consistent mineral wool insulation and fireboards. The drywall builder only installed the fireboards on one side.

As I said, if we fitted in the windows now, the building would not pass the inspection.

I contacted the drywall building company, but they have already left the construction site and have started new projects so they do not have the manpower necessary to make up for their failure. Luckily we could organize the necessary materials and install the second layer at short notice.

I consider this to be the best way to deal with the situation at hand, but you decide.

Waiting for your prompt reply,

Mr. José Keisen

(General Manager, Fireproof Security, S.L.)

Antylland Constructions, S.A.  
15 Chopin Str.  
50-202 Capital City  
Antylland

To  
Mr. José Keisen,  
General Manager  
Fireproof Security – Service and Equipment, S.L.  
35 Otolan Str.  
02-0202 Castlewood  
Reinoland

28 July 2010

Dear Mr. Keisen,

My name is Anna Cabra. I am the Deputy General Manager of Antylland Constructions, S.A. Mr. David Prospe is currently on holiday. He has taken care of this project from the very beginning and is responsible for the contract. Only he can personally make binding decisions. Thus, I kindly ask you to wait for his response in two weeks when he returns from his holiday.

Kind regards,

Ms. Anna Cabra

(Deputy General Manager, Antylland Constructions, S.A.)

***Fireproof Security, S.L.***

***– Service and Equipment –***

**35 Otolan Str.  
02-0202 Castlewood  
Reinoland**

Ms. Anna Cabra  
Deputy General Manager

Antylland Constructions, Société Anonyme  
15 Chopin Str., 50-202 Capital City, Antylland

Cc: Mr. David Prospe,  
Project Manager  
Antylland Constructions, Société Anonyme  
15 Chopin Str., 50-202 Capital City, Antylland

2 August 2010

Dear Ms. Cabra,

Thank you for your reply. I understand that Mr. Prospe is on vacation. However, we cannot wait this long for the decision. We have to perform our work according to the strict time schedule.

If we do not install the second layer now we are going to fall behind the schedule and the entire completion might be delayed. It will be a complex procedure to insert the additional fireboards at this stage, but if we do not do it now, the expenses will only increase further.

Awaiting your instructions.

Mr. José Keisen

(General Manager of Fireproof Security, S.L.)



Antylland Constructions, S.A.  
15 Chopin Str.  
50-202 Capital City  
Antylland

To  
Mr. José Keisen,  
General Manager  
Fireproof Security – Service and Equipment, S.L.  
35 Otolan Str.  
02-0202 Castlewood  
Reinoland

4 August 2010

Dear Mr. Keisen,

As I understand it, these changes in construction which you referred to in your previous correspondence are necessary to perform and complete the contract. In this situation, we have no choice, but to do what has to be done. So please carry out the works which you consider necessary. After returning from his holiday, Mr. Prospe will contact you to discuss the details of your work.

Kind regards,

Ms. Anna Cabra

(Deputy General Manager, Antylland Constructions, S.A.)

***Fireproof Security, S.L.***  
***– Service and Equipment –***

**35 Otolan Str.**  
**02-0202 Castlewood**  
**Reinoland**

Antylland Constructions, S.A.

*To the attention of: Mr. Prospe*

15 Chopin Str.  
50-202 Capital City  
Antylland

**Subject: Payment Notice Nr. 102-B53 DES and Nr. 96-B53 DES**

17 November 2010

Dear Mr. Prospe,

Although the works to be done have turned out to be more extensive than anticipated, we have made good progress in the past few weeks. We should finish the installation of the F-90 windows almost as scheduled.

Please find enclosed notice of payment No. 102-B53 DES covering the last stage completed (stage 4 of the schedule) in the amount of EUR 290,000. Please review this notice as quickly as possible. We would like to send you the corresponding invoice.

Further, several weeks ago I sent you the notice of payment No. 96-B53 DES for the amount EUR 100,817 concerning additional works, i.e., the installment of the second layer of fireboards in complex C, which we performed in August and September following Ms. Anna Cabra's instructions. These works were finished a long time ago, but so far you have not confirmed receipt. Please bear in mind that we also have to pay our suppliers.

As I already mentioned, we will finish the project, but we still have to keep our business going.

Regards,

Mr. José Keisen

(General Manager, Fireproof Security, S.L.)

Antylland Constructions, S.A.  
15 Chopin Str.  
50-202 Capital City  
Antylland

To  
Mr. José Keisen,  
General Manager  
Fireproof Security – Service and Equipment, S.L.  
35 Otolan Str.  
02-0202 Castlewood  
Reinoland

20 November 2010

**Subject: Re: Payment Notice No. 102-B53 DES**

Mr. Keisen,

I am in receipt of your letter of 17 November and took notice of the payment request No. 102B53 DES that you attached to that letter.

However, I have to inform you that Antylland Constructions, S.A. will not pay the amount claimed in your notification. Several structures were unacceptable, therefore we are going to withhold payment until the defects are repaired.

I received your notice of payment No. 96-B53 DES several weeks ago. However, I was sure that it was a mistake of your account. I had not ordered any additional works and besides, I did not agree to any details of such a change of the scope of works to be done. We prepared the contract jointly and you should know that, pursuant to § 8 (Scope of Works) of our contract, *"Prior written approval from the Contractor's Project Manager is necessary for the commencement of additional work."* – i.e., my approval.

Yours sincerely,

Mr. David Prospe

(Project Manager of Antylland Constructions, S.A.)

***Fireproof Security, S.L.***  
***– Service and Equipment –***

**35 Otolan Str.**  
**02-0202 Castlewood**  
**Reinoland**

Antylland Constructions, S.A.

*To the attention of: Mr. Prospe*

15 Chopin Str.  
50-202 Capital City  
Antylland

**Subject: Notice of cancellation**

17 September 2011

Mr. Prospe,

The purpose of this letter is to notify you that Fireproof Security, S.L. is rescinding from the so-called "settlement" of 30 January 2011 with your company.

On behalf of Fireproof Security S.L., I withdraw from all the declarations laid down in the protocol. This clearly one-sided agreement was the result of your companies' actions trying to induce our business to consent to your conditions, but not a result of fair and equal negotiations.

If you persist in withholding the outstanding payment, we see no alternative but to initiate further legal proceedings.

Mr. José Keisen

(General Manager, Fireproof Security, S.L.)



Warsaw, 2011-12-28

**Case No SA 219/2011**

Arbitral Legal Representative:  
Bob Bacher  
Bob Bacher Law Office  
22 Granał Str.  
02-0202 Castlewood  
Reinoland

I hereby inform you that the Statement of Claim of **Fireproof Security – Service and Equipment, Sociedad Limitada, Reinoland**

against: **Antylland Construction, Société Anonyme, Antylland**

for the payment of **EUR 190,817** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN **851,711.68**.

was filed to the Court of Arbitration at the Polish Chamber of Commerce in Warsaw on 21 December 2011.

With reference to the above I call upon you to:

1. pay, within three weeks, the arbitration fee **of PLN 53,302.00** as well as the registration fee **of PLN 2,000.00** to the bank account of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, account No 23124010531111000004408800 at BANK PEKAO S.A. IV Oddział w Warszawie, or § 30 Sec. 2 of the Rules of the Court of Arbitration will apply;

2. to appoint an arbitrator within three weeks, in other case the arbitrator will be nominated by the Arbitration Council (§ 22 Sec. 1 of the Rules of the Court of Arbitration).

The deadlines run from the date of receiving this letter.

Please refer to the case number in your further correspondence and when making any payments.

*Secretary General*

*Court of Arbitration at the PCC*

Enclosures:

1. Rules of the Court of Arbitration of 1 January 2007
2. Tariff of fees,
3. List of Arbitrators recommended by the Court (Further information on the qualifications of arbitrators is available on the website of the Court [www.sakig.pl](http://www.sakig.pl) in the section: List of Arbitrators).

## **BOB BACHER LAW OFFICE**

22 Granal Str.  
02-0202 Castlewood  
Reinoland

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e-mail: b.bacher@bacher.re

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**Court of Arbitration at the  
Polish Chamber of Commerce  
in Warsaw**

**ul. Trębacka 4  
00-074 Warsaw  
Poland**

Castlewood, 10 January 2012

**Case No. SA 219/2011**

### **CLAIMANT'S STATEMENT On the appointment of an arbitrator**

In execution of the Court's demand to appoint an arbitrator, which was delivered to the Claimant on 30 December 2011, on behalf of Fireproof Security – Service and Equipment, Sociedad Limitada, I hereby appoint as arbitrator, attorney Mr. Arbitrator 1.

I would also like to inform you that the arbitration fee and registration fee were paid on 9 January 2012. Please see the attached confirmation of the bank transfer.

Yours faithfully,

**BOB BACHER**

*Legal Representative*



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

Warsaw, 2012-01-16

Antylland Constructions, Société Anonyme

15 Chopin Str.  
50-202 Capital City  
Antylland

**Case No SA 219/2011**

Re: the claim brought against you by Fireproof Security – Service and Equipment, Sociedad Limitada, Reinoland

For the sum of **EUR 190,817** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN **851,711.68**.

Please find enclosed a copy of the Statement of Claim, with attachments, dated 21.12.2011.

The reply to the Statement of Claim should be filed to the Court of Arbitration in five copies, within 30 days from receiving this letter.

With reference to the above, I would like to ask you to appoint an arbitrator within three weeks from the date of receiving this letter, or the arbitrator will be nominated by the Arbitration Council (§ 22 Sec. 1 of the Rules of the Court of Arbitration).

Court of Arbitration at the Polish Chamber of Commerce  
4 Trębacka Str., 00-074 Warsaw, Poland  
tel. +48 (22) 827 47 54  
fax +48 (22) 827 94 01

info@sakig.pl  
www.sakig.pl



Please refer to the case number in your further correspondence.

*Secretary General*

*Court of Arbitration at the PCC*

Enclosures:

1. Copy of the Statement of Claim with attachments
2. Rules of the Court of Arbitration of 1 January 2007
2. Tariff of fees,
3. List of Arbitrators recommended by the Court (Further information on the qualifications of arbitrators is available on the website of the Court [www.sakig.pl](http://www.sakig.pl) in the section: List of Arbitrators).

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**Edvard Martinez, advocate  
Den & Martinez Law Firm  
4 City Square, 50-202 Capital City  
Antylland  
Mail [martinez@lawoffice.an](mailto:martinez@lawoffice.an)**

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Capital City, 7 February 2012

**Court of Arbitration at the  
Polish Chamber of Commerce  
in Warsaw**

**ul. Trębacka 4  
00-074 Warsaw  
Poland**

**Claimant: Fireproof Security – Service and Equipment, Sociedad Limitada**  
address: 35 Otolan Str., 02-0202 Castlewood, Reinoland

represented by Bob Bacher, attorney

address for service of notices:

Bob Bacher Law Office

22 Granal Str., 02-0202 Castlewood, Reinoland  
Mail [b.bacher@bacher.re](mailto:b.bacher@bacher.re)

**Respondent: Antylland Constructions, Société Anonyme**

address: 15 Chopin Str., 50-202 Capital City, Antylland

represented by Edvard Martinez, advocate

Den & Martinez Law Firm

4 City Square, 50-202 Capital City, Antylland  
Mail [martinez@lawoffice.an](mailto:martinez@lawoffice.an)

amount of the dispute: PLN 851,711.68

## Statement of Defense

1) My client, Antylland Constructions, S.A. (in the following cited as “**Antylland Constructions**”) has received your letter of 16 January 2012 stating that an arbitral proceeding was filed by Fireproof Security – Service and Equipment, S.L. (in the following cited as “**Fireproof Security**”). I will be representing Antylland Constructions in the present case. Please find the power of attorney enclosed to this document.

2) On behalf of my client and in accordance with § 32 of the Rules of the Court of Arbitration at the PCC (the “PCC-Rules”), I hereby submit the requested statement of defence responding to the Statement of Fireproof Security dated 21 December 2011.

3) Antylland Constructions respectfully asks the Arbitral Court not to start arbitral proceedings since there is no valid basis for arbitration in the case at hand. To be more precise, there is not even an actual case here. The parties never concluded an arbitration clause regarding the issues raised by Fireproof Security.

4) The alleged arbitration clause Fireproof Security referred to was contained in the contract between Antylland Constructions and Fireproof Security. However, this contract was effectively modified by both parties in January 2011. The agreement was meant to completely settle all differences between Antylland Constructions and Fireproof Security. In the presence of attorneys on both sides during the process of negotiations and the signing, the parties agreed that there should be no more demands after the conclusion of this settlement. It was thus understood by both parties to be a final and binding settlement (see Ex. R1). The parties agreed that the final Subcontractor’s Remuneration for delivered windows and all works executed in the last stages of the contract amounts to the total amount of EUR 200,000. This amount was immediately transferred to Fireproof Security. The settlement did not contain any arbitration agreement, which is why there are no grounds for an arbitration proceeding regarding the matter alleged by Fireproof Security.

5) Apart from the fact that the parties never concluded a valid arbitration agreement with regard to the present subject, Fireproof Security’s claim is unfounded and must thus be rejected. All the invoices that Fireproof Security rightfully submitted to Antylland Constructions were entirely paid in due course.

6) There is no disagreement as to the method of payment. The parties agreed that after the completion of a certain work stage, Fireproof Security had to prepare an adequate payment notice and submit it to Antylland Constructions. As stated in the Request for Arbitration, the sum should be calculated as a percentage rate comparing the current stage of progress in relation to the complete scope of the project. Within two weeks after receiving each payment notice from Fireproof Security, Antylland Constructions was obliged to return a copy of the accepted or

adjusted notice. This copy would later be the basis for drawing up a partial invoice which was essential for payment.

7) From May 2008 till September 2010, the cooperation was quite successful and satisfying for both parties. Antylland Constructions had been accepting the work stages performed by Fireproof Security, or just made some minor modifications to the payment notices. As stipulated in the contract, Antylland Constructions transferred the payments properly within 60 days upon receipt of the invoice.

8) However, in October 2010 this situation changed. After a partial inspection of the construction site, Antylland Constructions discovered that several parts of the work executed by Fireproof Security were not properly performed. Subsequently, Antylland Constructions reported the defective issues to Fireproof Security and asked them to undertake the necessary corrections and repair those defects. This request, however, was at first unanswered by Fireproof Security.

9) Without responding to the request for repair, Fireproof Security nevertheless demanded that the corresponding payment notice (102-B53 DES) should be accepted in its letter of 17 November 2010 (see Ex. C3).

10) In contrast to Fireproof Security's assertion that Antylland Construction was obliged to accept the work as well as the corresponding payment notices, Antylland Construction had the right to refuse Fireproof Security's demands. On the one hand, there were numerous major defects. This is proven by the protocol of the partial inspection (see Ex. R2). On the other hand, several works were carried out without prior instruction, as specified in the contract. It clearly and unequivocally states that no payment will be made for additional work except in the case that the Project Manager explicitly allows Fireproof Security to do so (see Ex. R3).

11) Further, in contrast to Fireproof Security's assertion, it was its own behaviour forcing the parties to commence negotiations. It refused to hand over certificates of approval which Antylland Constructions needed to pass on to its customer (see Ex. R4)

### **Applicable Law<sup>2</sup>**

Antylland Constructions confirms that, according to Clause 23 of the contract, the Draft Common Frame of Reference shall be the legal basis for any potential material issues and disputes between the parties.

It denies, however, that disputes arising between the parties shall be settled by arbitration. The settlement reached between the parties is valid and binding. It does not contain an arbitration clause. The Court of Arbitration at the PCC has therefore no jurisdiction.

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<sup>2</sup> For the purpose of this Moot, the Draft Common Frame of Reference (DCFR) is deemed to have entered into force and to being a legal basis validly chosen by the parties (see para. 11 of the rules).

## **Arbitral Claims**

Considering the facts of the case, I hereby request to:

- Discontinue the proceedings and that the Arbitral Tribunal decides on the lack of its competence to settle the dispute, and as a consequence reject the claim with respect to the Antylland Constructions due to the lack of an arbitration clause;

Taking procedural precautions, in case the Arbitral Tribunal does not accept the motion re. 1 above, I hereby ask the Arbitral Tribunal to find that:

- The settlement between the parties was final and closing
- Antylland Constructions was entitled to refuse the acceptance and payment of the allegedly outstanding amount of EUR 190,817
- There are thus no further claims by Fireproof Security against Antylland Constructions with regard to the present subject.

-----(*Extracted from the Settlement between Fireproof Security, S.L. and Atylland Construction, S.A.*

*concluded on 30 January 2011*)-----

## **SETTLEMENT**

Preliminary declarations:

After extensive negotiations, which took place in the period from November 2010 to January 2011, the parties reached a final and binding agreement upon mutual claims regarding the total amount due for performed works in connection with the installation of the fireproof windows, as well as the quality of those works. The Settlement regulates all relations and contract cooperation between the parties.

Therefore, the parties agreed upon the following terms:

### **§ 1 Remuneration**

1. The parties agree that the final Subcontractor's Remuneration for delivered fireproof windows and all works executed in the last stage of the Contract amounts to the total amount of EUR 200,000.
2. This amount shall be paid to the Subcontractor within two days after signing this Settlement.

(...)

### **§ 5 Mutual claims**

1. The Subcontractor confirms that the payment of Remuneration specified in *§1 Remuneration* covers all costs and fulfils all its claims related to the performance of works and delivered goods.
2. The parties agree that the Subcontractor is not entitled to receive any additional remuneration for alleged additional work from the Contractor.
3. The Contractor confirms that the provisions of this Settlement fulfil all its claims towards the Subcontractor for the delivery and installation of fireproof windows (type F-90). For the avoidance of doubt, the parties confirm that this provision limits the rights of the Contractor specified in the main contract in connection with the performance of works by the Subcontractor or fulfilling all of its scope of work. The Contractor confirms that the works were performed and finished in accordance with the main contract and that it accepts them.
4. The Contractor relinquishes all claims specified in *§19 Late Completion Contractual Penalties* of the main contract.

(...)

### **§ 9 Documentation**

1. The necessary documentation and technical files regarding performed works and certificates for fireproof windows possessed by the Subcontractor need to be handed over to the Contractor without undue delay.

(...)

### **PARTIAL INSPECTION PROTOCOL**

On 23 September 2010, the Commission consisting of:

1. David Prospe, the Contractor's Project Manager
2. Allan Blue, the Investor's representative
3. Michael Turtle, Building inspector

Has conducted partial inspection of works consisting on the following:

Quality and installation of fireproof windows type F-90 in the office building carried out in accordance with the Contract dated 27 May 2008 and technical project B-303.

The commission has found defects and faults:

- In most office rooms, cracks in walls surrounding the window openings;
- On the first floor, office rooms: 004/I, 012/I, 013/I, 130/I, 135/I – defects of oil varnish in window frame painting;
- On the second floor, office rooms: 034/II, 111/II, 123/II, 130/II, 140/II – defects of oil varnish in window frame painting;
- On the first floor, office rooms: 020/I, 023/I, 024/I, 100/I, 101/I, 102/I, 103/I, 104/I - loose handles, lack of windows' gaskets;
- On the fourth floor, office rooms: 030/IV, 140/IV, 141/IV, 145/IV, 146/IV –damaged window frames.

Commission:

...(signature).....  
David Prospe,  
Contractor's Project Manager

...(signature).....  
Allan Blue,  
Investor's representative

...(signature).....  
Michael Turtle,  
Building inspector

-----(*Extract from the Contract between Fireproof Security – Service and Equipment, S.L. and Antylland Constructions, S.A. concluded on 27 May 2008*)-----

## **§ 8 Scope of Works**

(...)

(3)*For the avoidance of doubt, works which are not envisaged in this contract but are required to complete the works will be paid, however, on the twin conditions of a prior written order from the Contractor to the Subcontractor, and agreement between the Parties upon the price and timing of the unforeseen works necessary for completion. No such works can be invoiced without such agreement. Prior written approval from the Contractor's Project Manager is necessary for the commencement of additional work.*

(...)

## **§ 12 Payment conditions**

*As far as the progress of the works is in accordance with the time schedule, the remuneration shall be invoiced to the Subcontractor partially upon completion of every stage in the work described in the time Schedule as based on the payment notice approved or adjusted by the Contractor. Every invoice to be sent to the offices of the Contractor must be accompanied by a copy of the aforementioned notice. Invoices sent without this notice will be without effect.*

*The Contractor shall pay each valid invoice within 60 days following the day of receipt of that invoice by the Contractor.*

(...)

## **§ 19 Late Completion Contractual Penalties**

*The Subcontractor shall pay to the Contractor a penalty of 2% of the remuneration for each calendar day of delay in completing the works after the dates and deadlines described in article no.4; (...)*

*The Contractor may further recover any other damages or costs as a result of the late completion by the Subcontractor, such as loss of profits and market share, damage to brand value, or other general or indirect damages.*



## Exhibit – R 4

Antylland Constructions, S.A.  
15 Chopin Str.  
50-202 Capital City  
Antylland

To  
Mr. José Keisen,  
General Manager  
Fireproof Security – Service and Equipment, S.L.  
35 Otolan Str.  
02-0202 Castlewood  
Reinoland

23 November 2010

### **Subject: Inspection Report**

Mr. Keisen,

This is the second letter that I write to you regarding the EN 1634 certification reports for the F-90 windows. The partial inspection is scheduled for Thursday of next week and we have still not received the certificates of approval for the windows.

I think that I do not have to point out that this is an urgent matter. The certificates are of essential importance for us to hand over the completed building complex to our customer.

Mr. David Prospe

(Project Manager of Antylland Construction, S.A.)



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

---

Warsaw, 2012-02-15

**Case No SA 219/2011**

Arbitral Legal Representative:

Den & Martinez Law Firm

Edvard Martinez

4 City Square  
50-202 Capital City  
Antylland

I hereby confirm that the Statement of Defence of Antylland Constructions, Société Anonyme, dated 7 February 2012, was received by the Court of Arbitration at the Polish Chamber of Commerce in Warsaw on 10 February 2012.

The Statement of Defence does not contain the appointment of an arbitrator. Therefore, please be informed that the Arbitral Council has nominated Ms Arbitrator 2 as arbitrator in this case, pursuant to Article 22 sec. 1 of the Rules of the Court of Arbitration of 1 January 2007.

*Secretary General*

*Court of Arbitration at the PCC*



Warsaw, 2012-02-15

**Case No SA 219/2011**

**Mr Arbitrator 1**

Applies to the case filed by: **Fireproof Security – Service and Equipment, Sociedad Limitada**

Registered at 35 Otolan Str., 02-0202 Castlewood, Reinoland

against: **Antylland Constructions, Soci   Anonyme**

Registered at 15 Chopin Str., 50-202 Capital City, Antylland

value of the claim: **EUR 190,817** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN **851,711.68**.

Dear Mr Arbitrator 1,

I would like to inform that you have been nominated as Arbitrator 1 by the Claimant.

Ms Arbitrator 2 has been nominated by the Arbitral Council, pursuant to Article 22 sec. 1 of the Rules of the Court of Arbitration of 1 January 2007, as the Respondent failed to appoint an arbitrator within the date set.

Please confirm your acceptance of the position of arbitrator in this case by completing and signing the attached "Arbitrator's Statement", and returning it within seven days.

If you do not accept the position, please state and justify the reasons for your refusal also within seven days.

With reference to the above, I would like to invite you to appoint – together with Ms Arbitrator 2 – a chairman of the Arbitral Tribunal within two weeks from the date of receiving this notification. Otherwise the chairman of the Arbitral Tribunal will be nominated by the Arbitration Council (§ 22 Sec. 2 of the Rules of the Court of Arbitration);

I enclose the "Arbitrator's Statement", Rules of the Court of Arbitration of 1 January 2007 and a List of Arbitrators recommended by the Court (Further information on the qualifications of arbitrators is available on the website of the Court [www.sakig.pl](http://www.sakig.pl) in the section: List of Arbitrators).

Pursuant to § 16 sec. 5, the case file will be provided after a written statement of independence and impartiality has been submitted.

*Secretary General*

*Court of Arbitration at the PCC*



.....  
Place

.....  
Date

**Name and surname: *Arbitrator 1***

**Case No: *SA 219/2011***

**A r b i t r a t o r ' s   S t a t e m e n t**  
**o f   i m p a r t i a l i t y   a n d   i n d e p e n d e n c e**

**As I have been appointed as an Arbitrator in the Case No: *SA 219/2011***

**filed by: *Security – Service and Equipment, Sociedad Limitada, Reinoland***

**against: *Antylland Constructions, Société Anonyme, Antylland***

**in the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, I hereby declare that:**

- I am independent and impartial in resolving the present case and, most notably, I do not have any direct links to, and professional contacts with, the parties or related entities as well as the legal representatives of the parties and their law offices or the companies in which they practice their profession. There are no future, present or foreseeable circumstances that may give rise to doubts as to my impartiality or independence for either party (nevertheless I hereby disclose the following circumstances:  
.....  
.....  
.....
- I shall perform accepted duties of an arbitrator according to the best of my knowledge and skills, remaining impartial and independent, in compliance with the "Code of Ethics for Arbitrators and Mediators of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw",
- I shall comply with the Rules of the Court of Arbitration at the PCC that is applied to the case,
- The Court of Arbitration at the PCC shall pay my fee as an arbitrator according to its regulations, which I accept.

\_\_\_\_\_  
(signature)



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

Warsaw, 2012-02-15

**Case No SA 219/2011**

**Ms Arbitrator 2**

Applies to the case filed by: **Fireproof Security – Service and Equipment, Sociedad Limitada**

Registered at 35 Otolan Str., 02-0202 Castlewood, Reinoland

against: **Antylland Constructions, Soci   Anonyme**

Registered at 15 Chopin Str., 50-202 Capital City, Antylland

value of the claim: **EUR 190,817** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN **851,711.68**.

Dear Ms Arbitrator 2,

I would like to inform you that you have been nominated as Arbitrator 2 by the Arbitral Council, pursuant to Article 22 sec. 1 of the Rules of the Court of Arbitration of 1 January 2007, as the Respondent failed to appoint an arbitrator within the date set.

Mr Arbitrator 1 has been nominated by the Claimant.

Please confirm your acceptance of the position of arbitrator in this case by completing and signing the attached "Arbitrator's Statement" and returning it within seven days.

Court of Arbitration at the Polish Chamber of Commerce  
4 Tr  backa Str., 00-074 Warsaw, Poland  
tel. +48 (22) 827 47 54  
fax +48 (22) 827 94 01

info@sakig.pl  
www.sakig.pl

If you do not accept the position, please state and justify the reasons for your refusal also within seven days.

With reference to the above, I would like to invite you to appoint – together with Mr Arbitrator 1 – a chairman of the Arbitral Tribunal within two weeks from the date of receiving this notification. Otherwise, the chairman of the Arbitral Tribunal will be nominated by the Arbitration Council (§ 22 Sec. 2 of the Rules of the Court of Arbitration);

I enclose the "Arbitrator's Statement", the Rules of the Court of Arbitration of 1 January 2007 and the List of Arbitrators recommended by the Court (Further information on the qualifications of arbitrators is available on the website of the Court [www.sakig.pl](http://www.sakig.pl) in the section: List of Arbitrators).

Pursuant to § 16 sec. 5, the case file will be provided after a written statement of independence and impartiality has been submitted.

*Secretary General*

*Court of Arbitration at the PCC*



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

.....  
Place

.....  
Date

**Name and surname: *Arbitrator 2***

**Case No: *SA 219/2011***

**A r b i t r a t o r ' s   S t a t e m e n t**  
**o f   i m p a r t i a l i t y   a n d   i n d e p e n d e n c e**

**As I have been appointed as an Arbitrator in the Case No: *SA 219/2011***

**filed by: *Security – Service and Equipment, Sociedad Limitada, Reinoland***

**against: *Antylland Constructions, Société Anonyme, Antylland***

**in the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, I hereby declare that:**

- I am independent and impartial in resolving the present case and, most notably, I do not have any direct links to, and professional contacts with, the parties or related entities as well as the legal representatives of the parties and their law offices or the companies in which they practice their profession. There are no future, present or foreseeable circumstances that may give rise to doubts as to my impartiality or independence for either party (nevertheless I hereby disclose the following circumstances:  
.....  
.....  
.....
- I shall perform accepted duties of an arbitrator according to the best of my knowledge and skills, remaining impartial and independent, in compliance with the "Code of Ethics for Arbitrators and Mediators of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw",
- I shall comply with the Rules of the Court of Arbitration at the PCC that is applied to the case,

The Court of Arbitration at the PCC shall pay my fee as an arbitrator according to its regulations, which I accept.

\_\_\_\_\_  
(signature)



From: "Arbitrator 1" <[arbitrator1@arbitrator1.de](mailto:arbitrator1@arbitrator1.de)>  
To: "Secretary General" <[info@sakig.pl](mailto:info@sakig.pl)>  
Cc: "Arbitrator 2" <[arbitrator2@arbitrator2.de](mailto:arbitrator2@arbitrator2.de)>  
Sent: Tuesday, February 27, 2012 11:16 AM  
Subject: Case No SA 219/2011; Chairman

Dear Secretary General,

In response to your letter which I received on 21 February 2012, I hereby inform that I accept the nomination to act as Arbitrator 1.

Please note that, during the conference call held on 26 February 2012, Ms. Arbitrator 2 and I jointly appointed Professor Chairman Arbitrator as the chairman of the Arbitral Tribunal in Case No. SA 219/2011.

I have no connections with either of the parties or their legal representatives. I give personal assurances of my independence and impartiality. My Arbitrator's Statement was sent three days ago directly to the Court.

*Yours sincerely,*

*Mr. Arbitrator 1*

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From: "Arbitrator 2" <[arbitrator2@arbitrator2.de](mailto:arbitrator2@arbitrator2.de)>  
To: "Secretary General" <[info@sakig.pl](mailto:info@sakig.pl)>  
Cc: "Arbitrator 1" <[arbitrator1@arbitrator1.de](mailto:arbitrator1@arbitrator1.de)>  
Sent: Tuesday, February 21, 2012 11:16 AM  
Subject: Case No SA 219/2011

Dear Secretary General,

I accept the nomination to act as Arbitrator 2.

I will send you the written statement of independence and impartiality by post.

*Yours sincerely,*

*Ms. Arbitrator 2*



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

Warsaw, 2012-02-28

**Case No SA 219/2011**

**CHAIRMAN OF THE ARBITRAL TRIBUNAL**

Applies to the case filed by: **Fireproof Security – Service and Equipment, Sociedad Limitada**  
Registered at 35 Otolan Str., 02-0202 Castlewood, Reinoland

against: **Antylland Constructions, Société Anonyme**  
Registered at 15 Chopin Str., 50-202 Capital City, Antylland

value of claim: **EUR 190,817** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN **851,711.68**.

Dear Chairman of the Arbitral Tribunal,

I hereby inform you that you have been nominated as chairman of the Arbitral Tribunal by arbitrators: Mr Arbitrator 1 and Ms Arbitrator 2.

Please confirm your acceptance of the position of chairman of the Arbitral Tribunal in this case by completing and signing the attached "Arbitrator's Statement", and returning it within seven days.

I enclose the "Arbitrator's Statement" and Rules of the Court of Arbitration of 1 January 2007.

If you do not accept the position, please state and justify the reasons for your refusal also within seven days.

Pursuant to § 16 sec. 5, the case file will be provided after a written statement of independence and impartiality has been submitted.

*Secretary General*

*Court of Arbitration at the PCC*



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

.....  
Place

.....  
Date

**Name and surname: *Chairman of the Arbitral Tribunal***

**Case No: SA 219/2011**

**A r b i t r a t o r ' s   S t a t e m e n t**  
**o f   i m p a r t i a l i t y   a n d   i n d e p e n d e n c e**

**As I have been appointed as an Arbitrator in the Case No: SA 219/2011**

**filed by: Security – Service and Equipment, Sociedad Limitada, Reinoland**

**against: Antylland Constructions, Société Anonyme, Antylland**

**in the Court of Arbitration at the Polish Chamber of Commerce in Warsaw, I hereby declare that:**

- I am independent and impartial in resolving the present case and, most notably, I do not have any direct links to, and professional contacts with, the parties or related entities as well as the legal representatives of the parties and their law offices or the companies in which they practice their profession. There are no future, present or foreseeable circumstances that may give rise to doubts as to my impartiality or independence for either party (nevertheless I hereby disclose the following circumstances:)  
.....  
.....  
.....
- I shall perform accepted duties of an arbitrator according to the best of my knowledge and skills, remaining impartial and independent, in compliance with the "Code of Ethics for Arbitrators and Mediators of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw",
- I shall comply with the Rules of the Court of Arbitration at the PCC that is applied to the case,

The Court of Arbitration at the PCC shall pay my fee as an arbitrator according to its regulations, which I accept.

\_\_\_\_\_  
(signature)



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

Warsaw, 2012-03-15

**Case No SA 219/2011**

**Chairman of the Arbitral Tribunal**

**Mr Arbitrator 1, Ms Arbitrator 2**

Applies to the case filed by: **Fireproof Security – Service and Equipment, Sociedad Limitada**

Registered at 35 Otolan Str., 02-0202 Castlewood, Reinoland

against: **Antylland Constructions, Société Anonyme**

Registered at 15 Chopin Str., 50-202 Capital City, Antylland

value of claim: **EUR 190,817** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2011 from 20 December 2011, in order to determine the arbitration and registration fee, as PLN **851,711.68**.

Dear Arbitrators,

I hereby inform you that your acceptance and all three "Arbitrators' Statements" regarding your independence and impartiality have been received by the Court of Arbitration at the Polish Chamber of Commerce.

Court of Arbitration at the Polish Chamber of Commerce

4 Trębacka Str., 00-074 Warsaw, Poland

tel. +48 (22) 827 47 54

fax +48 (22) 827 94 01

info@sakig.pl

www.sakig.pl

I transfer to you the files of the case and would like to ask you to:

- Issue any appropriate orders to be served on the parties
- Set, in consultation with the Secretary-General, a date for the hearing, immediately after recognizing that the case should be heard at a hearing.

*Secretary General*

*Court of Arbitration at the PCC*



Warsaw, 2012-04-10

**To: Bob Bacher Law Office**

22 Granał Str.  
02-0202 Castlewood  
Reinoland  
Phone: (0) 606-96- 27  
Fax: (0) 860-31-10  
E-mail: [b.bacher@bacher.re](mailto:b.bacher@bacher.re)

**To: Den & Martinez Law Firm**

To the attention of: Edvard Martinez

4 City Square  
50-202 Capital City  
Antylland  
Phone: (0) 242-62- 00  
Fax: (0) 821-72-72  
E-mail: [martinez@lawoffice.an](mailto:martinez@lawoffice.an)

**Subject: Case No. SA 219/2011 – Procedural Order**

The purpose of this letter is to inform you that the Arbitral Tribunal in the arbitration case Fireproof Security – Service and Equipment, Sociedad Limitada versus Antylland Constructions, Société Anonyme, under the above mentioned Case No. SA 219/2011, has been constituted.

After revising the submitted records and conferring with the parties and their legal representatives, the Arbitral Tribunal, presided by Mr. Chairman, has agreed on the following regulations concerning the future procedure of the arbitration:

I. The Claimant is requested to submit a memorandum discussing the relevant legal issues and presenting its arguments by **25 May 2012** to the Court of Arbitration at the Polish Chamber of Commerce.

II. The Respondent is requested to submit a memorandum responding to the memorandum under I., pointing out its legal view on the issues and presenting its arguments by **29 June 2012** to the Court of Arbitration at the Polish Chamber of Commerce<sup>3</sup>.

The memoranda should particularly address the following questions and further elaborate the arguments already indicated<sup>4</sup>:

- I. Does the Arbitral Tribunal have jurisdiction over the present case, especially considering the agreement which the parties concluded on 30 January 2011?
- II. Did the Respondent have the right to refuse the acceptance of the payment notice No. 102-B53 DES because of the defects?
- III. Is the Claimant entitled to (further) payment for the works executed in August and September 2010?

Any questions or requests for clarification concerning the procedure or the facts of this case must be presented by **27 April 2012** via email to [moot@sakig.pl](mailto:moot@sakig.pl).

The oral hearing will be held in **October 2012** at the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (ul. Trębacka 4, 00-074 Warsaw, Poland). Currently, there is no agreement between the Arbitral Tribunal and the parties regarding the exact date of the hearing.

Due to the scope of the issues in dispute, the Arbitral Tribunal suggests to schedule the meeting for two to four consecutive days in October 2012.

In order to facilitate the process of finding a convenient date, the parties are requested to submit a list of the representatives participating in the case by **30 April 2012**<sup>5</sup>. As soon as agreement is reached in this regard, the Arbitral Tribunal will notify the parties and their legal representatives.

Yours sincerely,

Mr. Chairman  
(on behalf of the Arbitral Tribunal)

---

<sup>3</sup> The memoranda should be submitted to [moot@sakig.pl](mailto:moot@sakig.pl).

<sup>4</sup> The memoranda have to comply with the respective provisions of the Rules to the Moot available at <http://www.sakig.pl/en/news/draft-common-frame-of-reference-warsaw-international-arbitration-moot/the-rules>.

<sup>5</sup> Please use the registration form available at <http://www.sakig.pl/en/news/draft-common-frame-of-reference-warsaw-international-arbitration-moot/team-registration-form>.