

Stavby, a.s. (headquarters and place of business in Prague, Czech Republic) deals with a wide range of construction activities. These include construction and reconstruction of hospitals and other medical facilities in the Czech Republic. Previously, Stavby, a.s. has contracted several times with Bau, Gmbh (headquarters and place of business in Berlin, Germany), which is a manufacturer and seller of air conditioning units. These contracts contained provisions on supply of air conditioners and air purifiers. In November 2019, Stavby, a.s. sent an offer for 50 pieces of air conditioning units for two interconnected buildings in a state hospital, which is being reconstructed in Prague. Further negotiations specifying the buyer's requirements took place through a skype conference in December 2019. During these negotiations further conditions were negotiated, i.e., 30 pcs of type A51 air conditioning units for waiting rooms, examination rooms and inpatient departments, and 20 pcs type B52 special air conditioning units with additional hygienic specifications were to be delivered to operating rooms and ICU department (these units contain special sterilization filters for air exchange). On January 3, 2020, Stavby, a.s. sent an e-mail with a draft contract which contained, *inter alia*, following provisions:

- a) *DDP central warehouse of the buyer, Tusarova 50, Prague 7.*
- b) *The goods will be delivered within two deliveries, the first delivery of 30 pieces type A51 by the end of February 2020 FIX, the second delivery of 20 pieces type B52 by the end of May 2020 FIX.*
- c) *This contract is governed by Czech law and lex mercatoria.*
- d) *Any changes or amendments to this contract, all subsequent communications related to performance, breach, and consequences of breach of contract shall be exclusively in writing; written form includes e-mails.*
- e) *The Contracting Parties undertake to settle amicably all and any disputes arising out of or in connection with this contract. If the parties do not settle any disputes amicably within a reasonable period, which shall not exceed thirty (30) days, these disputes will be finally settled by three arbitrators at the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic according to its Rules. The place of arbitration will be Prague. The arbitration proceedings will be conducted in the Czech language. Each Contracting Party shall appoint one arbitrator. No later than thirty (30) days after their appointment, the two (2) arbitrators shall appoint a third arbitrator. If the two arbitrators fail to do so, the third arbitrator shall be appointed by the Chairman of the Arbitration Court.*
- f) *The total price of the delivery is 140,400 EUR, type A51 2,500 EUR / piece (75,000 EUR / 30 pieces), type B52 3,270 EUR / piece (65,400 EUR / 20 pieces). The seller is also obliged to install all air conditioning units for a total price of 10,000 EUR*
- g) *The advance payment of the purchase price in the amount of 50,000 EUR is due within 30 days from the date of signing the contract, the rest of the purchase price shall be paid by the end of the fourth quarter of 2020.*
- h) *In case of delay in payment of the purchase price, the parties agree on interest on arrears in the amount of 0.05% of the purchase price for each day of delay.*
- i) *In the event of a delay of the delivery of goods under this contract, a contractual penalty of 0.05% of the purchase price is agreed for each day of delay.*

On 5 January 2020, Bau, Gmbh replied by an e-mail that it agreed to the draft agreement.

1. Qualify and determine the legal regime of the contract. Identify contractual clause that responds to the existence of so-called internal gaps. If the parties did not include this provision in the contract, analyse how the legal regime of these so-called internal gaps would be determined.
2. The first delivery of type A51 air conditioning units was delivered on 15.2.2020. The buyer took over the goods, inspected them and immediately installed them in one of the hospital's buildings, waiting rooms, examination rooms and a non-intensive ward. After a month, about 70% of air conditioning units began to show faults (failure of thermal signalling and remote control, the devices can only be controlled manually, the temperature cannot be set below a certain level, etc.). The running of the air conditioning units had to be stopped. The buyer notified the seller of this situation by e-mail on 31

March 2020, but the seller refused to accept it, stating that he was not informed of this defect in time. Analyse whether the buyer has carried out the complaint process properly in all aspects. If the defects are of such a nature that it would not be possible to repair them, analyse the type of claims the buyer could make.

3. Interpret the content of the delivery conditions, i.e. where the goods are to be handed over and where the risk passes. Identify the problem areas of the delivery terms (if any) and explain what interpretative rules based on the provisions of the Vienna Convention you could use to overcome these problem areas.
4. Notwithstanding the answer to the previous questions, assume that the buyer has duly withdrawn from this first delivery. Regarding the need to quickly ensure air conditioning in the hospital, the buyer ordered a week after the withdrawal the air conditioning units from another supplier (Danish company Klima, DK), but at a higher price (approximately 20% increase over the original price). The buyer is considering claiming the difference between the purchase prices from Bau, GmbH. Qualify the situation, state in general the preconditions for the exercise of this claim and justify whether the buyer in the described situation will successfully exercise this claim.
5. The second delivery of air conditioning units intended for operating theatres and ICU departments was not delivered within the agreed deadline due to restrictions at the Czech borders introduced by the Czech government in connection with the COVID-19 pandemic. Explain what types of liability for the breach of this contractual obligation of the seller to the buyer arise or potentially might arise. Accordingly, analyse whether the buyer can withdraw from this second delivery. If he would be forced to pay a contractual penalty to the investor due to non-compliance with the deadline, explain whether he is able to claim the funds spent on the payment of this contractual penalty from the seller.
6. The contract for the supply of air conditioning units with the Danish company Klima, DK included, among other provisions, the seller's obligation to conclude a contract with the bank on the opening of a documentary letter of credit in accordance with the agreement of the parties. Analyse the advantages and disadvantages of this international payment method. List and explain at least three variants of the documentary letter of credit and given the brevity of legal regulation in national legal systems, characterize the non-state means of regulation of this payment method.
7. For questions 2 and 4 determine the manner and place of dispute resolution if the seller refuses to bear any responsibility for defects in the delivered goods. Analyse the relevant clause in the contract and assess its validity in terms of the relevant legislation. Indicate what general and formal requirements such a clause must meet to be valid. In the event that one of the parties objects to the invalidity of this clause, analyse, with reference to the legislation, which two doctrines are associated with this process.
8. Regardless of the answer to the previous question, assume that arbitration proceedings have been initiated in Prague. The arbitrators requested from Stavby, a.s. additional documents to assess the case, which the Czech company refuses to submit. Do the arbitrators have any powers in this regard? What are the related functions of the national courts of the place of arbitration? Name at least two other similar functions for each of the three phases of the arbitration proceedings.
9. Assume that in an arbitration proceeding before an arbitration court in Prague, an arbitration award was issued, according to which the Czech company was granted a pecuniary claim due to a breach of contract. State and characterize the process that Czech company must go through to achieve this claim if the German society does not fulfil voluntarily. Indicate what sources of legislation are possible and what the relationship is between them. Based on the source, which is common to the Czech Republic and Germany, state the possibilities of how a German company could defend itself against an issued arbitration award.
10. In the context of the current situation regarding the COVID-19 pandemic in the EU Member States, the US considers that the EU and its Member States aid entities in the EU that could be classified as illegal subsidies. Identify and characterize the international organization or body that is empowered to conduct proceedings to assess whether the assistance provided by the EU and its Member States to entities on their territory constitutes illegal subsidies. Please also indicate what typical defence tool the US can use if that international organization decides that EU aid constitutes illegal subsidies, but the EU and its Member States have refused to comply.