

EXTRACTS FROM THE REQUEST

1. By a contract formed on 5th November 1998 it was agreed that the claimant was to supply to the Respondent a machine known as the Supercable MKII for installation at Paro.
 2. The terms and condition included the following provision:

At clause 4 “ we reserve the right to make reasonable charges in respect of any escalation in wages or prices of materials and goods required for the manufacture of the machine which occur after commencement of manufacture “;

At clause 5 “ all orders are accepted only upon and subject to the terms in our tender and the conditions accompanying it. These terms and conditions shall prevail over any terms and condition in the buyer’s order “.
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5. In the event the respondent was unable to accept delivery of the machine on the agreed date for reasons set out in its postponement notice dated 4th August 1999.
 6. In consequence thereof the claimant incurred additional cost particulars whereof are set out in schedule 1 annexed here to. The said schedule was first served on the Respondent in the form of the claimant’s letter to the Respondent dated 4th November 1999.
 7. The claimant is entitled to and claims the said additional costs further to the provisions in clause 4 above.
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10. Further the claimant was obliged to pay additional sums for steel for the production of the machine by reason of matters outside its control. The said additional cost amount to U\$10,000.
 11. The claimant is entitled to and claims the said additional cost further to the provisions of clause 4 above.

(The claimant also claims costs).

EXTRACTS FROM THE REPLY

1. We deny the contract was made on 5 November 1998. The contract was formed on 21 November 1998 and was only made with the service of its acceptance of the Claimant's offer on that date ("the Acknowledgement").
 2. The terms and conditions of the said contract are those included in the Respondent's acceptance. The said terms include:
 - (i) at Clause 1: "this order is placed on the terms and conditions shown overleaf, which terms and conditions shall prevail over any terms and conditions put forward at any time by the sellers.
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6. The Respondent denies therefore that the Claimant is entitled to postponement costs arising from inclement weather.
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10. Further, the Respondent denies that the Claimant is entitled to extra costs for the supply of steel.
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