

INTERNATIONAL COURT OF ARBITRATION
INTERNATIONAL CHAMBER OF COMMERCE

ICC CASE NO.

IN THE MATTER OF AN ARBITRATION BETWEEN

GRANBIO LLC

and

BIOFLEX AGROINDUSTRIAL S.A.

Claimants

- versus -

BETA RENEWABLES S.P.A.

and

BIOCHEMTEX S.P.A.

Respondents

REQUEST FOR ARBITRATION

7 April 2016

This Request for Arbitration is submitted on behalf of GranBio LLC and BioFlex Agroindustrial S.A. in accordance with Articles 4 and 6(1) of the Rules of Arbitration of the International Chamber of Commerce (“ICC”), effective January 2012 (“the ICC Rules”).

I. THE PARTIES

1. The Claimants are GranBio LLC, a company incorporated under the laws of Delaware, United States of America, and BioFlex Agroindustrial S.A. (“BioFlex”), a company incorporated under the laws of Brazil (together “GranBio”).

2. GranBio LLC is wholly owned by GranBio Investimentos S.A., a company incorporated under the laws of Brazil (“GranBio Brazil”), which is in turn jointly owned by the Brazilian Development Bank (15%) and GranInvestimentos S.A. (85%). GranBio LLC was formerly known as Graal Bio LLC. It changed its corporate name to GranBio LLC in March 2013.

3. GranBio LLC’s address is:

3625 Cumberland Boulevard SE Suite 1000
Atlanta, GA 30339-6403
United States of America

4. BioFlex is a wholly-owned subsidiary of GranBio Brazil. In June 2012, BioFlex changed its company status from an “Ltda” to “S.A.” BioFlex’s address is:

Av. Brigadeiro Faria Lima, 2277
15th Floor, CEP 01452-000
Sao Paulo, Brazil

5. GranBio LLC and BioFlex are represented in this arbitration by:

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All communications to GranBio in this arbitration should be made to GranBio's representatives at the addresses set forth above.

6. The Respondents in this arbitration are BioChemtex S.p.A. ("BioChemtex") and Beta Renewables S.p.A. ("Beta"). Both companies are incorporated under the laws of Italy.

7. BioChemtex is wholly owned by M&G Finanziaria s.r.l. BioChemtex was formerly known as Chemtex Italia S.p.A. and later changed its corporate name to BioChemtex S.p.A. BioChemtex's contact information is:

Strada Ribrocca n. 11
15057 Tortona (AL)
Italy
Tel: +39 0131 810 1
Fax: +39 0131 811 759
Attn: Mauro Osella, mauro.osella@gruppomg.com
Giovanni Bolcheni, giovanni.bolcheni@gruppomg.com

8. Beta is majority owned by BioChemtex (67.54%), with minority stakes held by TPG ESCH S.a.r.l. (22.51%), and Novozymes Bio-Industrial Holdings A/S (9.95%). Beta's contact information is:

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Tel: +39 0131 810 1
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Attn: Dario Giordano, dario.giordano@gruppomg.com
Rogih Yazgi, General Counsel of Chemtex International,¹
rogih.yazgi@chemtex.com

9. Beta and BioChemtex are both members of the Mossi Ghisolfi Group ("M&G Group"). The M&G Group is controlled by M&G Finanziaria s.r.l. and is owned by the Ghisolfi family. The M&G Group is an industry leader in the petrochemical and renewables sectors, including biofuels, with a turnover of US\$2.4 billion in 2014 alone.

II. THE ARBITRATION AND GOVERNING LAW CLAUSES

10. This dispute arises out of three related agreements:

- a. License Agreement between GranBio LLC and Beta dated 15 May 2012 ("License Agreement");²
- b. Basic Engineering and Technical Services Agreement between BioFlex and BioChemtex dated 15 May 2012 ("Engineering Agreement");³ and
- c. Equipment Supply Agreement between BioFlex and BioChemtex dated 15 May 2012 ("Equipment Agreement").⁴

¹ License Agreement, Exhibit C-1, at p. 21.

² License Agreement, Exhibit C-1.

³ Engineering Agreement, Exhibit C-2.

(collectively, the “Agreements”)

11. All three Agreements contain identical arbitration and governing law clauses, which provide as follows:

“DISPUTE RESOLUTION AND GOVERNING LAW

... **Consultation to Resolve Disputes**: Any dispute, difference, controversy or claim of any kind arising out of or relating to this Agreement (including, but not limited to the breach, termination, construction, execution, operation, effect or invalidity of this Agreement) (a “Dispute”) shall be settled through friendly consultation between both Parties. If the Dispute cannot be resolved through consultation within thirty (30) days of the Dispute being first notified to the other Party, the Dispute shall be settled definitively, finally and exclusively by binding arbitration as provided in this Article 19.

... **Arbitration Notice**: If the Parties are unable to resolve a dispute relative to the interpretation of this Agreement through negotiation as provided for in [the subsection above], the matter shall, at the written notice of either Party, be definitively, finally and exclusively determined and settled pursuant to arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce in London, England, by a single arbitrator to be appointed in accordance with such rules. The arbitration shall be conducted in English. Any such arbitration may be initiated by a Party by written notice (“Arbitration Notice”) to the other Party specifying the subject of the requested arbitration.

... **Arbitration Award**: The arbitration award shall be final and conclusive and shall receive recognition, and judgment upon such award may be entered and enforced in any court of competent jurisdiction. In the event of any conflict between the Rules of the ICC and the provisions of this Article [], the provisions of this Article [] shall govern and control. Any damage awards by the arbitrator shall be promptly paid free of any deduction or offset; and any costs or fees incident to enforcing the award shall to the maximum extent permitted by law be charged against the Party resisting such enforcement. The costs of arbitration shall be borne by the unsuccessful Party or as otherwise allocated by the arbitrator.

... **Governing Law**: This Agreement shall be construed (both as to validity and performance), interpreted, and enforced in accordance with, and governed by the laws of England, excluding any conflict of laws principles, which would apply the laws of a different jurisdiction.

... **Continued Performance**: In the course of arbitration, both Parties shall continue to perform their obligations under this Agreement except the parts under arbitration.”⁵

12. The disputes to which this Request for Arbitration relates fall within the scope of Article 19 of the License Agreement, Article 15 of the Engineering Agreement, and Article 12 of the Equipment Agreement.

⁴ Equipment Agreement, Exhibit C-3.

⁵ License Agreement, at Art. 19, Exhibit C-1; Engineering Agreement, at Art. 15, Exhibit C-2; Equipment Agreement, at Art. 12, Exhibit C-3.

13. All of the Agreements provide that the arbitration shall be subject to the ICC Rules, the place of arbitration shall be London, England, and the language of the arbitration shall be English.⁶

III. CONSTITUTION OF THE TRIBUNAL

14. The Agreements provide for a single arbitrator.⁷ GranBio is amenable to discussions with the Respondents regarding the selection of a three-member Tribunal to decide the dispute referenced in this Request for Arbitration and regarding the procedure for constituting such a Tribunal. GranBio will confer with the Respondents' counsel regarding constitution of the Tribunal.

IV. NATURE AND CIRCUMSTANCES OF THE DISPUTE

15. The disputes to which this arbitration relates arise out of the Respondents' repeated misrepresentations to GranBio regarding the "PROESA" technology and other services and materials that they provided in connection with the design and construction and attempted operation of GranBio's second generation bioethanol plant in Alagoas, Brazil ("Plant"). Among other things, the Respondents falsely assured GranBio that their PROESA technology was mature, effective, reliable, and ready for commercial-scale operations.

16. GranBio relied on these false representations, entering into and implementing licensing, design and engineering, and equipment supply agreements with the Respondents for the design and construction of the Plant. Contrary to the Respondents' representations, their PROESA technology was still in a developmental stage, was fundamentally flawed, and was entirely unsuitable for commercial-scale operations.

17. Throughout the parties' discussions, the Respondents refused to disclose detailed information regarding the PROESA technology without prior execution of the Agreements. Without direct access to the PROESA technology, GranBio was dependent on the Respondents and relied on the false assurances of the Respondents regarding the PROESA technology and the technological and economic viability of the project.

18. After execution of the Agreements on 15 May 2012, the Respondents continued to make false representations about the maturity, efficacy, and reliability of their PROESA technology and repeatedly assured GranBio that the PROESA technology worked as designed. In fact, the Respondents were still (unsuccessfully) attempting to develop essential aspects of the PROESA technology at the time they made these representations.

19. The Respondents repeatedly assured GranBio that there were no problems with the PROESA technology at their own commercial second generation bioethanol plant in Crescentino, Italy, which was allegedly running well and at full capacity. In fact, the Respondents' plant did not, and (to the best of GranBio's knowledge) still does not, run at capacity, and the PROESA technology was, and remains, fundamentally flawed.

20. In reality, and unbeknownst to GranBio, the Respondents were experimenting with the PROESA technology before and after concluding the Agreements. Because that

⁶ License Agreement, at Art. Article 19.2, Exhibit C-1; Engineering Agreement, at Art. 15.2, Exhibit C-2; Equipment Agreement, at Art. 12.2, Exhibit C-3.

⁷ License Agreement, at Art. 19.2, Exhibit C-1; Engineering Agreement, at Art. 15.2, Exhibit C-2; Equipment Agreement, at Art. 12.2, Exhibit C-3.

technology was not mature, effective, or ready for commercial-scale operations, the Respondents provided grossly incompetent and deficient performance under the Agreements.

21. While the Respondents continued attempting to develop their PROESA technology, they submitted wholly deficient design plans, followed by hundreds of design revisions for the Plant to GranBio. The Respondents' gross negligence in connection with their design of the Plant and attempted development of the PROESA technology resulted in enormous overruns of the capital expenditure, well above what had been negotiated between the parties in relation to construction of the Plant prior to the signature of the Agreements, and produced a Plant that is incapable of functioning in a commercially viable manner.

22. GranBio spent more than US\$300 million in capital expenditure to build the Plant using the Respondents' fundamentally flawed PROESA technology. Because of the Respondents' misrepresentations and gross incompetence, GranBio's Plant cannot achieve stable operations and does not work at even a fraction of the capacity promised by the Respondents.

A. *The Respondents Repeatedly Misrepresented that the PROESA Technology Was Mature and Effective in the Negotiations Leading to the Agreements*

23. In 2011, the Respondents, together with the M&G Group, announced their launch of a purportedly reliable, efficient technology for producing second generation bioethanol on a commercial scale, the so-called "PROESA" technology. The Respondents and the M&G Group touted PROESA to GranBio and others as a "break-through" patented technology for the production of second generation bioethanol on a commercial scale, requiring only limited operating and capital expenditures.

24. In 2011, Mr. Guido Ghisolfi, then-Managing Director of M&G Finanziaria and then-CEO of Beta and BioChemtex, gave a presentation in Brazil on the PROESA technology. He emphasized that hundreds of millions of euros had been invested in the technology, the efficacy of which had been proven by extensive testing over many years. Mr. Ghisolfi encouraged GranBio and other Brazilian companies to invest in his purportedly effective, proven, and ready technology.

25. In response, GranBio began discussing with Mr. Ghisolfi the possibility of constructing a second generation bioethanol plant in Brazil using the PROESA technology. Throughout the parties' discussions, Mr. Ghisolfi and the Respondents repeatedly misrepresented the status, capabilities and viability of the PROESA technology and its readiness for commercial use. Among other things, the Respondents and the M&G Group represented to GranBio that their PROESA technology: (a) was mature, already up and running, reliable, and in operation; (b) was ready for commercial-scale operations; (c) required low capital and operating expenditure; (d) required no addition of (expensive) chemicals and only minimal enzyme consumption; (e) provided for liquefaction of biomass feedstock material in fewer than eight hours even with limited enzyme consumption; and (f) was capable of producing specified quantities of ethanol.

26. GranBio relied on the Respondents' and the M&G Group's representations, none of which were true. In particular, GranBio's decision to invest hundreds of millions in the Plant turned on whether the PROESA technology was mature and operational, whether the project could be contained within certain capital expenditure limits and whether the Plant would

generate a satisfactory rate of return. The Respondents were well aware of GranBio's requirements, which were repeatedly discussed by GranBio and the Respondents.

B. Under the Agreements the Respondents Were Obligated to Provide the Design Plans and Equipment Necessary to Construct the Plant

27. On 15 May 2012, the parties entered into the Agreements. All three Agreements were executed on the same date by Mr. Bernardo Gradin (or Mr. Gradin and others) on behalf of GranBio and by Mr. Guido Ghisolfi on behalf of the Respondents. In summary, the Agreements provide the following:

a. Under the License Agreement between GranBio LLC and Beta for US\$22 million, GranBio LLC obtained a license to use and sublicense the PROESA technology. In addition:

i. Under Article 5.1, Beta is obliged to provide the Process Design Package ("PDP") which "shall contain all process design and know-how information which is reasonably required to enable [BioChemtex] to prepare the Basic Engineering Design and, when taken in conjunction with the Basic Engineering Design, to permit the General Contractor to prepare the Detailed Engineering Design"⁸ The Basic Engineering Design ("BEP") is in turn defined as "the package of engineering design information to be prepared by [BioChemtex] in sufficient detail to enable [GranBio LLC] to perform... [c]onstruction of the Plant."⁹

ii. Consistent with the Respondents' representations during the negotiations, Annex 5 contains various guarantees on the performance of the Plant, which Article 10.3 provides would be evaluated through a Performance Test that would be conducted once the Plant reached stable operations. If the Plant failed the Performance Test, the Respondents would be liable to pay substantial liquidated damages.

iii. The License Agreement requires GranBio LLC to purchase the BEP and Critical Equipment from BioChemtex,¹⁰ which was done pursuant to the Engineering and Equipment Agreements executed the same day.

b. Under the Engineering Agreement between BioFlex and BioChemtex for €1.968 million, BioChemtex is obliged to provide the BEP for the Plant.¹¹

c. Under the Equipment Agreement between BioFlex and BioChemtex for €34.25 million, BioChemtex is obliged to supply certain Critical Equipment for the Plant.¹²

28. Together, the Agreements comprise a single transaction. The Respondents together agreed to provide GranBio with the essential technology, design and engineering information, and equipment necessary for GranBio to construct a second generation bioethanol Plant using

⁸ License Agreement, at Article 5.1, Exhibit C-1.

⁹ License Agreement, at Definition of BEP, Exhibit C-1.

¹⁰ License Agreement, at Article 1.1 and definition of "Contractor," Exhibit C-1.

¹¹ Engineering Agreement, at Article 2.1, Exhibit C-2.

¹² Equipment Agreement, at Article 2.3, Exhibit C-3.

the PROESA technology. In the License Agreement, the Respondents also guaranteed the Plant would reach certain specified levels of performance.

C. The Respondents Were Grossly Negligent in Connection with the Design and Engineering of the Plant

29. After the Agreements were concluded, the Respondents provided grossly incompetent advice and services in connection with the design and engineering of the Plant. The Respondents' incompetence caused GranBio substantial damages.

30. As noted above, the License Agreement obligated Beta to provide GranBio with the PDP for the Plant. In August and September 2012, the PDP was delivered to GranBio on a rolling basis by BioChemtex. The PDP was used to produce and was incorporated into a BEP that the Respondents issued to GranBio in October 2012. GranBio and its contractors began construction, relying on the Respondents' PDP and BEP. In fact, BioChemtex's PDP and BEP were inadequate and unsuitable and provided a fundamentally flawed basis for proceeding with construction. As a consequence, BioChemtex revised the BEP repeatedly, ultimately issuing nearly 400 revisions. These changes increased GranBio's capital expenditure significantly.

31. The Respondents made these hundreds of revisions after issuing the PDP and BEP because, among other things, the Respondents were still attempting to develop the PROESA technology for use on a commercial scale and failed to act with even rudimentary technical competence.

32. The Respondents' constant revisions to the BEP had serious consequences for the construction of the Plant, which had already begun. Often, the Respondents issued revisions *after* GranBio had already invested significant time and resources in procuring materials and construction.

33. The construction of the Plant was eventually completed in November 2014. The Respondents' revisions caused very substantial delays in completion of the Plant (more than nine months of delay) and enormous overruns in capital expenditure.

34. After completion of construction, the parties anticipated that the Plant would start commercial scale operations immediately. Unfortunately, the Plant was incapable of functioning as intended, and the Respondents continued to provide services and goods to GranBio in a grossly incompetent manner.

D. After Executing the Agreements, the Respondents Repeatedly Misrepresented that the PROESA Technology Was Effective

35. During and after the construction of the Plant, GranBio voiced concerns over the delays and disruptions at the Plant. In response, throughout 2013 and 2014, the Respondents and the M&G Group repeatedly assured GranBio that the problems with their PROESA technology had been or would be resolved. Specifically, the Respondents falsely represented to GranBio that the PROESA technology in their Crescentino, Italy plant was operating well, and that the same solutions were being implemented at GranBio's Plant. The Respondents and the M&G Group also assured GranBio that there was nothing wrong with the PROESA technology itself.

36. These statements were patently untrue. As it turned out, the Respondents' Crescentino plant also suffered repeated and fundamental technology failures and was never running at capacity. Indeed, to the best of GranBio's knowledge, the Respondents' Crescentino plant has never achieved the performance levels that the Respondents promised to GranBio.

37. In February 2015, Mr. Guido Ghisolfi finally admitted to GranBio that the Respondents' Crescentino plant had been plagued by repeated defects, that the Respondents had attempted numerous times to resolve these problems and had been unsuccessful, and that the PROESA technology being used at the plant in Crescentino had ultimately been significantly altered (because it failed to perform satisfactorily). While the PROESA technology sold to GranBio involved a two-step pre-treatment process, that process was later abandoned at Crescentino.

38. Mr. Ghisolfi's February 2015 admissions were a radical change from what Mr. Ghisolfi and the Respondents had previously represented to GranBio. GranBio had already contracted and spent more than US\$300 million for all of the design, engineering, and equipment for its Plant under the Agreements on the basis of the Respondents' purportedly proven, two-step pre-treatment technology. Nearly three years after execution of the Agreements, the Respondents acknowledged that they had in fact been experimenting to develop the PROESA technology and that they had previously and secretly abandoned the technology they sold to GranBio.

E. The Plant Fails to Achieve Stable Operations

39. After construction of the Plant was completed, GranBio requested confirmation from the Respondents that the Plant was ready for the Performance Test, as required by Article 10.3 of the License Agreement. The Performance Test is an essential milestone in the License Agreement, which was required to demonstrate that the Plant can meet the Respondents' performance guarantees. If the Plant failed to meet the performance guarantees in the Performance Test, GranBio would be entitled to substantial liquidated damages under the License Agreement.

40. In initial operations, the Plant fell far short of the performance levels promised by the Respondents and the M&G Group. The high and low pressure reactors did not perform as required, and the Plant's performance in other operations was drastically below the promised levels of production. Among other things, the Plant was supposed to run for 8,000 consecutive hours, but in fact could not operate for even 24 consecutive hours, the Plant consumed vastly more enzyme solution and chemicals than it was supposed to require, and the Plant's ethanol output was only a fraction of the promised output.

41. Rather than conduct a Performance Test, the Respondents informed GranBio that yet further revisions needed to be made to the Plant. The Respondents directed that certain items of Critical Equipment provided under the Equipment Agreement be replaced. The Respondents claimed that, with these changes, the Plant would reach stable operations.

42. The Critical Equipment to be replaced included, among others, a piece of equipment known as the "inclined screw."¹³ The Respondents instructed GranBio to close down the

¹³ The inclined screw is a large piece of equipment that serves as the connecting piece between the first and second stages of PROESA's two-stage pre-treatment process.

Plant for several weeks to replace the original inclined screw with a substitute provided by the Respondents. In compliance with the Respondents' instructions, GranBio closed down the Plant in early 2015.

43. However, the new inclined screw provided by the Respondents was just as defective and unsuitable for the Plant as the prior version. The prior (defective) inclined screw was thus reintroduced. The Plant remained nonfunctional and unable to reach stable operations.

44. To date, the Respondents have not certified that the Plant has met stable operations. Thus, nearly two years after completion of construction of the Plant, the Performance Test required under Article 10.3 of the License Agreement has never been performed. It is apparent that, if the Performance Test were conducted, the Plant would fail all of the performance guarantees provided pursuant to Annex 5 of the License Agreement. The Respondents have resisted any attempt to ready the Plant for the Performance Test as required by the Agreements. Instead, the Respondents proposed a "metered run test" on the Plant. Without prejudice to its insistence that the contractual milestone of the Performance Test be secured, GranBio cooperated fully with the Respondents in an effort to get the defunct Plant operating appropriately.

45. In October 2015, the parties commissioned two independent third parties to perform a "metered run test" on the Plant. Unlike the Performance Test, the metered run test used technical protocols that, even if fulfilled, would not demonstrate that the Plant could function at the performance levels guaranteed in the Agreements.

46. Even on these protocols, however, the Plant was unable to achieve stable operation, much less satisfy any of the performance guarantees contractually agreed by the Respondents. In particular, although the Plant is designed to run for 8,000 continuous hours of operation per year, the Plant could not sustain continuous operation for more than 17 hours during the metered run test and operated at a significantly lower capacity than that contracted for in the License Agreement.

47. GranBio has derived no income or other economic benefit from the more than US\$300 million which it invested in the Plant. Instead, GranBio incurs approximately US\$10 million annually in third party services, maintenance, personnel and other expenses for the Plant. Moreover, because the Plant is inoperable, large stockpiles of biomass sat idle, which imposed further expenses and losses as well as serious safety hazards.

F. GranBio Has Suffered Substantial Damages as a Result of the Respondents' Breaches of Their Obligations

48. The Respondents, and the M&G Group, acting jointly, have breached their express and implied obligations to GranBio under the Agreements and applicable law. These breaches have severely damaged GranBio. The Respondents' wrongful conduct includes those breaches set out below.

1. The Respondents Are Liable for the Tort of Deceit

49. The Respondents made numerous false representations to GranBio both before and after execution of the Agreements. Among other things, the Respondents repeatedly assured GranBio that (a) their PROESA technology was mature, effective, tested, proven, and ready for a commercial-scale plant, (b) GranBio could build a PROESA plant with lower capital

and operating expenditure investments than would be required if GranBio contracted with the Respondents' competitors, (c) GranBio's Plant would require minimal enzyme and chemical consumption, and (d) the Respondents' own PROESA plant was running appropriately and at capacity.

50. These and other statements by the Respondents are false. The Respondents either knew these statements to be false or were reckless as to whether they were false. Among other things, when the Respondents made these false representations, they knew that (a) they had never attempted to use PROESA in a commercial-scale plant, (b) the technology as sold to GranBio had not been tested at commercial-scale, (c) the technology was not mature, proven, and reliable because they were still experimenting with it, (d) it was not possible to construct and operate the Plant on the basis of the limited capital and operating expenditure the Respondents had promised, and (e) the ethanol output they guaranteed to GranBio was impossible on the basis of the enzyme and chemical consumption they had promised.

51. The fact that the Respondents and the M&G Group knew their representations about the efficacy of PROESA and the Crescentino plant to be false is plain from Mr. Ghisolfi's February 2015 correspondence. In that correspondence, Mr. Ghisolfi finally admitted that the PROESA process as employed in the Plant does not work, that major modifications had accordingly been introduced at Crescentino several months prior, and that his prior representations regarding PROESA and Crescentino were no more than wishful thinking.

52. GranBio relied on these numerous and ongoing misrepresentations. GranBio entered into the Agreements on the basis of these false statements, and it continued to implement the Agreements and the Respondents' design revisions on the basis of these false statements. As a result of GranBio's reliance on the Respondents' false statements, both before and after execution of the Agreements, GranBio has spent more than US\$300 million dollars on a Plant that cannot even achieve stable operations.

2. The Respondents Are Liable for Breach of the License Agreement

53. The Respondents have breached their obligations under the License Agreement, including under Article 5.1. Under Article 5.1, the Respondents were obliged to provide a PDP containing "***all process design and know-how information which is reasonably required*** to enable [BioChemtex] to ***prepare the Basic Engineering Design*** and, when taken in conjunction with the Basic Engineering Design, to permit the General Contractor to ***prepare the Detailed Engineering Design.***"¹⁴

54. As set out above, the PDP provided by the Respondents was grossly deficient and incompetent. The Respondents did not provide "all process design and know-how information which is reasonably required" to develop the BEP and Detailed Engineering Design.

55. The Respondents further failed to exercise even rudimentary care and skill in preparing the PDP. The Respondents were still attempting to develop their PROESA technology and the process for its use in their own plant in Crescentino. The Respondents nevertheless delivered a PDP to GranBio, which was wholly deficient. This had a direct impact on the BEP, the Detailed Engineering Design, and the construction of the Plant itself.

¹⁴ License Agreement, at Art. 5.1, Exhibit C-1 (emphasis added).

Moreover, the Respondents concealed their own ongoing difficulties with the PROESA technology.

56. As a result of the Respondents' breaches and gross incompetence, GranBio has been severely damaged. GranBio invested hundreds of millions of dollars to build a Plant using the Respondents' technology that cannot achieve stable operations.

3. The Respondents Are Liable for Breach of the Engineering Agreement

57. The Respondents have breached the Engineering Agreement, including Article 5.1. Under Article 5.1, the Respondents "guarantee[] that the Basic Engineering Package shall be provided based on the process design package [PDP] ... *in accordance with the standards of care and diligence normally practiced by recognized firms in providing services of a similar nature...*"¹⁵ The BEP is defined as a design package containing information "in sufficient detail to enable [GranBio] ... to perform Detailed Engineering Design ... procurement and *construction of the Plant.*"¹⁶

58. The Respondents issued a BEP for technology that they were still attempting to develop. The Respondents then proceeded to revise the BEP hundreds of times as they continued to attempt to develop their technology. The Respondents' actions breach Article 5.1's requirement that that BEP be provided "in accordance with the standards of care and diligence normally practiced by recognized firms in providing services of a similar nature." The Respondents' actions are far outside industry standard practice.

59. As a result of the Respondents' breaches and gross incompetence, GranBio has incurred millions of dollars of capital expenditure that were neither envisioned nor agreed between the parties. Moreover, despite investing hundreds of millions of dollars to build a Plant using the Respondents' design engineering for the Respondents' PROESA technology, the Plant still cannot achieve stable operations.

4. The Respondents Are Liable for Breach of the Equipment Agreement

60. The Respondents have also breached the Equipment Agreement. Numerous pieces of Critical Equipment provided by the Respondents are defective and failed to perform as guaranteed under Article 5.1 of the Equipment Agreement. Under the Equipment Agreement and applicable law, the Respondents were required to provide Critical Equipment that worked and was fit for use in the Plant.

61. Indeed, to the best of GranBio's knowledge, the Respondents have abandoned several pieces of the defective Critical Equipment in their own plant in Crescentino. This is because this Critical Equipment is defective and fundamentally unfit for its intended purpose.

62. As a result of the Respondents' breaches of the Equipment Agreement, GranBio has invested hundreds of millions of dollars into building a Plant with the Respondents' equipment that cannot achieve stable operations.

¹⁵ Engineering Agreement, at Art. 5.1, Exhibit C-2 (emphasis added).

¹⁶ Engineering Agreement, at Definition of "BEP," Exhibit C-2 (emphasis added).

5. The Respondents Are Liable for Gross Negligence

63. The Respondents have also been grossly negligent, both with respect to the misrepresentations that they made to GranBio and in connection with their provision of the PDP and BEP to GranBio. Among other things, the Respondents (a) made numerous false misrepresentations with respect to the maturity, efficacy, and economic feasibility of PROESA on a commercial scale and made those representations with serious disregard of or indifference to an obvious risk, (b) were grossly negligent in their provision of the PDP and BEP to GranBio under the Agreements while still attempting to develop essential elements of their PROESA technology, and (c) proceeded to issue hundreds of revisions to the BEP when the obvious risk of having issued a PDP and BEP for an underdeveloped technology materialized.

64. The Respondents' gross negligence has caused GranBio substantial loss. Among other things, the Respondents' gross negligence increased GranBio's capital expenditure by tens of millions of dollars, and imposed operating expenses on GranBio.

* * * * *

65. As a result of the Respondents' breaches of their obligations under the Agreements and applicable law, GranBio has suffered significant financial harm. GranBio has now spent hundreds of millions of dollars to construct a second generation bioethanol Plant using the Respondents' PROESA technology, relying on the Respondents' design and engineering and equipment.

66. After investing more than US\$300 million in capital expenditure to build the Plant, GranBio is saddled with a Plant that does not work at a fraction of the capacity promised by the Respondents and which cannot even achieve stable operations. The Plant loses money every day that it operates and has had to be shut down. GranBio's equity investment continues to depreciate while the Plant sits idle and defunct as a result of the Respondents' breaches.

G. The Parties Have Been Unable to Resolve This Dispute Through Friendly Consultations

67. By a letter dated 25 November 2015, GranBio initiated the pre-arbitration "friendly consultation" process prescribed by Article 19.1 of the License Agreement, Article 15.1 of the Engineering Agreement, and Article 12.1 of the Equipment Agreement.¹⁷ Commercial negotiations between the parties had been ongoing for some time previously.

68. In the interest of finding a commercial solution to the dispute, GranBio has devoted significant time and resources, including directly from its highest officers, to engage in friendly consultations with the Respondents. These attempts have been futile.

* * * * *

69. There is considerable urgency in obtaining the relief sought by GranBio. The longer the Plant remains commercially inoperable, the longer GranBio's losses will continue to mount. These losses ultimately threaten the financial survival of GranBio.

¹⁷ Letter dated 25 November 2015 from GranBio to Beta and BioChemtex, Exhibit C-4.

V. REQUEST FOR RELIEF

70. As a consequence of the foregoing, GranBio respectfully requests the following relief:

- a. A declaration that the Respondents have breached their obligations under the Agreements and the applicable law;
- b. A declaration that the License Agreement remains in force between GranBio and Beta, as GranBio has affirmed the agreement following Beta's breaches of its obligations under the agreement;
- c. An award requiring the Respondents to pay damages for all losses suffered as a consequences of their breaches, in an amount to be quantified, but which are in excess of US\$85 million;
- d. A declaration that the Respondents are jointly and severally liable for GranBio's losses;
- e. An award requiring the Respondents to pay all costs and expenses of the present arbitration and reimburse all of GranBio's reasonable legal fees, expenses and other costs incurred in connection with the arbitration, including all internal costs, on a full indemnity basis;
- f. interest on all damages due from the Respondents to GranBio; and
- g. such additional or other relief as may be just.

71. GranBio reserves the right to amend or supplement this Request for Arbitration or to make additional claims or revisions to its claims, or to supplement the relief requested. GranBio specifically reserves the right to seek interim measures on an expedited basis prior to or after the constitution of the Arbitral Tribunal.

Respectfully submitted,



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