

## UM & TOYO UNIVERSITY NEGOTIATION CASE (CISG - BREACH & REMEDIES)

### General Information

**Japan Bean Traders KK ("JBT")** located in Tokyo is the world's number one seller of "super healthy Japanese beans". JBT receives an order from **Kloppo GmbH** in Hamburg to deliver "500kgs of super healthy Japanese beans fit for human consumption" on or before 15 March. The parties agree that the payment will be made "upon delivery of the beans at €30 per kg for a total cost of €15,000." Kloppo and JBT also agreed that CISG is the applicable law for the contract.



JBT faxes Kloppo with the message that it accepts Kloppo's proposal and initiates the process of transporting 500kgs of super healthy Japanese beans to a port in Hamburg from the Port of Tokyo. Without relying on any INCOTERMS, JBT arranges for a transport company, **Deliveries-R-U** to: 1) pick up the beans from their Tokyo factory, 2) take the container full of super healthy beans to the harbor, and 3) load them on to a vessel bound for Hamburg.

When the beans arrive in Hamburg on 15 March, however, Kloppo inspects them only to realize that all of the beans appear to have rotted, with a stinky, slimy disposition. Therefore, Kloppo claims that they are "no longer fit for human consumption" and refuses to accept delivery of the cargo and to make payment. JBT argues that the super health Japanese beans are supposed to be slightly fermented and it is still fit for human consumption. However, Kloppo insists that the beans are not fit for the German consumers and that JBT should have known this. In addition to refusing to take delivery and make payment, Kloppo threatens to seek damages from JBT for their alleged breach of contract.

It turns out that a week before Deliveries-R-U picked up the super healthy beans at JBT's Tokyo factory, there was a heatwave affecting Tokyo. While the average temperature in Tokyo is usually about 14 degrees Celsius in March, this year, the average has been around 16 degrees so far in the month, which could have potentially impacted the quality and the status of the beans.

### Confidential Information for Kloppo

Kloppo arranged to resell all of the super healthy Japanese beans within the German market for a markup of €37 per kg. However, Kloppo didn't realize that when they initially placed the order that the "super healthy Japanese beans" would actually be fermented, slimy and stinky. Only after placing the order, did they realized that the average German consumers would not be interested this type of beans. There is, however, a Japanese market located in Dusseldorf (where there is a large Japanese community) that they could potentially resell the beans to, but the market is only willing to pay up to €32 per kg. Kloppo is willing to accept deliver and make partial payment, if JBT is willing to reduce the agreed upon sales price to compensate for their lost profits.