

## **MARIANA GONZALO 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, 20 December 2013

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

Dear Sir or Madam,

On behalf of my client, Prime Construction – Construction and Engineering, Sociedad Limitada (registered at 35 Veneza Str., 88-0202 Castlewood, Reinoland), I am filing this statement of claim in order to comply with § 27 par. (1) of the Rules of the Court of Arbitration at the PCC as a request to commence arbitral proceedings.

On 27<sup>th</sup> April 2012, Prime Construction – Construction and Engineering concluded a contract with Antylland Ceramic, Société Anonyme (registered at 15 Wind Str., 50-202 Capital City, Antylland), *inter alia*, regarding the construction of the new site for Antylland Ceramic – 2285 m<sup>2</sup> building consisting of office, warehouse and production spaces. General Terms, which constitute a part of the contract, contain 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 Prime Construction – Construction and Engineering, Sociedad Limitada
- Exhibit - C1 (arbitration clause)
- Exhibit - C2 (correspondence between Claimant and Respondent)
- Exhibit - C3 (merger clause)

Yours faithfully,

**MARIANA GONZALO**

## STATEMENT OF CLAIM

### ***I. Claimant:*** Prime Construction – Construction and Engineering, Sociedad Limitada

Registered at 35 Veneza Str., 88-0202 Castlewood, Reinoland, European Union  
Phone: (0) 502 09 37  
Fax: (0) 466 30 98  
Mail: [office@primeconstruction.re](mailto:office@primeconstruction.re)  
Person in charge: José Nanni, Project Manager

### ***II. Respondent:*** Antylland Ceramic – Tiles and Decoration Properties, Societé Anonyme

Registered at 15 Wind 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 Meyer, General Manager

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

1. Prime Construction – Construction and Engineering, Sociedad Limitada (hereafter "**Prime Construction**") is a well-known and recognized construction and engineering Reinoland's enterprise with long tradition in branch. The company operates not only on the Reinoland's market but it realizes projects with international investors. Prime Construction is specialized in the complete construction together with completion of large-area edifices. During 35 years in the construction business, its reputation has spread across Europe.  
Prime Construction performs in a quite good financial condition. However, due to the financial crisis in Europe and growing competition coming from the states being outside the EU, the company has to be careful, time-precise and rigorous in financial.
2. Prime Construction acts always as a general contractor. Due to enormous purchase of building materials, the company receives from manufacturers, licensed suppliers or other distributors substantial discounts. Thus, Prime Construction can offer for its customers competitive prices for entire projects.
3. Prime Construction and Antylland Ceramic – Tiles and Decoration Properties, Societé Anonyme (hereafter "**Antylland Ceramic**") contracted the first time in 1999, when they concluded a contract concerning construction of a main seat for Antylland Ceramic in Antylland. The whole construction process took two years after which parties definitely finished mutual relation regarding that contract. On September 2011 Prime Construction took information that Antylland Ceramic has been planning to expand the company by building its site in Reinoland. Due to this news Prime Construction turned to Antylland Ceramic with a question whether they are interested in receiving an offer. Antylland Ceramic expressed its interest in the offer and intensive negotiation between both companies took place between September 2011 and April 2012.
4. On 27<sup>th</sup> April, 2012 Prime Construction entered into a contract with Antylland Ceramic regarding the construction of the new site for Antylland Ceramic – 2285 m<sup>2</sup> building consisting of office, warehouse and production spaces. Antylland Ceramic had been already in the possession of 5000 m<sup>2</sup> land which was situated in Castelwood – the seat of Prime Construction. The ground was handed over by the owner to Prime Construction immediately after the contract was signed.

5. Due to the fact that the construction took place at the ground which was situated in Reinoland, the contract contained provisions according to which Prime Construction agreed and obligated itself to obtain all necessary and/or required approvals, acknowledgement or other documents from any state entities, architectural board or committee. Jurisdiction of Reinoland's bodies was relevant to works. Thus, Prime Construction acquired detailed knowledge in the subject. The procedure of obtaining all documents was finished before August 2012.
6. Time between April and August 2012 needed for processing with documents was simultaneously used by Prime Construction for preparing the ground for a building process. Therefore, from the very beginning of August 2012 very intensive works started. The construction was conducted effectively and according to the time schedule until October 2012 when the Binder's concrete went out. Since its introduction on the market in 2009, Prime Construction used to its projects mainly the concrete produced by Binder Sociedad Limitada. Mr. José Nanni, Project Manager immediately contacted Binder company where he was informed that time needed for an order accomplishment is approximately 5 weeks.
7. However, on the market there were other concrete's substitutes available, which Prime Construction also knows and use it. Having in mind that Antylland Ceramic during the negotiations insisted on the Binder's concrete, Prime Construction decided not to use a substitute without its partner's opinion. On 21<sup>st</sup> October 2012 the Project Manager of Prime Construction contacted General Manager of Antylland Ceramic. During the phone call Mr. David Meyer declared that they are interested only in Binder's concrete and that they will wait those 5 weeks longer. However, he underlined that no further time delay would be accepted.
8. While waiting for Binder's concrete the construction activity was held during October and November 2012. On 30<sup>th</sup> November 2012 unexpected information – instead of concrete's delivery - reached Prime Construction. Binder sent an official statement that there had been a fire in the company and the whole store and production place was destroyed. All orders were postponed about half of the year. Due to this situation Binder sent an apology and asked its customers whether they still confirm their orders.
9. Those circumstances put Prime Construction in a time severe situation. Due to the strict schedule stipulated in the contract and rigid wording of Mr. David Meyer's notice regarding further delay, it had to continue the completion of the project without Binder's concrete. This situation placed Prime Construction under an enormous pressure. Prime Construction immediately bought the best quality substitute of Binder's concrete available on the market. Prime Construction used this substitute concrete in some projects and it also fulfills requirement of professional level. The construction process was continued from the very first days of December 2012.
10. On 3<sup>rd</sup> August 2013 Prime Construction received from Antylland Ceramic an official Statement declaring that Antylland Ceramic felt cheated and did not want to continue the cooperation. Mr. David Meyer, General Manager informed that on the previous day Antylland Ceramic's representatives inspected the building site in Reinoland and they discovered that substitute concrete was used instead of Binder's one. An expert, who was one of the representatives, without any doubts affirmed that the substitute was used. An expertize document was attached to the Statement. On the same day – 3<sup>rd</sup> August 2013 Antylland Ceramic took the construction site over. Prime Construction builders were asked to leave the land.
11. Between August and September 2013 exchange of positions between both parties took place. Prime Construction wanted to perform work according to the contract. Antylland Ceramic did not want to continue cooperation claiming that a breach of contract had occurred when the concrete substitute had been used. Prime Construction was not obliged to perform only with Binder's concrete. The contract did not specify concrete's producer and due to a merger clause, which was individually negotiated (see Exhibit - C2), contained in the contract Prime Construction was not bound by any previous findings (see Exhibit - C3).

12. The contract concluded between the parties contained a schedule determining four work stages. Before August 2013 Prime Construction closed 1<sup>st</sup> stage and performed 95% of 2<sup>nd</sup> stage. It was agreed in the contract that Prime Construction would be paid the total amount of EUR 5,320,000.00 for the completion of the project. 1<sup>st</sup> stage was paid properly in the amount of EUR 1,000,000.00. According to the contract's provisions the amount for the 2<sup>nd</sup> stage was EUR 2,150,000.00. Prime Construction performed a significant part of 2<sup>nd</sup> stage. However, Antylland Ceramic denied further payment. This conduct put Prime Construction in an economically severe situation. Additionally, Prime Construction bought materials needed to continue the completion of the entire project.

#### ***IV. Amount of the dispute: PLN 17.993.664,00***

EUR 4,320,000.00 calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as PLN 17.993.664,00.

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

1. According to Clause 104 of the General Terms, which constitutes a part 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 110 of the General Terms, which constitutes a part of the contract, the Draft Common Frame of Reference shall be the legal basis for the material issues<sup>1</sup>.
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, Prime Construction respectfully requests the Arbitral Tribunal to find that:

- Prime Construction did not breach the contract by using a substitute concrete, thus the contract is still binding;
- Antylland Ceramic is obliged to make an immediate payment for Prime Construction on the amount of EUR 2,150,000.00 for the works executed in the 2<sup>nd</sup> stage.

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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).

-----*(Extracted from the General Terms)*-----

**§ 104 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.*
- (...)*

**§ 110 Applicable Material Law**

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

**Prime Construction – Construction and Engineering, Sociedad Limitada**  
**35 Veneza Str.**  
**88-0202 Castlewood**  
**Reinoland**

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To:

Mr. David Meyer, General Manager

Antylland Ceramic – Tiles and Decoration Properties, Societ  Anonyme

Registered at 15 Wind Str.  
50-202 Capital City  
Antylland, European Union

1 April 2012

Dear Mr. Meyer,

attached you will find a draft of our contract which I prepared after our telephone conversation yesterday during which you confirmed your decision regarding last questionable issues. I would also like to propose additional provision to this contract – a merger clause. Normally we don't use such uncommon terms but in my opinion it would be desirable in our situation where negotiations were conducted eight long months and concerned so many issues like: parties' obligations on obtaining permissions or documents on building process, preparing plans, projects and maps, parties' responsibility for contacts with local authorities, parties' responsibility for fulfilling requirements of environmental protection, warranty etc. Such provision will be for our mutual protection. We have never handled with merger clauses but if you agree on such, we design and present you an appropriate provision.

I attach also the General Terms, which constitute a part of our contract. The General Terms are also available on Primes Construction's web-page.

Kind Regards,

Jos  Nanni, Project Manager

6 April 2012

**Antylland Ceramic**

**– Tiles and Decoration Properties, S. A.**

**Registered at 15 Wind Str.  
50-202 Capital City  
Antylland**

**Prime Construction**

**– Construction and Engineering, S. L.**

**35 Veneza Str.  
88-0202 Castlewood  
Reinoland**

Dear Mr. Nanni,

we made small changes in the contract draft – see attachment. We agree to the remaining terms.

In my opinion there are no issues which we didn't discuss and in respect of which we didn't reach an agreement. We don't feel uncomfortable or unsure. However, if you insist, we can agree with your request. In the past we were using merger clauses in our contracts. Thus, we have a ready project so don't bother yourself with any draft. See below.

I also inform you that Mr. Thomas Frog, my Deputy, will sign the contract on behalf of Antylland Ceramic.

Draft of a Merger Clause

*This Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, constitutes the entire agreement between the parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, purchase orders, proposals or quotations, whether oral or written. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties.*

Yours sincerely,

David Meyer

General Manager



**Prime Construction – Construction and Engineering, Sociedad Limitada**  
**35 Veneza Str.**  
**88-0202 Castlewood**  
**Reinoland**

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To:

Mr. David Meyer, General Manager

Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme

Registered at 15 Wind Str.  
50-202 Capital City  
Antylland, European Union

7 April 2012

Dear Mr. Meyer,

thank you for your amendments in the contract. We accept all without any additional comments. The proposition of a merger clause we added as the last provision of the contract – clause 125. See attached final version.

I also ask you to confirm that Mr. Thomas Frog has adequate power to sign the contract together with all attachments on behalf of Antylland Ceramic.

Best Regards,

José Nanni, Project Manager

16 April 2012

**Antylland Ceramic**

**– Tiles and Decoration Properties, S. A.**

**Registered at 15 Wind Str.  
50-202 Capital City  
Antylland**

**Prime Construction**

**– Construction and Engineering, S. L.**

**35 Veneza Str.  
88-0202 Castlewood  
Reinoland**

Dear Mr. Nanni,

my Deputy will come to your office on 27<sup>th</sup> April 2012 to determine strict technical issues, hand on a ground to you and sign the contract in a final shape that you sent us in your last email. It's quite late and construction process has to start asap.

Kind Regards,

David Meyer

General Manager

## Exhibit – C3

----- (Extracted from the contract between Prime Construction – Construction and Engineering, S.L. and Antylland Ceramic – Tiles and Decoration Properties, S.A.

concluded on 27 April 2012)-----

(...)

### **Clause 125 Merger Clause**

*This Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, constitutes the entire agreement between the parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, purchase orders, proposals or quotations, whether oral or written. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties.*

(...)

By the signature below of its authorized representative each Party, hereby acknowledges that has read this agreement, understands it, and agrees to be bound by its terms and conditions.

On behalf of

Prime Construction

– Construction and Engineering, S.L.

On behalf of

Antylland Ceramic

– Tiles and Decoration Properties, S.A.

**José Nanni**

Project Manager

**Thomas Frog**

Deputy of General Manager



Warsaw, 2013-12-28

**Case No SA 350/2013**

Arbitral Legal Representative:  
Mariana Gonzalo  
Mariana Gonzalo Law Office  
15 Gallera Str.  
88-0202 Castlewood  
Reinoland

I hereby inform you that the Statement of Claim of **Prime Construction – Construction and Engineering, Sociedad Limitada, Reinoland**

against: **Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme, Antylland**

for the payment of **EUR 4,320,000.00** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as **PLN 17,993,664.00**

was filed to the Court of Arbitration at the Polish Chamber of Commerce in Warsaw on 20 December 2013.

With reference to the above I call upon you to:

1. pay, within three weeks, the arbitration fee **of PLN 191,161,984.00** 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;

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

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).

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Court of Arbitration at the Polish Chamber of Commerce  
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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 2014

**Case No. SA 350/2013**

**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 2013, on behalf of Prime Construction – Construction and Engineering, 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 5 January 2014. Please see the attached confirmation of the bank transfer.

Yours faithfully,

**MARIANA GONZALO**

*Legal Representative*



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

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Warsaw, 2014-01-16

**Antylland Ceramic – Tiles and Decoration Properties, Soci   Anonyme**  
**15 Wind Str.**  
**50-202 Capital City**  
**Antylland**

**Case No SA 350/2013**

Re: the claim brought against you by **Prime Construction – Construction and Engineering, Sociedad Limitada, Reinoland**

For the sum of **EUR 4,320,000.00** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as **PLN 17,993,664.00**.

Please find enclosed a copy of the Statement of Claim, with attachments, dated 20.12.2013.

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).

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Court of Arbitration at the Polish Chamber of Commerce  
4 Tr  backa Str., 00-074 Warsaw, Poland  
tel. +48 (22) 827 47 54  
info@sakig.pl  
fax +48 (22) 827 94 01  
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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[www.sakig.pl](http://www.sakig.pl)



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**Manuela Perto, advocate  
Perto & Dinello Law Firm  
12 Eleph Str., 50-202 Capital City  
Antylland  
Mail [perto@lawoffice.an](mailto:perto@lawoffice.an)**

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Capital City, 14 February 2014

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

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

**Claimant:** Prime Construction – Construction and Engineering, Sociedad  
Limitada

address: 35 Veneza Str., 88-0202 Castlewood, Reinoland

represented by Mariana Gonzalo, attorney

address for service of notices:

Mariana Gonzalo Law Office

15 Gallera Str., 88-0202 Castlewood, Reinoland

Mail [m.gonzalo@gonzalo.re](mailto:m.gonzalo@gonzalo.re)

**Respondent:** Antylland Ceramic – Tiles and Decoration Properties, Societé  
Anonyme

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

represented by Manuela Perto, advocate

address for service of notices:

Perto & Dinello Law Firm

12 Eleph Str., 50-202 Capital City, Antylland

Mail [perto@lawoffice.an](mailto:perto@lawoffice.an)

amount of the dispute: PLN 17,993,664.00

## Statement of Defense

(1) Acting on behalf of the Respondent Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme (in the following cited as “**Antylland Ceramic**”) in the basis of the power of attorney that I enclose to this document, with reference to the letter of the Secretary General of the Court of Arbitration at the Polish Chamber of Commerce dated 16 January 2014, in a dispute with Prime Construction – Construction and Engineering, Sociedad Limitada (in the following cited as “**Prime Construction**”), I hereby submit this Statement of Defense.

(2) The Respondent contends that this Statement of Defense has been filed within 30- day time limit set out in the Arbitration Court’s letter dated 16 January 2014. As the Respondent was served with the Statement of Claim on 20 January 2014, the Statement of Defense should be filed on 19 February 2014 at the latest (in accordance with § 32 of the Rules of the Court of Arbitration at the PCC (the “PCC-Rules”).

(3) With reference to the request of the Secretary General to appoint an arbitrator, on behalf of Antylland Ceramic, I hereby appoint as arbitrator, attorney Mr. Arbitrator X.

(3) Antylland Ceramic respectfully asks the Arbitral Tribunal not to start arbitral proceedings since there is no valid basis for arbitration in the case at hand. The parties never concluded an arbitration clause regarding the issues raised by Prime Construction. Parties were exclusively related to the content of the contract, signed on 27 April 2013. This document did not contain any arbitration clause.

(4) Prime Construction invokes to the subject case an arbitration clause that constitutes a part of its General Terms, which according to its allegations binds also Antylland Ceramic. Contrary to the Claimant’s allegation the parties did not sign any General Terms. Additionally, Mr. Thoms Frog, Deputy of General Manager of Antylland Ceramic was not empowered to sign on his own behalf mandatory any documents except the contract in its final version that was agreed by the parties and delivered by José Nanni, Project Manager of Prime Construction – Construction and Engineering, Sociedad Limitada via email on 7th May 2012 (Exhibit - R1). The main contract that the parties concluded did not contain any arbitration agreement, which is why there are no grounds for an arbitration proceeding regarding the matters alleged by Prime Construction. The Court of Arbitration at the PCC has therefore no jurisdiction.

(5) Apart from the fact that the parties never concluded a valid arbitration agreement with regard to the present subject, Prime Construction’s claim is unfounded and must thus be rejected. Furthermore, Prime Construction is responsible not only for destruction of our mutual cooperation but also for a slowdown in construction which will bring us further financial losses. Antylland Ceramic is preparing against Prime Construction a claim that will be filed to a state court in the nearest time.

(6) Prime Construction is the one which failed to act and perform the parties' agreement regarding the use of only the special high-quality type of concrete - Binder's product. This obligation was strictly underlined since the very beginning of mutual cooperation. Prime Construction alleged that the contract did not provide for specific concrete's producer. The paper document did not specify materials' producer in any of its points. However, it has to be underlined that the type and manufacturer of concrete was the most important part of parties' agreement on construction. Prime Construction was aware of the fact that only Binder's concrete could be used during the construction process and it assured on numerous occasions that only this product acted exclusively in the construction.

(7) Due to the past Antyllan Ceramic's experiences, the concrete's type issue was a key element of cooperation. Antylland Ceramic is a prestigious manufacturer of ceramic products like wall and floor tiles, also decorations. The company has been on the market since 1995. In 1999 Antylland Ceramic was building its main seat. For the purpose of execution of the project, the company hired Prime Construction. Unfortunately, due to a low-quality concrete used by the contractor, relations between parties were finished. Therefore, in 2011, when the decision regarding construction of a new site in Reinoland was made, the type of concrete aroused the greatest interest and anxiety. Management Board asked experts to prepare a rapport containing the best products available on the market. Although it was only on the market for a short time period, the Binder Company's product received the highest opinions among different experts. Antylland Ceramic decided to find constructors that use exactly this product and asked them for offers.

(8) After receiving this request, Prime Construction sent its offer to Antylland Ceramic. In the first moment it was not acceptable to resume a cooperation with a builder who was not professional in the past. But long negotiation between the parties convinced Antylland Ceramic that Prime Construction's offer is the best among others, taking into account prices and material's quality.

(9) What is important, the "issue of concrete" was present during the entire negotiation – eight long months. Antylland Ceramic's Directors, remembering their previous experiences, were scared about the result and they did not want to risk anything. Therefore, Antylland Ceramic made a condition that only Binder's concrete could be used in the construction process, sine qua non for the contract conclusion. Prime Construction was asked several times to confirm this term. And it confirmed (Exhibit - R2). After several months and an infinite number of emails on this matter Antylland Ceramic became convinced that Prime Construction, as a professional, can build a new Antylland Ceramic's site. Also time played an important role in the whole project. As Prime Construction has its seat in Reinoland where the construction was planned, it could streamline and speed up the work.

(10) Antylland Ceramic disagrees with a view according to which merger clause excludes Prime Construction's obligation to use only Binder's concrete during the construction. Merger clause did not apply to parties' agreement regarding the concrete. Binder's product constituted a main requirement for the contract conclusion. Merger clause was proposed by Prime Construction in a relation to

totally different subjects which were negotiated between parties in various options and which became part of the contract's content. Moreover, it has to be noticed that merger clause was not individually negotiated. The idea to put into the contract a merger clause originated from Prime Construction. Prime Construction was the one who put on Antylland Ceramic a pressure to incorporate the merger clause. However, this merger clause does not relate in any way to the type and producer of concrete.

(11) Also subsequent Prime Construction's conduct confirmed Antylland Ceramic's position. When the concrete's stock was over in October 2012 Prime Construction did not decide to buy any substitute. Prime Construction was aware that it would be against the contract. Therefore, Antylland Ceramic was asked for permission on a substitute. Antylland Ceramic refused and directly recalled previous Prime Construction's declarations. (Exhibit - R3)

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

Antylland Ceramic disagrees that the Draft Common Frame of Reference shall be the legal basis for any potential material issues and disputes between the parties. The Contract concluded between the Parties does not indicate the Draft Common Frame of Reference as a material law. Antylland Ceramic negates Prime Construction's allegation that General Terms were signed and are binding.

It also denies, however, that disputes arising between the parties shall be settled by arbitration. The parties concluded the Contract which does not contain an arbitration clause, thus all disputes between the Parties shall be a subject before state courts.

### **Arbitral Claims**

Considering the facts of the case, I respectfully request the Arbitral Tribunal to:

Discontinue these 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 Ceramic 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:

- Prime Construction breached the Contract by using a product other than Binder's concrete,
- Antylland Ceramic was entitled to refuse the payment of the allegedly amount of EUR 2,150,000.00 for the works executed in the 2<sup>nd</sup> stage,
- There are no further claims by Prime Construction against Antylland Ceramic with regard to the Contract.

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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).

*Antylland Ceramic– Tiles and Decoration Properties, S. A.*

*15 Wind Str.  
50-202 Capital City  
Antylland*

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I, the undersigned, **David Meyer**, in my capacity as a member of the management board of the Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme organized and operating under the laws of Antylland with its registered office in Capital City at 15 Wind Str., 50-202 Capital City, registered at the register of businesses of the State Court Register under ANT number 0000429310,

hereby **empower**

**Thomas Frog**, son of Bill and Melissa, holder of identity card number ANT8878889, residing at 12 Lake Str.51-202 Capital City, without the right to grant further authorisation, to represent the Antylland Ceramic – Tiles and Decoration Properties, S.A. with regard to the following issues:

1. **to sign the contract** between Prime Construction – Construction and Engineering, Sociedad Limitada Anonyme organized and operating under the laws of Reinoland with its registered office in Castlewood at 35 Veneza Str., 88-0202 Castlewood, registered at the register of businesses of the State Court Register under REN number 0006677334 and Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme **regarding the construction of the new site for Antylland Ceramic** – 2285 m<sup>2</sup> building consisting of office, warehouse and production spaces, limited to the final version of the contract that was agreed by the parties and delivered

by José Nanni, Project Manager of Prime Construction – Construction and Engineering, Sociedad Limitada Anonyme via email on 7<sup>th</sup> May 2012;

2. to undertake an action to hand over the possession of 5000 m<sup>2</sup> land situated in Castelwood, Reinoland, for which the State Court in Castlewood keeps Land Register No RE/CA/245/9/00.

This power shall remain valid until revoked.

Signed on\_\_/\_\_/2012

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**Prime Construction – Construction and Engineering, Sociedad Limitada**

**35 Veneza Str.  
88-0202 Castlewood  
Reinoland**

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To:

Mr. David Meyer, General Manager

Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme

Registered at 15 Wind Str.  
50-202 Capital City  
Antylland, European Union

12 September 2011

Dear Mr. Meyer

I am writing to you on behalf of Prime Construction – Construction and Engineering, Sociedad Limitada, where I hold a position of Project Manager. I have been working in the company for five years but as I heard our firms cooperated with each other in the past. I turn to you because I took information that Antylland Ceramic is planning to expand the company by building its site in Reinoland. That's great news. We would be willing to introduce you our offer. Please don't hesitate to contact me if you are interested.

Kind Regards,

José Nanni, Project Manager

Prime Construction – Construction and Engineering, Sociedad Limitada

3 October 2011

**Antylland Ceramic**

**– Tiles and Decoration Properties, S. A.**

**Registered at 15 Wind Str.  
50-202 Capital City  
Antylland**

**Prime Construction**

**– Construction and Engineering, S. L.**

**35 Veneza Str.  
88-0202 Castlewood  
Reinoland**

Dear Mr. Nanni

I have to start by saying that I was very surprised when I received an email from you. Taking into account our previous relation and its tough finish I didn't expect that Prime Construction would even try to establish any mutual cooperation. I even faltered whether to reply on your email, thus I respond after quite long consideration. But you are the one who was not working in the Prime Construction in about 2000 years so you are not aware of problems that we had as a result of your construction. We gained those bad experiences during the construction process of our first site because your company which acted as a constructor used low-quality concrete. High costs were created due to cracks that had to be repaired and we also remember the long duration of the construction process... Until today we still have problems with cracks destroying the tiles in our offices. Therefore, we want to prevent such a disaster and we are looking for a constructor that uses the new type of concrete that closes cracks by itself. Such concretes were just introduced into the market by Binder Sociedad Limitada. Thus, I can only refuse and thank you for your proposition.

Yours sincerely,

David Meyer

General Manager



**Prime Construction – Construction and Engineering, Sociedad Limitada**  
**35 Veneza Str.**  
**88-0202 Castlewood**  
**Reinoland**

---

To:

Mr. David Meyer, General Manager

Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme

Registered at 15 Wind Str.  
50-202 Capital City  
Antylland, European Union

5 October 2011

Dear Mr. Meyer,

I am sorry that our companies had a conflict in the past. But it was about 10 years ago and I think that past hassles cannot decide about present. We know Binder's concrete very well because we use it since its introduction into the market in 2009. Prime Construction based its projects mainly on the concrete produced by Binder Sociedad Limitada. You can write a question to Binder company and they should confirm you that we are one of their biggest customers. I hope that you are aware that only a few building contractors already know about and use this specific concrete, Prime Construction amongst them. Please consider the offer which is attached,

Best Regards,

José Nanni, Project Manager

Prime Construction – Construction and Engineering, Sociedad Limitada

22 October 2011

**Antylland Ceramic**

**– Tiles and Decoration Properties, S. A.**

**Registered at 15 Wind Str.  
50-202 Capital City  
Antylland**

**Prime Construction**

**– Construction and Engineering, S. L.**

**35 Veneza Str.  
88-0202 Castlewood  
Reinoland**

Dear Mr. Nanni

It took us a few days to analyze the offer which I received from you on 5<sup>th</sup> October 2011. I have to admit that during this time we also collected offers from other construction companies. But yours was the most interesting. The only issue that refrain us from cooperation with you are the past serious problems. Thus, we have to be sure that the situation will not repeat. We talked to experts and Binder Company. After many tests, checking, information received, we decided on Binder's concrete. We depend choice of service providers not only on a pricing, but also on the quality of concrete that he uses. Waiting for your confirmation regarding the concrete and then we can start detailed negotiation on further issues.

Kind Regards,

David Meyer

General Manager

**Prime Construction – Construction and Engineering, Sociedad Limitada**  
**35 Veneza Str.**  
**88-0202 Castlewood**  
**Reinoland**

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To:

Mr. David Meyer, General Manager

Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme

Registered at 15 Wind Str.  
50-202 Capital City  
Antylland, European Union

22 October 2011

Dear Mr. Meyer,

So we shouldn't waste time. When we are looking back, we understand your concerns, thus we understand your concerns regarding construction process. However, we can assure you that technique changed during those 10 years, we also changed materials that we use, we have also the best engineers. As to the standard and type of concrete - we rely on Binder's product. We think that it is very high quality and no cracks will happen. Let's turn to other subjects because we still have a lot to discuss. We already have a technical project of a building. Our main engineer will contact you about some specifications. As I understood, you already have a ground that you bought for the purpose of construction. Who will be responsible for all documentation and obtaining any permissions etc.?

José Nanni, Project Manager

Prime Construction – Construction and Engineering, Sociedad Limitada

22 October 2012

**Antylland Ceramic**

**– Tiles and Decoration Properties, S. A.**

**Registered at 15 Wind Str.  
50-202 Capital City  
Antylland**

**Prime Construction**

**– Construction and Engineering, S. L.**

**35 Veneza Str.  
88-0202 Castlewood  
Reinoland**

Dear Mr. Nanni

With reference to our yesterday's phone conversation regarding possibility of any substitutes using I remind you about your strict declaration that only Binder's concrete will be used. Any other concrete will not be accepted by us.

Although it is not compatible with our plan we will wait those 5 weeks longer. However, please be aware that no further time delay would be accepted.

Kind Regards,

David Meyer

General Manager



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Warsaw, 2014-02-19

**Case No SA 350/2013**

Arbitral Legal Representative:

Manuela Perto, advocate  
Perto & Dinello Law Firm  
12 Eleph Str.  
50-202 Capital City  
Antylland

I hereby confirm that the Statement of Defense of Antylland Ceramic – Tiles and Decoration Properties, Société Anonyme, dated 14 February 2014, was received by the Court of Arbitration at the Polish Chamber of Commerce in Warsaw on 18 February 2014.

The Statement of Defense containing the appointment of an arbitrator was sent on 14 February 2014, after the deadline for arbitrator's appointment. As it was confirmed in the Statement of Defense the Court's official letter dated on 16 January 2014 was received on 20 January 2014. Thus, three weeks time for an appointment expired on 10 February 2014. 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*

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



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

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Warsaw, 2014-02-19

**Case No SA 350/2013**

**Mr Arbitrator 1**

Applies to the case filed by: **Prime Construction – Construction and Engineering, Sociedad Limitada**

Registered at 35 Veneza Str., 88-0202 Castlewood, Reinoland

against: **Antylland Ceramic – Tiles and Decoration Properties, Societ  Anonyme**

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

value of the claim: **EUR 4,320,000.00** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as **PLN 17,993,664.00**.

Dear Mr Arbitrator 1,

I would like to inform you 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.

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Court of Arbitration at the Polish Chamber of Commerce  
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info@sakig.pl  
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www.sakig.pl

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*

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Court of Arbitration at the Polish Chamber of Commerce  
4 Trębacka Str., 00-074 Warsaw, Poland  
tel. +48 (22) 827 47 54  
[info@sakig.pl](mailto:info@sakig.pl)  
fax +48 (22) 827 94 01  
[www.sakig.pl](http://www.sakig.pl)



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

.....  
Place

.....  
Date

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

**Case No: SA 350/2013**

**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 350/2013**

**filed by:** Prime Construction – Construction and Engineering, **Sociedad Limitada, Reinoland**

**against:** Antylland Ceramic – Tiles and Decoration Properties, **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)





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Warsaw, 2014-02-19

**Case No SA 350/2013**

**Ms Arbitrator 2**

Applies to the case filed by: **Prime Construction – Construction and Engineering, Sociedad Limitada**

Registered at 35 Veneza Str., 88-0202 Castlewood, Reinoland

against: **Antylland Ceramic – Tiles and Decoration Properties, Soci   Anonyme**

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

value of the claim: **EUR 4,320,000.00** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as **PLN 17.993.664,00**.

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. 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*

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Court of Arbitration at the Polish Chamber of Commerce  
4 Trębacka Str., 00-074 Warsaw, Poland  
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fax +48 (22) 827 94 01  
[www.sakig.pl](http://www.sakig.pl)



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

.....  
Place

.....  
Date

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

**Case No: SA 350/2013**

**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 350/2013**

**filed by:** Prime Construction – Construction and Engineering, **Sociedad Limitada, Reinoland**

**against:** Antylland Ceramic – Tiles and Decoration Properties, **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: Monday, March 3, 2014 11:16 AM

Subject: Case No SA 350/2013; Chairman

Dear Secretary General,

In response to your letter which I received on 24 February 2014, I hereby inform that I accept the nomination to act as Arbitrator 1.

Please note that, during the conference call held on 28 February 2014, Ms. Arbitrator 2 and I jointly appointed Professor Chairman Arbitrator as the chairman of the Arbitral Tribunal in Case No. SA 350/2013.

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: Monday, February 24, 2014 11:16 AM

Subject: Case No SA 350/2013

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, 2014-03-04

**Case No SA 350/2013**

**CHAIRMAN OF THE ARBITRAL TRIBUNAL**

Applies to the case filed by: **Prime Construction – Construction and Engineering, Sociedad Limitada**

Registered at 35 Veneza Str., 88-0202 Castlewood, Reinoland

against: **Antylland Ceramic – Tiles and Decoration Properties, Societé Anonyme**

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

value of the claim: **EUR 4,320,000.00** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as **PLN 17,993,664.00**.

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.

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Court of Arbitration at the Polish Chamber of Commerce  
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info@sakig.pl  
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www.sakig.pl

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*

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Court of Arbitration at the Polish Chamber of Commerce  
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Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

.....  
Place

.....  
Date

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

**Case No: SA 350/2013**

**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 350/2013**

**filed by:** Prime Construction – Construction and Engineering, **Sociedad Limitada, Reinoland**

**against:** Antylland Ceramic – Tiles and Decoration Properties, **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

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Warsaw, 2014-03-17

**Case No SA 350/2013**

**Chairman of the Arbitral Tribunal**

**Mr Arbitrator 1, Ms Arbitrator 2**

Applies to the case filed by: **Prime Construction – Construction and Engineering, Sociedad Limitada**

Registered at 35 Veneza Str., 88-0202 Castlewood, Reinoland

against: **Antylland Ceramic – Tiles and Decoration Properties, Soci   Anonyme**

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

value of the claim: **EUR 4,320,000.00** calculated using the NBP (National Bank of Poland) exchange rate No. 68/A/NBP/2013 from 19 December 2013, in order to determine the arbitration and registration fee, as **PLN 17,993,664.00**.

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.

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

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



Court of Arbitration

at the Polish Chamber of Commerce in Warsaw

Warsaw, 2014-04-10

**To: Mariana Gonzalo Law Office**

15 Gallera Str.  
88-0202 Castlewood  
Reinoland  
Phone: (0) 600-15-17  
Fax: (0) 860-13-10  
E-mail: [m.gonzalo@gonzalo.re](mailto:m.gonzalo@gonzalo.re)

**To: Perto & Dinello Law Firm**

To the attention of: Manuela Perto

12 Elph Str.  
50-202 Capital City  
Antylland  
Phone: (0) 424-60-12  
Fax: (0) 800-62-62  
E-mail: [perto@lawoffice.an](mailto:perto@lawoffice.an)

**Subject: Case No. SA 350/2013– Procedural Order No 1**

The purpose of this letter is to inform you that the Arbitral Tribunal in the arbitration case **Prime – Construction and Engineering, Sociedad Limitada** versus **Antylland Ceramic – Tiles and Decoration Properties, Societé Anonyme**, under the above mentioned Case No. SA 350/2013, 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 **1 June 2014** 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 **6 July 2014** to the Court of Arbitration at the Polish Chamber of Commerce<sup>i</sup>.

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

- I. Did the parties validly incorporate the arbitration agreement into the contract, concluded on 27 April 2012, so that the Arbitral Tribunal has jurisdiction over the present case?
- II. Is the Draft Common Frame of Reference validly chosen by the parties as legal basis for any potential material issues and disputes between the parties?
- III. Constitutes the use of substitute concrete a breach of contract, considering the effects of merger clause incorporated in the contract?
- IV. Did Respondent have the right to refuse the payment for works executed in 2<sup>nd</sup> stage?

Any questions or requests for clarification concerning the procedure or the facts of this case must be presented by **9 May 2014** via email to [moot@sakig.pl](mailto:moot@sakig.pl).

The oral hearing will be held from **19<sup>th</sup> to 21<sup>st</sup> November 2014** at the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (ul. Trębacka 4, 00-074 Warsaw, Poland).

The parties are requested to submit a list of the representatives participating in the case by **23 May 2014**<sup>iii</sup>.

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

<sup>ii</sup> The memoranda have to comply with the respective provisions of the Rules to the Moot available at <http://www.sakig.pl/en/news/2nd-draft-common-frame-of-reference-warsaw-international-arbitration-moot/the-rules>

<sup>iii</sup> Please use the registration form available at <http://www.sakig.pl/en/news/2nd-draft-common-frame-of-reference-warsaw-international-arbitration-moot/team-registration-form>.