

**STATE OF MICHIGAN
IN THE SUPREME COURT
(On Application for Leave to Appeal from the Michigan Court of Appeals)
(M. J., Kelly, PJ, Swartzle and Ackerman, JJ)**

FCA US LLC,

Plaintiff/Counter-Defendant-Appellee,

v.

KAMAX Inc.,

Defendant/Counter-Plaintiff-Appellant,
and

KAMAX Mexico S. de R.L. de C.V.,

Defendant.

Supreme Court Case No. 168680
Court of Appeals Case No. 371234

Oakland County Circuit Court
Case No. 2024-205863-CB
Hon. Victoria Valentine

**FCA APPENDIX VOL. I TO
PLAINTIFF-APPELLEE FCA US LLC's
APPEAL BRIEF**

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**FCA APPENDIX VOL. II TO
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY

FCA US LLC, a Delaware limited liability
company,

Plaintiff,

v.

KAMAX INC., a Delaware corporation, and
KAMAX MEXICO S. DE R.L. DE C.V., a
Mexican corporation,

Defendants.

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) Case No. 2024-205863-CB

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) Hon. Victoria Valentine

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**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff FCA US LLC, f/k/a Chrysler Group LLC ("FCA"), by counsel, having filed its
Verified Complaint for Specific Performance, Damages, and Injunctive Relief ("Complaint")
against Defendants KAMAX Inc. and KAMAX Mexico S. De R.L. De C.V. (collectively

“KAMAX”), respectfully moves this Court, under MCR 3.310, for a temporary restraining order and an order for KAMAX to show cause as to why a preliminary injunction should not be issued against it enjoining KAMAX to perform its contractual obligations to supply FCA with its requirements of the Goods at issue until further order of this Court.

KAMAX has stopped delivery of the Goods in violation of the requirements contract between the parties. FCA brings this motion in order to avoid the continued and increasing irreparable harm that will result should KAMAX be permitted to continue to refuse to supply all of FCA’s requirements of the Goods. FCA relies on the authorities and arguments set forth in its brief in support of this motion, and the allegations set forth in the Complaint.

CERTIFICATION: Undersigned counsel certifies pursuant to MCR 3.310(B) that on February 27, 2024, a copy of the Complaint, this motion, and brief in support was forwarded to KAMAX’s outside counsel, Christopher R. Struble of Brooks Wilkins Sharkey & Turco PLLC (struble@bwst-law.com). FCA contacted Mr. Struble by email to inform KAMAX of this Motion and its legal basis on February 27, 2024.

WHEREFORE, FCA respectfully requests that this Honorable Court enter a temporary restraining order and an order for KAMAX to show cause as to why a preliminary injunction should not be issued requiring KAMAX to deliver the Goods to FCA in accordance with the parties’ agreements.

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff FCA US LLC, f/k/a Chrysler Group LLC ("FCA"), by counsel, pursuant to MCR 3.310, submits this brief in support of its Motion for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue on Defendants KAMAX Inc. and KAMAX Mexico S. De R.L. De C.V. (collectively "KAMAX"), and states as follows:

I. INTRODUCTION

This case is about KAMAX's improper tactics of attempting to coerce FCA into paying it substantially more money than it is owed by withholding supply of Goods required for FCA to operate *seventeen* automobile manufacturing plants, including plants in Michigan, Indiana, Ohio, Mexico, and Canada, thereby potentially causing thousands of layoffs and devastating harm to FCA.¹ These Plants represent *nearly all of FCA's North American assembly and powertrain manufacturing operations*. At the time of this filing, production at least two of FCA's Plants, the Toledo South Assembly Plant (manufacturing the Jeep Gladiator) and the Toledo North Assembly Plant (manufacturing the Jeep Wrangler), have already been forced to shut down, and FCA is facing imminent shut down of its remaining Plants, which represent *all* of its manufacturing operations. Accordingly, FCA seeks a restraining order enjoining KAMAX to continue supplying the Goods and preventing it from further stopping performance under the parties' automotive supply contracts for their duration or until FCA may transition the work to a new supplier without interruption. Immediate injunctive relief is necessary not just to prevent irreparable harm to FCA but also to avoid widespread, catastrophic harm across the automotive industry.

¹ The referenced exhibits are attached to the Complaint, which is attached as **Exhibit A**. A complete list of the parts at issue identifying the relevant corresponding part number and part description (the "Goods") is attached as **Exhibit 1**.

KAMAX is a German-based global supplier of fastener parts for the automobile industry. Beginning February 20, 2024, KAMAX has stopped performing completely under the parties' long-term, fixed-price requirements automotive supply contracts to supply the Goods. The Goods consist of critical fastener parts for automobiles and other products that FCA manufactures.

Absent Court intervention, KAMAX's breach will force FCA to substantially, or possibly completely, shut down eighteen different assembly plants (collectively, the "Plants"):

Plant	Program	Vehicle/Product
Detroit Assembly Complex -- Jefferson	WL	Jeep Grand Cherokee
	WD	Dodge Durango
Detroit Assembly Complex -- Mack	WL	Jeep Grand Cherokee L
Dundee Engine Plant	N/A	3.6-liter (V-6) Pentastar Upgrade
Indiana Transmission Plant	N/A	Six- and nine-speed transmissions
Kokomo Engine Plant	N/A	GMET4 engine
Kokomo Transmission Plant	N/A	Eight-speed transmissions
Saltillo North Engine Plant	N/A	GMET6 engine
Saltillo Truck Assembly Plant	D2	RAM 3500 Pickup
	DD	RAM 3500 Cab Chassis
	DF	RAM 3500 <10Klb Cab Chassis
	DJ	RAM 2500 Pickup
	DP	RAM 4500/5500 Cab Chassis
Saltillo Van Assembly Plant	VF	RAM Promaster
Sterling Heights Assembly Plant	DT	RAM 1500 Pickup
Tipton Transmission Plant	N/A	Nine-speed transmission
		Nine-speed SI-EVT transmission for

Plant	Program	Vehicle/Product
		Chrysler Pacifica Hybrid
Toledo South Assembly Plant	JT	Jeep Gladiator
Toledo Machining Plant	N/A	Steering columns
		Torque converters
Toledo North Assembly Plant	JL	Jeep Wrangler
Toluca Assembly Plant	MP	Jeep Compass
Warren Truck Assembly Plant	DS	RAM 1500 Classic
	WS	Jeep Wagoneer
Windsor Assembly Plant	RU	Chrysler Pacifica

As demonstrated in the chart above, nearly *all* of FCA's North American assembly and powertrain plants are affected by KAMAX.² In addition to the shutdown of the Plants, FCA's "Mopar" division – offering aftermarket parts, service, and customer care – is also impacted by KAMAX's cease of supply of the Goods.

Each of the Plants is supplied hundreds of parts by other suppliers to manufacture vehicles. When one of the critical parts is not available, the Plant is halted as are releases to other suppliers for any ancillary parts required to produce the relevant vehicle(s).

KAMAX is obligated to supply FCA with the Goods under the relevant Purchase Order terms and conditions which KAMAX accepted (*i.e.*, Production and Mopar Purchasing General Terms and Conditions or the "Terms")³ The Terms and the Purchase Orders shall be collectively

² Only one of FCA's North American powertrain plants, the Saltillo South Engine Plant, is not affected by KAMAX. In other words, if KAMAX's refusal to deliver the Goods is not remedied, nearly 100% of FCA's North American production will be halted.

³ Samples of Purchase Orders for each of the Plants at issue are attached to the Complaint as **Exhibit 2**. A copy of the Terms is attached to the Complaint as **Exhibit 3**.

referred to as the “Agreements.” The Agreements are requirements contracts under which KAMAX agreed to timely provide FCA with the Goods to meet FCA’s requirements as set forth in its releases. *See* **Ex. 3**, Terms, § 3. KAMAX is a Tier 1, *sole supplier* of the Goods to the Plants, and without them, FCA will be forced to stop production of vehicles across *all of FCA’s sixteen different vehicle programs* (reflected in the above chart, collectively referred to as the “Programs”) manufacturing. Without the Goods, the Plants cannot operate. Due to prior delays in KAMAX’s delivery of the Goods, FCA has low inventory of the Goods. Now that KAMAX has stopped shipping the Goods, two of the Plants have already been forced to shut down, while others have mere days of inventory remaining before they will also be forced to shut down.

KAMAX’s decision to stop ship the Goods arises out of its dissatisfaction with its profitability under the Agreements it negotiated. Consequently, KAMAX has embarked on a strategy of leveraging its position as a critical and vital supplier to force FCA to pay substantially higher prices for the Goods or risk a production shut down.

In November 2023, the parties entered an Accommodation Letter Agreement to temporarily modify the parties’ payment arrangement.⁴ Under the Accommodation Letter Agreement, KAMAX reconfirmed that it would not repudiate its obligations under any Purchase Order or take any action announcing or threatening non-delivery or the stop shipment of the Goods. Nonetheless, KAMAX has not only breached the Agreements, but it is also breaching the promises made mere months ago in the Accommodation Letter Agreement and is once again attempting to unfairly leverage supply of the Goods over FCA. This amounts to nothing less than commercial extortion.

⁴ The November 2023 Accommodation Letter Agreement is filed under seal as **Exhibit 4**.

If KAMAX is not enjoined and ordered to specifically perform under the Agreements for a limited period of time, production at all of the Plants will halt and FCA (and its sub-suppliers) will continue to suffer irreparable and catastrophic harm, including but not limited to potentially laying off thousands of employees, threatening the ability of FCA's numerous sub-suppliers to continue their operations, and causing incalculable damage to FCA's reputation and goodwill in the marketplace.

FCA respectfully requests that the Court order KAMAX to temporarily continue what it has been doing for over ten years: provide FCA with Goods under the Agreements at the agreed pricing. FCA is seeking preliminary and permanent injunctive relief, specific performance, money damages, a declaratory ruling of the parties' rights under the Agreements, and such other relief as it may be entitled as determined by the Court.

II. BACKGROUND

FCA is a cornerstone of the American automotive sector, and through its predecessor Chrysler, has manufactured vehicles in the United States for over 100 years. Presently, FCA produces and markets automobiles under several brand names, including Chrysler, Dodge, Jeep, Ram, Fiat, Alfa Romeo, and Maserati, alongside various parts and accessories divisions.

For the Plants to remain operational, FCA depends on numerous suppliers such as KAMAX to ensure an uninterrupted supply chain of parts. If FCA's supply of vital parts such as the Goods is even temporarily broken, the Plants is forced to shut down, lay off workers, and suspend other suppliers to the Plants (causing their workers to be laid off) and, in the event of a prolonged shutdown, the widespread automobile production community cannot continue until the supplier at fault agrees to resume performance under its contract. This also causes issues with the unions that bargain for the benefit of the workers and negatively impacts the economic viability of

the communities of the automobile workers. KAMAX has performed under the Agreements and supplied the Goods at issue for over a decade. The Agreements are requirements contracts pursuant to which KAMAX is obligated to, among other things, timely supply FCA with the Goods to meet its demand as provided by its releases, broadcasts, written requirements, or as otherwise stated in its Purchase Orders. *See Ex. 3, Terms, §§ 1, 3.*

KAMAX's role as a Tier 1, sole supplier of the Goods includes the assembly and delivery of over 140 different parts, which are delivered to the various Plants for installation into vehicles and other products. The Agreements are fixed-price requirements contracts and provide that the prices in FCA's Purchase Orders are "firm and are not subject to adjustment for changes in volume, changes in the price of raw materials or labor, changes in currency valuation, or for any other reason," unless FCA specifically states in writing in a Purchase Order that the price would be adjusted. *See id.*, § 9.

The Agreements expressly provide that time is of the essence for KAMAX to deliver the Goods in accordance with the time frame set forth in the Purchase Orders. *Id.* § 3. Timely delivery of all goods, but especially these critical Goods is crucial to the Plants' ability to operate. Typically, KAMAX receives a broadcast time of approximately 90 days in advance containing FCA's estimated needs, and KAMAX is required to deliver the Goods to the relevant Plant as confirmed by FCA approximately one week before the delivery date. Without the Goods, the Plants cannot operate. Due to prior delays in KAMAX's delivery of the Goods, FCA has low inventory of the Goods. Now that KAMAX has stopped shipping the Goods, two of the Plants have already been forced to shut down, while others have mere days of inventory remaining before they will also be forced to shut down.

KAMAX is aware of and expressly acknowledged the irreparable harm that is caused to FCA if delivery of the Goods does not meet demand or is interrupted. Clause 33 of Terms provides:

[KAMAX] acknowledges that a material breach of its obligation to supply goods in accordance with Clause 3 of [the Terms] ... would cause irreparable damage to FCA US, including without limitation potential damage to FCA US's relationships with its customers, suppliers, labor unions, lenders, and prospective future customers, the exact amount of which would be difficult to ascertain, and that the remedies at law and monetary damages for any such breach would be inadequate. Accordingly, in the event of any action taken or threatened by [KAMAX] hereunder that, if taken, would constitute a material breach of its obligations under Clause 3 ... of [the Terms], FCA US and [its] successors and assigns are entitled to injunctive or other equitable relief and/or a decree for specific performance, without the posting of any bond or other security, in addition to any other remedies it may have for damages or otherwise.

Id., § 33 (emphasis added). Despite this understanding, KAMAX has repeatedly taken action and threatened to take action which constitutes material breaches of the Agreements, thereby harming FCA irreparably.

In recent years, KAMAX has suffered chronic operational issues, causing significant supply interruptions to FCA. Throughout 2022 and 2023, FCA has made substantial accommodations to KAMAX to help ensure continued supply of the Goods. In or around June 2023, KAMAX once again began demanding price increases for the Goods, and if KAMAX's demands were not met, KAMAX threatened to discontinue shipments of the Goods to FCA.

On or about November 6, 2023, the parties entered the Accommodation Letter Agreement, under which KAMAX agreed to, among other things, continue supply of the Goods to FCA without reservation. *See Ex. 4*, Accommodation Letter Agreement. In exchange for various accommodations made by FCA, KAMAX specifically agreed as follows:

Kamax hereby agrees that it shall not: (i) **repudiate all or any portion of, or any obligation under, an installment of or an**

entire Order; (ii) take any action evidencing its intention or threat not to fully and timely perform each and all of its obligations under an installment of or an entire Order (including announcing or threatening non-delivery or the stop shipment of goods); or (iii) fail or omit to take any action required to be performed by Kamax that is necessary for Kamax to fully and timely deliver fully conforming goods or services to meet FCA's requirements or otherwise perform under a release or an Order.

Id. (emphasis added).

Unsatisfied with the accommodations provided by FCA and accepted by KAMAX, KAMAX continued to threaten to stop shipment of the Goods and has now followed through with its threats and stopped shipment of the Goods to FCA in direct breach of the Agreements and the Accommodation Letter Agreement. On February 20, 2024, KAMAX stopped shipment of the Goods to the Plants, and has indicated that it will not resume shipment. As a result of KAMAX's breach and decision to stop shipment of the Goods to the Plants, FCA has been forced to shut down its Toledo North Assembly Plant and Toledo South Assembly Plant, and FCA's remaining Plants are facing imminent shutdown (if they have not already been forced to shut down at the time of filing). Indeed, KAMAX's forced shutdown of the Toledo North Assembly Plant and Toledo South Assembly Plant has already caused FCA to suffer millions of dollars of damages, plus irreparable non-monetary harm.

If KAMAX is permitted to continue to withhold the Goods, FCA will be forced to shut down production of the remaining Plants, including all affected Programs, causing millions of dollars of losses per hour of downtime, and will also continue to suffer irreparable non-monetary harm. A temporary restraining order and preliminary injunction requiring specific performance under the Agreement is desperately needed to prevent KAMAX from forcing further shutdown of the Plants and causing irreparable harm to FCA.

III. LEGAL STANDARD

MCR 3.310 allows parties to obtain a temporary restraining order and preliminary injunctive relief. “The purpose of a preliminary injunction is to preserve the status quo pending a final hearing regarding the parties’ rights.” *Martin v. Progressive Mich. Ins. Co.*, 2023 Mich. App. LEXIS 7367, at *3-4 (Ct. App. Oct. 12, 2023) (quoting *Hammel v Speaker of House of Representatives*, 297 Mich. Ct. App. 641, 647; 825 N.W.2d 616 (2012) (citation omitted)).

In determining whether to issue a preliminary injunction, a court must consider four factors: (i) the likelihood the movant will prevail on the merits; (ii) whether the movant will suffer irreparable injury if a preliminary injunction is not granted; (iii) whether harm to the movant in the absence of an injunction outweighs harm to the opposing party if an injunction is granted; and (iv) the harm to the public interest, if any, if an injunction issues. *Michigan State Employee’s Association v Department of Mental Health*, 421 Mich. 152, 158-159; 365 N.W.2d 93 (1984); *Michigan AFSCME Council 25 v Woodhaven-Brownstown School District*, 293 Mich. App. 143, 148; 809 N.W.2d 444 (2011). “[T]hese four factors are simply a guide for the trial court’s exercise of discretion, and the factors are not designed to be rigid and unbending requirements.” *Martin v. Progressive Mich. Ins. Co.*, 2023 Mich. App. LEXIS 7367, at *4 (Ct. App. Oct. 12, 2023) (citing *Johnson v Mich Minority Purchasing Council*, 341 Mich. App. 1, 25, 988 N.W.2d 800 (2022)).

Unlike a preliminary injunction, a TRO “requires only that ‘it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice.’” *Red D Freight, Inc. v. Sexton*, 2017 WL 4818898, at *3 (Mich. Ct. App. Oct. 24, 2017) (quoting MCR 3.310(B)(1)(a)). The Court of Appeals has described this as a “minimal standard[.]” *Id.*

IV. ARGUMENT

A. FCA Is Likely To Succeed On The Merits Of Its Claims.

FCA is likely to prevail on its breach of contract claims. A party asserting a breach of contract must establish that “(1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.” *Miller-Davis Co. v. Ahrens Constr., Inc.*, 495 Mich. 161, 848 N.W.2d 95, 104 (Mich. 2014). When contract terms are clear and unambiguous, courts are to enforce the language as written in accordance with its plain and ordinary meaning. *Coates v. Bastian Bros., Inc.*, 276 Mich. App. 498, 741 N.W.2d 539, 543 (Mich. Ct. App. 2007).

A requirements contract is one in which the quantity of goods to be provided by the seller to the buyer is measured by the buyer’s good faith requirements for such goods. *Cyril Bath Co. v. Winters Indus.*, 892 F.2d 465, 467 (6th Cir. 1989); *Eden Foods, Inc. v. American Soy Products, Inc.*, No 318337, slip op at 6 (Mich. App. Jan 22, 2015) (unpublished decision). Requirements contracts are enforceable under Michigan law. MCL 440.2306(1), 2204(3); *see also Lorenz Supply Co. v. Am. Standard Inc.*, 358 N.W.2d 845, 846-47 (Mich. 1984).

Courts in Michigan regularly impose preliminary injunctions to require specific performance of requirements contracts in the automotive industry. *E.g., Higuchi Int’l Corp. v. Autoliv ASP, Inc.*, 2023 U.S. Dist. LEXIS 145649, at *8-9 (E.D. Mich. Aug. 18, 2023) (granting preliminary injunction and finding an enforceable requirements contract existed where the goods were ordered through purchase orders and releases); *Magna Seating Inc. v. Adient US LLC*, 2021 Mich. App. LEXIS 3155, at *4 (Ct. App. May 20, 2021) (affirming lower court’s ruling where a preliminary injunction was entered when the supplier refused to fill the buyers releases and demanded a price increase); *Dana Ltd. v. Mico Indus.*, 2015 Mich. Cir. LEXIS 73, at *11 (Kent County 2015) (“[S]upply-chain litigation in the automotive industry more readily lends itself to

injunctive relief because a breach of contract disrupting the ‘just in time’ delivery of components can cause catastrophic harm throughout the supply chain.”) (citation omitted); *BorgWarner PDS (Anderson), L.L.C. v. Indus. Molding Corp.*, 2020 U.S. Dist. LEXIS 41937, at *15 (E.D. Mich. Mar. 11, 2020) (finding that the manufacturer was likely to prevail on the merits of its claim seeking specific performance from the supplier of parts in a requirements contract).

Here, it is beyond dispute that the Agreements, including the Accommodation Letter Agreement, are enforceable requirements contracts under Michigan law. Indeed, KAMAX has been FCA’s supplier of the Goods for the Plants for many years, has supplied FCA’s requirements pursuant to the terms provided in the Agreements and the quantities set forth in FCA’s Purchase Orders, which specify that they are for at least one part and are for between 65% - 100% of FCA’s requirements. *See* Compl., Ex. 2, Sample Purchase Orders.

Further, the Agreements are requirements contracts under which KAMAX is required to deliver the Goods “in accordance with [FCA]’s releases, broadcasts, and/or written requirements[.]” *E.g.*, Terms, § 3. KAMAX expressly agreed to the Terms in multiple ways, including by clicking “Accept” in FCA’s supplier portal when responding to FCA’s Requests for Quotation (“RFQs”) that resulted in final contract for each Program. KAMAX also reconfirms the Terms each time it accepts a Purchase Order. *See* Compl., Ex. 2; *see also* MCL § 440.2206(1)(b) (“an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods”); *see also Kvaerner U.S., Inc. v. Hakim Plast Co.*, 74 F. Supp. 2d 709, 714 (E.D. Mich. 1999) (“Assent to an offer may be indicated through actions.”)). Subject to FCA’s termination rights, KAMAX is required to supply the Parts for the life of the Programs. *See* Terms, § 38; Ex. 2, Sample Purchase Order. Additionally, KAMAX confirmed it would supply the Goods

in accordance with the Purchase orders to “meet FCA’s requirements” under the Accommodation Letter Agreement. *See* **Ex. 4**. As such, the Agreements are enforceable requirements contracts. *See Higuchi*, 2023 U.S. Dist. LEXIS 145649, at *8-9 (finding an enforceable requirements contract where the purchase order stated that the exact amount of the buyers requirements would be specified from time to time in its releases); *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, 331 Mich. App. 416, 952 N.W.2d 576 (Mich. Ct. App. 2020) (enforcing requirements contract which only provided that the buyer would purchase between one part and 100% of its requirements).

KAMAX has breached the valid, binding, and enforceable Agreements with FCA and the Accommodation Letter Agreement. KAMAX has repudiated its contractual obligations and has breached the Agreements by refusing to continue shipment of the Goods. Beginning February 20, 2024, KAMAX stopped shipment of the Goods to the Plants, consistent with its prior threats that it would stop such supply unless FCA caved to its unwarranted and unauthorized price demands. These actions demonstrate an unequivocal breach of KAMAX’s continuing obligations under the Agreements which requires that “[d]elivery [of the Goods] must be made and completed as specified (including as to time) in the applicable Purchase Order and in accordance with [FCA’s] releases, broadcasts, and written requirements and instructions issued by [FCA] from time to time[.]” **Ex. 3**, Terms, § 2. This is also a breach of the Purchase Orders which specify that each Purchase Order is for KAMAX to provide at least one part and up to 100% of FCA’s requirements of the Goods for the life of the applicable Program. *See* **Ex. 2**, Sample Purchase Orders. Additionally, KAMAX’s decision to withhold shipment of the goods breaches the promises it recently made in November 2023 under the Accommodation Letter Agreement, where KAMAX agreed that it would not threaten or take any action that would cause KAMAX to fail to fully and

timely deliver the Goods to meet FCA's requirements under a release or a Purchase Order. *See* **Ex. 4**, Accommodation Letter Agreement.

FCA has not terminated the Purchase Orders, Agreements, or otherwise relieved KAMAX of its ongoing obligation to supply the Goods. To the contrary, FCA has attempted to accommodate KAMAX to ensure the continued supply of Goods to the Plants. *See* **Ex. 4**, Accommodation Letter Agreement. KAMAX's refusal to ship the Goods ordered by FCA, at the times and in the quantities ordered, constitutes a breach of the Agreements, and KAMAX must be held liable. Therefore, FCA is likely to succeed on the merits on its claims for Breach of Contract against KAMAX.

According to Section 2-711 of the UCC, the buyer may "in a proper case obtain specific performance." MCL 440.2711(2)(b). Specific performance under the UCC is particularly appropriate in cases such as this, where the goods are unique or in short supply from a limited number of potential sources. MCL 440.2716(1) ("Specific performance may be decreed where the goods are unique or in other proper circumstances."); *Jaup v. Olmstead*, 55 N.W.2d 119, 120 (Mich. 1952) ("[I]f the specific property is not obtainable on the market and damages will not provide adequate compensation, equity may take jurisdiction."); *TRW Inc. v. Indus. Sys. Assoc. Inc.*, 47 F. App'x 400, 401 (6th Cir. 2002) (affirming preliminary injunction ordering defendant supplier to continue to supply goods where defendant was "sole supplier" of parts to the plaintiff).

As the official comments to UCC § 2-716 explain, contracts "involving a particular or peculiarly available source or market" represent "the typical commercial specific performance situation." MCL 440.2716, Cmt 2.10; *see also* MICHIGAN CONTRACT LAW § 14.16 (1998) ("Specific performance is particularly appropriate in the modern automotive industry where manufacturers commonly enter into requirements contracts.").

Here, KAMAX is FCA's sole supplier of the Goods, which are unique components, to the Plants. The Goods are not fungible, nor can regularly be procured from alternative sources. Although KAMAX is fully aware that it is not yet feasible for an alternate supplier to supply the Goods, it has stopped supplying the Parts to FCA anyways, which is causing the Plants to shut down. Due to the unique nature of the Goods, FCA is likely to succeed on the merits of its claim for Specific Performance.

B. FCA Will Suffer Irreparable Harm if KAMAX is Not Required to Resume its Supply of the Goods to FCA.

There is no doubt that FCA will continue to suffer irreparable injury if this Court does not grant its Motion. Indeed, production at two of the Plants – Toledo South Assembly Plant (manufacturing the Jeep Gladiator) and the Toledo North Assembly Plant (manufacturing the Jeep Wrangler) – have already been forced to shut down, and FCA is facing imminent shut down of its remaining Plants.

Irreparable injury is defined as “non-compensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty.” *Thermatool Corp. v. Borzym*, 575 N.W.2d 334, 338 (Mich. Ct. App. 1998). “[I]rreparable harm can be established via the potentially catastrophic disruption of the supply chain to the automotive industry.” *Robert Bosch Battery Sys.*, 2014 Mich. Cir. LEXIS 71, at *5 (citing *Kelsey-Hayes Co v. Galtaco Redlaw Castings Corp*, 749 F. Supp. 794, 798 (ED Mich 1990)); *Eberspaecher N. Am., Inc. v. Nelson Glob. Prods., Inc.*, 2012 U.S. Dist. LEXIS 52207, at *14-18 (E.D. Mich. Apr. 13, 2012) (same).

“The loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute.” *Basicomputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. 1992); *Robert Bosch Battery Sys.*, 2014 Mich. Cir. LEXIS 71, at *6 (granting

preliminary injunction noting that the plaintiff's goodwill and reputation with its customer may be immeasurably damaged if the failure to deliver the goods resulted in the shutdown of production of the vehicle at issue); *see also JD Norman Indus. v. Metaldyne, LLC*, 2016 U.S. Dist. LEXIS 55239, at *22-25 (E.D. Mich. Apr. 26, 2016); *TRW, Inc.*, 47 F. App'x at 401 (holding that district court did not abuse its discretion in entering a preliminary injunction in which it found irreparable harm where automaker could not readily obtain air bags from a second source and further held that plaintiff's good will and business reputation would be harmed absent injunctive relief).

Given the complex nature of the manufacturing process at each of the Plants, only minimal inventories of the Goods are able to be maintained, and deliveries must be made on a regular basis to keep assembly lines operating. *See Kelsey-Hayes Co.*, 749 F. Supp. at n.7 ("It is well known that in an effort to promote efficiency, car manufacturers are reducing the size of their reserve banks of parts.... A supplier's failure to make scheduled shipments may have immediate and dramatic consequences."). The failure of a single Tier-1 supplier to fulfill its contractual commitments to the Plants will thus inevitably cause a ripple effect throughout the chain, preventing all suppliers of that assembly from providing parts to the vehicle manufacturer. FCA's Plants are operating at or near capacity and cannot make up for lost production. Thus, courts have repeatedly granted preliminary injunctive relief to require component suppliers to continue delivery of parts to prevent the irreparable harm that inevitably occurs in the automotive supply chain if there is a refusal to ship. *See, e.g., Dana Ltd. v. Mico Indus.*, 2015 Mich. Cir. LEXIS 73, at *11-12 (Kent Cir. July 2, 2015) (explaining that supply-chain litigation in the automotive industry often requires injunctive relief due to the severe impact a disrupted parts delivery can have across the entire supply chain); *TRW*, 47 F. App'x at 401 (affirming preliminary injunction

where plaintiff automotive supplier faced injury to goodwill and business relations and loss of future business prospects due to non-delivery of product).

Likewise, if KAMAX does not resume compliance with its contractual obligations to supply the Goods at the times and in the quantities specified in FCA's releases, the ongoing irreparable harm to FCA will continue on an exponentially increasing basis. Two of the Plants have already been forced to shut down, and without continued supply of the Goods, FCA's production lines at all seventeen affected Plants will grind to a halt within days of this filing.

If not quickly remedied, the financial impact on FCA will be catastrophic and will cause tens, if not hundreds, of millions of dollars in shutdown damages, in addition to the incalculable losses from being shut out of future supply work with its suppliers and losing various employees due to forced layoffs. Further, FCA's reputation and goodwill in the marketplace will be severely damaged and it will likely lose future business opportunities, causing it incalculable and irreparable injury. *See Almetals Inc. v. Wickeder Westfalenstah L. GmbH*, 2008 WL 4791377, at *9 (E.D. Mich. Oct. 29, 2008) (granting permanent injunction against automotive supplier where there was no alternative source of supply for the components and plaintiff would lose goodwill and business relationships with customers).

The certainty that FCA will suffer immediate and irreparable harm supports entry of injunctive relief. Without prompt issuance of a temporary restraining order and preliminary injunction, it will be too late to prevent additional line shutdowns and resulting harms to FCA's goodwill, business relationships, and reputation.

C. The Balance Of Harms Favors Granting Preliminary Relief To FCA to Keep the Plants Operational.

In contrast to the irreparable harm to FCA if a preliminary injunction is not granted, ordering KAMAX to continue to supply the Goods as required under the Agreements will merely

maintain the status quo and require KAMAX to do nothing more than what it is obligated to do and has been doing for more than 10 years. Thus, the balance of harms tips decisively in favor of granting FCA's Motion and requiring KAMAX to specifically perform under the Agreements. *See Gates v. Detroit & Mackinac Ry.*, 115 N.W. 420, 421 (Mich. 1908) ("The defendant can suffer little injury by continuing to do temporarily as he has done for the last seven years"); *Campau v. McMath*, 463 N.W.2d 186, 190 (Mich. Ct. App. 1990) (preserving status quo so that final hearing can be held without injury to either party is another valid consideration in issuing an injunction).

Further, if KAMAX does not resume supplying the Goods to FCA, FCA's numerous Tier-1 suppliers and sub-suppliers will be forced to shut down. *See Key Safety Sys., Inc. v. Invista, S.A.R.L., L.L.C.*, 2008 WL 4279358, at *13 (E.D. Mich. Sept. 16, 2008) (holding that potential shutdown of third party OEMs based on lack of parts weighs in favor of granting injunctive relief). The potential harm to innocent third parties also weighs in favor of granting this Motion. KAMAX cannot escape its contractual obligations due to its unhappiness with the economics of the deal it made, nor can it argue that its continued performance is impractical due to any increased cost of performance. Indeed, "courts, including the U.S. Supreme Court, conclude that an unprofitable contract and increase in the cost of raw materials does not rise to the level of impracticability." *BAE Indus. v. Agrati - Medina, LLC*, 2022 U.S. Dist. LEXIS 169785, at *13 (E.D. Mich. Sept. 20, 2022). To the extent that KAMAX suffers any harm by having to continue to perform its duties under the Agreements, KAMAX can seek damages at the appropriate time. *See BorgWarner*, 2020 U.S. Dist. LEXIS 41937, at *18. Thus, the balance of harms weighs in favor of FCA.

D. Granting Injunctive Relief Is In The Public Interest.

Keeping the Plants operational is in the strong favor of the public interest. Injunctions enabling the automotive industry to continue its operations are favored because "a disruption to the automotive supply chain will harm the public's interest." *BAE Indus.*, 2022 U.S. Dist. LEXIS

169785, at *18; *see also Cooper-Standard Auto, Inc. v. Daikin Am., Inc.*, 568 F. Supp. 3d 846, 854 (E.D. Mich. 2021) (“The public interest also weighs in favor of the efficient administration of the automobile industry.”). KAMAX’s failure to deliver the Goods to the Plant is causing and will cause FCA—and its other supply chain participants—to shut down production, potentially causing layoffs and economic harm. The public interest weighs heavily in favor of the efficient administration of the automotive industry. *See, e.g., Key Safety Sys., Inc.*, 2008 WL 4279358, at *13 (holding that public interest factor weighed in favor of injunctive relief where compelling seller to supply automotive part would avoid consequential plant shutdowns or layoffs and would avoid economic harm to the state, region, and nation); *see also Almetals, Inc.*, 2008 WL 4791377, at *10 (“[D]enying the injunction places at risk the operations of [the plaintiff], and, correspondingly numerous customer assembly plants” which “would be disastrous, irreparably damaging [the plaintiff’s] business and reputation, and causing further detriment to the economy.”); *see also BorgWarner PDS*, 2020 U.S. Dist. LEXIS 41937, at *18-19 (explaining that the “public has an interest in having valid contracts enforced and there is no evidence at this time that the Contracts are invalid.”). As such, the public interest weighs heavily in favor of entering the requested preliminary injunction.

V. ENTRY OF A TEMPORARY RESTRAINING ORDER IS APPROPRIATE.

MCR 3.310(B) allows the Court to issue a temporary restraining order without oral or written notice to the adverse party if (1) “it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;” and (2) “the applicant’s attorney certifies to the

court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.”

This case presents the ideal facts and circumstances that warrant entry of a temporary restraining order and a preliminary injunction. If KAMAX is not immediately required to resume shipment of the Goods ordered by FCA, all of the Plants will be forced to shut down within days, and some of the Plants have already been affected. FCA has engaged in commercial negotiations with KAMAX to remedy the situation; however, KAMAX has refused to continue to ship the Goods while the parties continue discussions. KAMAX’s improper conduct in threatening to stop work in breach of the Agreements demonstrates the substantial risk of further loss to FCA if KAMAX is not required by a Court Order to continue performing under the Agreements and honor the promises made in the Accommodation Letter Agreement. Accordingly, injunctive relief is warranted to compel KAMAX’s specific performance under the Agreements.

VI. CONCLUSION

For the foregoing reasons, Plaintiff FCA US LLC respectfully requests that this Honorable Court enter a temporary restraining order and issue an order to show cause why a preliminary injunction should not be entered requiring Defendants KAMAX Inc. and KAMAX Mexico S. De R.L. De C.V. to comply with its obligations under the Agreements and the Accommodation Letter Agreement and timely supply FCA with Goods as set forth by the Agreements and all applicable Purchase Orders until further order of this Court.

Date: February 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed on February 28, 2024. Notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system, and the filing may be accessed through that system.

/s/Stephen W. King _____
Stephen W. King (P56456)

EXHIBIT A

This case has been designated as an eFiling case, for more information please visit
www.oakgov.com/efiling.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

FCA US LLC, a Delaware limited liability company,	)	2024-205863-CB
	)	JUDGE VICTORIA VALENTINE
<i>Plaintiff,</i>	)	
	)	Case No.
v.	)	
	)	Hon.
KAMAX INC., a Delaware corporation, and KAMAX MEXICO S. DE R.L. DE C.V., a Mexican corporation,	)	<u>BUSINESS COURT DOCKET</u>
	)	
<i>Defendants.</i>	)	

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**VERIFIED COMPLAINT FOR SPECIFIC PERFORMANCE,
DAMAGES, AND INJUNCTIVE RELIEF**

There is no other civil action between these parties arising out of the transactions or occurrences alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge. This case involves a business or commercial dispute as defined in MCL 600.8031 and therefore should be assigned to the business court.

Plaintiff FCA US LLC, f/k/a Chrysler Group LLC (“FCA”), by counsel, states as follows as its Verified Complaint for Specific Performance, Damages, and Injunctive Relief against Defendants KAMAX Inc. and KAMAX Mexico S. De R.L. De C.V. (collectively, “KAMAX”):

INTRODUCTION

1. FCA files this action to enforce its rights under its automotive supply contracts with KAMAX in which KAMAX promised to produce critical fastener parts for automobiles that FCA manufactures in *seventeen* of its major automobile manufacturing plants, representing *nearly all of FCA’s North American assembly and powertrain manufacturing operations* (identified in greater detail below as the “Plants”).¹ Immediate injunctive relief is necessary not just to prevent irreparable harm to FCA but also to avoid widespread, catastrophic harm across the automotive industry if KAMAX is permitted to abandon its obligations under the parties’ contracts.

2. KAMAX is an affiliate to German-based KAMAX Holding GmbH & Co. KG, a leading global manufacturer of fastener products for the automotive industry with over \$1 Billion in annual revenue.

3. Beginning on February 20, 2024, KAMAX stopped performing completely under certain long-term, fixed-price requirements supply contracts, and despite FCA’s efforts, KAMAX stated that it will no longer supply the Goods to FCA unless FCA agrees to pay substantially increased prices for the Goods.

4. KAMAX’s refusal to supply the Goods to FCA is causing FCA to suffer irreparable harm and will have disastrous effects on FCA’s ability to produce its vehicles in these various production plants, which will in turn require FCA to shut down the supply of hundreds of other

¹ A list of the parts at issue identifying the relevant corresponding part number and part description is attached as Exhibit 1. The relevant parts shall be collectively referred to as the “Goods.”

suppliers and will likely cause FCA and such other supplies to layoff or idle thousands of employees. It will cause severe disruption in the marketplace and severely impact the automotive supply base throughout Michigan and beyond. At the time of filing, production at least two of FCA's Plants, the Toledo South Assembly Plant (manufacturing the Jeep Gladiator) and the Toledo North Assembly Plant (manufacturing the Jeep Wrangler), has been forced to shut down, and FCA is facing imminent shut down of its remaining Plants.

5. Without Court intervention, KAMAX's breach will force FCA to substantially, or possibly completely, shut down the Plants, which are located in Michigan, Ohio, Indiana, Mexico, and Canada.

6. Each of the Plants is supplied hundreds of parts by other suppliers to manufacture vehicles. When one of the critical parts is not available, the Plant is forced to shut down and stop ordering all parts for the relevant vehicle(s) or products manufactured at that Plant. The suppliers of those other parts then shut down their manufacturing plants as FCA cannot take the supply of parts. This trickle-down effect cascades through several tiers of suppliers. FCA and all of these tiers of suppliers are then forced to send their workers home.

7. The Goods delivered by KAMAX to the Plants are for the production of vehicles across sixteen different vehicle programs (collectively referred to as the "Programs") manufacturing various vehicle models and other products identified as follows:

Plant	Program	Vehicle/Product
Detroit Assembly Complex – Jefferson	WL	Jeep Grand Cherokee
	WD	Dodge Durango
Detroit Assembly Complex – Mack	WL	Jeep Grand Cherokee L
Dundee Engine Plant	N/A	3.6-liter (V-6) Pentastar Upgrade

Plant	Program	Vehicle/Product
Indiana Transmission Plant	N/A	Six- and nine-speed transmissions
Kokomo Engine Plant	N/A	GMET4 engine
Kokomo Transmission Plant	N/A	Eight-speed transmissions
Saltillo North Engine Plant	N/A	GMET6 engine
Saltillo Truck Assembly Plant	D2	RAM 3500 Pickup
	DD	RAM 3500 Cab Chassis
	DF	RAM 3500 <10Klb Cab Chassis
	DJ	RAM 2500 Pickup
	DP	RAM 4500/5500 Cab Chassis
Saltillo Van Assembly Plant	VF	RAM Promaster
Sterling Heights Assembly Plant	DT	RAM 1500 Pickup
Tipton Transmission Plant	N/A	Nine-speed transmission
		Nine-speed SI-EVT transmission for Chrysler Pacifica Hybrid
Toledo South Assembly Plant	JT	Jeep Gladiator
Toledo Machining Plant	N/A	Steering columns
		Torque converters
Toledo North Assembly Plant	JL	Jeep Wrangler
Toluca Assembly Plant	MP	Jeep Compass
Warren Truck Assembly Plant	DS	RAM 1500 Classic
	WS	Jeep Wagoneer
Windsor Assembly Plant	RU	Chrysler Pacifica

8. As demonstrated in the chart above, nearly *all* of FCA's North American assembly

and powertrain plants are affected by KAMAX.² In addition to the shutdown of the Plants, FCA's "Mopar" division – offering aftermarket parts, service, and customer care – is also impacted by KAMAX's cease of supply of the Goods.

9. If forced to shut down or severely limit the Plants' production, FCA and its suppliers and their respective employees will suffer irreparable harm as production at the Plants will grind to a halt, causing a devastating chain reaction in the automotive industry. FCA seeks immediate relief from the Court to order KAMAX to fully supply FCA with the Goods as set forth in FCA's Purchase Orders as required under the parties' contracts, at least until FCA can replace KAMAX with another supplier and to avoid further irreparable harm to FCA, its employees, contractors, and its numerous other suppliers and their employees.

10. KAMAX is obligated to supply FCA with the Goods pursuant to the relevant Purchase Orders issued by FCA and accepted by KAMAX and subject to the terms and conditions set forth in the Production and Mopar Purchasing General Terms and Conditions (the "Terms").³ The Terms and the Purchase Orders shall be collectively referred to as the "Agreements."

11. The Agreements are requirements contracts pursuant to which KAMAX agreed to timely provide FCA with the Goods to meet FCA's requirements as set forth in FCA's releases. *See Terms*, § 3.

² Only one of FCA's North American powertrain plants, the Saltillo South Engine Plant, is not affected by KAMAX. In other words, if KAMAX's refusal to deliver the Goods is not remedied, nearly 100% of FCA's North American production will be halted.

³ True and correct copies of samples of Purchase Orders for each Plant at issue are attached as **Exhibit 2**. A true and correct copy of the Terms is attached as **Exhibit 3**. Each Purchase Order expressly incorporates the Terms by reference. *See id.* KAMAX expressly agreed to the Terms in multiple ways, including by clicking "Accept" in FCA's supplier portal when responding to FCA's Requests for Quotation ("RFQs") that resulted in a final contract for each Program. KAMAX also reconfirms the Terms each time it accepts a Purchase Order. *See Ex. 2*. The Purchase Orders and the Terms are referred to collectively as the "Agreements."

12. KAMAX is a Tier 1 supplier to FCA under each of the Programs and is FCA's sole supplier of the Goods for the Plants. Typically, KAMAX receives a release or a "broadcast" from FCA approximately 90 days in advance containing FCA's estimated needs, and KAMAX is required to deliver the Goods to the relevant Plant as confirmed by FCA approximately one week before the delivery date. Without the Goods, the Plants cannot operate. Due to prior delays in KAMAX's delivery of the Goods, FCA has low inventory of the Goods. Now that KAMAX has stopped shipping the Goods, two of the Plants have already been forced to shut down, while others have mere days of inventory remaining before they will also be forced to shut down.

13. Recently, KAMAX has become dissatisfied with its profitability under the Agreements and is demanding that FCA agree to pay substantially higher prices than the Agreements require.

14. KAMAX is trying to exploit its crucial role as a vital supplier to FCA by effectively holding the Plants hostage. KAMAX aims to use this leverage to compel FCA to pay inflated prices for the Goods, thereby threatening FCA's capacity to run the Plants for vehicle and product manufacturing.

15. In November 2023, the parties entered an Accommodation Letter Agreement to temporarily modify the parties' payment arrangement.⁴ Under the Accommodation Letter Agreement, KAMAX reconfirmed that it would not repudiate its obligations under any Purchase Order or take any action announcing or threatening non-delivery or the stop shipment of the Goods. Nonetheless, KAMAX has not only breached the Agreements, but it is also breaching the promises made just a few months ago in the Accommodation Letter Agreement and is once again attempting to unfairly leverage supply of the Goods over FCA. This amounts to nothing less than commercial

⁴ The November 2023 Accommodation Letter Agreement is filed under seal as **Exhibit 4**.

extortion.

16. Given the uniqueness of the Goods, if the dispute is not timely resolved FCA will be unable to transfer the work to another supplier for at least several months, if at all.⁵

17. Instead of continuing to supply the Goods under the agreed pricing terms, beginning February 20, 2024 KAMAX stopped delivery of the Goods to each of the Plants, impacting all of the Programs and affected products at issue. If automobile manufacturers like FCA are permitted to become vulnerable to such tactics by its suppliers, the automotive industry will not function properly and production will grind to a stop.

18. If KAMAX is not enjoined and ordered to specifically perform under the Agreements for a limited period of time, production at all of the Plants (virtually all of FCA's manufacturing capacity) will continue to halt and FCA, its suppliers, various levels of sub-suppliers, and each of their workers, will suffer irreparable and catastrophic harm, including but not limited to lay-offs or idling of thousands of workers at the Plants and the plants of FCA's other suppliers. This will also negatively impact the economic vitality of the communities in which these workers reside.

19. KAMAX's actions has already caused, and will continue to cause, incalculable damage to FCA's reputation and goodwill in the marketplace, both with its suppliers as well as with the public at large due to FCA's inability to meet customer orders for the vehicles produced by the Programs.

⁵ It would likely take at least a year to replace KAMAX with another Tier 1 supplier of the Goods. At least one of the Programs, the DS Program, will likely end this year. Meaning that if KAMAX ceases supply of the Goods, *at least* the DS Program will be forced to shut down permanently, resulting in tens of millions of dollars in losses and irreparable nonmonetary harm to FCA. Thus, cover would not be possible, and FCA will be irreparably harmed if KAMAX is not ordered to continue supply as agreed.

20. FCA respectfully requests that the Court order KAMAX to temporarily continue what it has been doing for over 10 years: provide FCA with the Goods under the Agreements at the agreed pricing. FCA is seeking preliminary and permanent injunctive relief, specific performance, money damages, a declaratory ruling of the parties' rights under the Agreements, and such other relief as it may be entitled as determined by the Court.

PARTIES, JURISDICTION AND VENUE

21. FCA is a Delaware limited liability company registered to conduct business in Michigan. To the extent that any of the contracts at issue were entered into not directly by FCA but by any of its affiliates, FCA has the right to bring this action to enforce such contracts by assignment and pursuant to Clause 14(d) of the Terms.

22. KAMAX Inc. is a Delaware corporation with its principal place of business in Michigan.

23. On information and belief, KAMAX Mexico S. De R.L. De C.V. is organized under the laws of Mexico with its principal place of business in Mexico and is considered a citizen of Mexico.

24. This Court has subject matter jurisdiction over this matter pursuant to MCL 600.605 because the amount in controversy, exclusive of interest and costs, exceeds \$25,000 and this Complaint seeks equitable relief.

25. There is a basis for general and limited personal jurisdiction in Michigan under MCL 600.711 and MCL 600.715 because KAMAX continuous and systematic part of its general business in Michigan.

26. Personal jurisdiction is also proper because KAMAX agreed to jurisdiction in this Court. *See Ex. 3, Terms, § 26(b).*

27. Venue is proper under MCL 600.1621(a) because the parties conduct regular and systematic business in Oakland County and because KAMAX agreed that this Court is an appropriate venue under the Agreement. *See Ex. 3, Terms, § 26(b).*

FACTS

28. FCA is a cornerstone of the American automotive sector, and through its predecessor Chrysler, has manufactured vehicles in the United States for over 100 years. Presently, FCA produces and markets automobiles under several brand names, including Chrysler, Dodge, Jeep, Ram, Fiat, Alfa Romeo, and Maserati, alongside various parts and accessories divisions.

29. For the Plants to remain operational, FCA depends on numerous suppliers such as KAMAX to ensure an uninterrupted supply chain of parts. If FCA's supply of vital parts such as the Goods is even temporarily broken, the Plants are forced to shut down, lay off workers, and suspend other suppliers to the Plants (causing their workers to be laid off) and, in the event of a prolonged shutdown, the widespread automobile production community cannot resume until the supplier at fault agrees to perform under its contract. This also causes issues with the unions that bargain for the benefit of the workers and negatively impacts the economic viability of the communities of the automobile workers.

Contracts to Supply the Goods

30. KAMAX has performed under the Agreements and supplied portions of the Goods to FCA for over ten years. The Agreements are requirements contracts pursuant to which KAMAX is obligated to, among other things, timely supply FCA with the Goods to meet its demand as provided by its releases, broadcasts, written requirements, or as otherwise stated in its Purchase Orders. *See Ex. 3, Terms, §§ 1, 3.*

31. KAMAX's role as a supplier of the Goods includes over 140 different parts, which

are delivered to the various Plants. See Exhibit 1.

32. The Agreements are fixed-price requirements contracts and provide that the prices in FCA's Purchase Orders are "firm and are not subject to adjustment for changes in volume, changes in the price of raw materials or labor, changes in currency valuation, or for any other reason," unless FCA specifically states in writing in a Purchase Order that the price would be adjusted. See Ex. 3, Terms, § 9.

33. The Agreements expressly provide that time is of the essence for KAMAX to deliver the Goods within FCA's lead time set forth in the Purchase Order. *Id.* § 3. The relevant portion of Clause 3 of the Terms provides:

Time is of the essence. Delivery must be effected within the time specified in the Order, or in accordance with FCA US's releases, broadcasts, and/or written requirements[.]... If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by FCA US as a result of Seller's non-performance, including but not limited to any premium transportation or other costs incurred by FCA US in its efforts to mitigate the impact of Seller's late performance on its manufacturing operations, will be at Seller's expense.

Id.

34. Timely delivery of the Goods is crucial to the Plants' ability to operate. If KAMAX is permitted to stop delivery of the Goods to FCA, some of the Plants will be forced to shut down almost immediately, while others will be forced to shut down within one week.

35. Given the uniqueness of the Goods, they may not easily be sourced from another supplier. Substantial infrastructures must be in place for the Goods to be assembled and delivered within close proximity of the Plants for manufacturing to be feasible.

36. KAMAX is aware of and understands the irreparable harm that is caused to FCA if delivery of the Goods does not meet demand or is interrupted.

37. KAMAX expressly acknowledged in the Agreements the irreparable harm that FCA would suffer if it failed to deliver parts on a timely basis as provided by the Purchase Orders.

Clause 33 of Terms provides:

[KAMAX] acknowledges that a material breach of its obligation to supply goods in accordance with Clause 3 of [the Terms] ... would cause irreparable damage to FCA US, including without limitation potential damage to FCA US's relationships with its customers, suppliers, labor unions, lenders, and prospective future customers, the exact amount of which would be difficult to ascertain, and that the remedies at law and monetary damages for any such breach would be inadequate. Accordingly, in the event of any action taken or threatened by [KAMAX] hereunder that, if taken, would constitute a material breach of its obligations under Clause 3 ... of [the Terms], FCA US and [its] successors and assigns are entitled to injunctive or other equitable relief and/or a decree for specific performance, without the posting of any bond or other security, in addition to any other remedies it may have for damages or otherwise.

Ex. 3, Terms, § 33 (emphasis added).

38. Despite this understanding, KAMAX has taken action and threatened to take action which constitutes material breaches of the Agreements and that has and will continue to irreparably harm FCA.

**FCA Accommodates KAMAX's Price Increase Demands
and Threats to Stop Shipment of the Goods**

39. In recent years, KAMAX has suffered chronic operational issues, causing significant supply interruptions to FCA. Throughout 2022 and 2023, FCA has made substantial accommodations to KAMAX to help ensure continued supply of the Goods.

40. In or around June 2023, KAMAX once again began demanding price increases for the Goods, and if KAMAX's demands were not met, KAMAX threatened to discontinue shipments of the Goods to FCA.

41. Throughout 2023, FCA attempted in good faith to resolve KAMAX's demands to

ensure the continued shipment of the Goods by offering various additional accommodations.

42. On or about November 6, 2023, the parties entered the Accommodation Letter Agreement, under which KAMAX agreed to, among other things, continue supply of the Goods to FCA without reservation. Ex. 4, Accommodation Letter Agreement. In exchange for various accommodations made by FCA, KAMAX specifically agreed as follows:

Kamax hereby agrees that it shall not: (i) **repudiate all or any portion of, or any obligation under, an installment of or an entire Order**; (ii) take any action evidencing its intention or threat not to fully and timely perform each and all of its obligations under an installment of or an entire Order (**including announcing or threatening non-delivery or the stop shipment of goods**); or (iii) **fail or omit to take any action required to be performed by Kamax that is necessary for Kamax to fully and timely deliver fully conforming goods or services to meet FCA's requirements or otherwise perform under a release or an Order.**

Id. (emphasis added).

43. Unsatisfied with the accommodations provided by FCA and accepted by KAMAX, KAMAX continued to threaten to stop shipment of the Goods, including demanding further price increases in late November 2023, the same month that it signed the Accommodation Letter Agreement. Now, KAMAX has followed through with its threats and stopped shipment of the Goods to FCA in direct breach of the Agreements and the Accommodation Letter Agreement.

44. On February 20, 2024, KAMAX stopped shipment of the Goods to the Plants, and has indicated that it will not resume shipment.

45. As a result of KAMAX's breach and decision to stop shipment of the Goods to the Plants, FCA has been forced to shut down its Toledo North Assembly Plant and Toledo South Assembly Plant, and FCA's remaining Plants are facing imminent shutdown (if they have not already been forced to shut down at the time of filing).

46. KAMAX's forced shut down of the Toledo North Assembly Plant and Toledo

South Assembly Plant alone has already caused FCA to suffer millions of dollars of damages, plus irreparable non-monetary harm.

47. If KAMAX is permitted to continue to withhold the Goods, FCA will be forced to shut down production of the remaining Plants, including all affected Programs, causing millions of dollars of losses per hour of downtime, and will also continue to suffer irreparable non-monetary harm.

Irreparable Harm to FCA

48. KAMAX does not have the right to demand that FCA pay price increases for the Goods as a condition to continue fulfilling its firm and clear obligations under the Agreements, and KAMAX's decision to threaten and actually stop shipment of the Goods and shut down production at the Plants is preventing FCA from manufacturing the vehicles for the Programs, causing it, its suppliers, and their respective employees' irreparable harm. The power of one supplier to cause such catastrophic disruption and impact merely by FCA exercising its clear contractual rights is unwarranted and cannot be justified, and FCA will not be able to make up for lost vehicle production if KAMAX does not resume shipping the Goods.

49. Given that the Plants will be (or have already been) forced to stop production, FCA may imminently be forced to lay off workers at the Plants, many of which are members of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW").

50. The Plants also rely on hundreds of suppliers and sub-suppliers for other components that are required for vehicle manufacture and assembly, many of which rely on the Plants' operation to stay in business. If and when the Plants are forced to shut down, even temporarily, it will likely force many of these suppliers to shut down their plants and lay off their

workers and may ultimately force many of these suppliers out of business. As would be expected, many of the suppliers that make up the large number of Tier 1 suppliers rely on sub-suppliers for the manufacture and assembly of its respective components. All of these sub-suppliers and their employees and their affected stakeholders will also be negatively impacted by KAMAX's wrongful actions.

51. Layoffs and business disruptions caused by even a temporary shutdown of the Plants has caused and will continue to cause immeasurable damage to FCA's reputation and goodwill in the marketplace, as well as hundreds of millions of dollars in losses.

52. A preliminary and permanent injunction, as well as an order requiring specific performance under the Agreements is needed to prevent KAMAX from continuing its shutdown of the Plants and causing irreparable harm to FCA.

53. FCA has been required to engage counsel to enforce its rights under the Agreements and has incurred attorneys' fees and costs because of KAMAX's breach, which are recoverable pursuant to the Terms. **Ex. 3**, Terms, §§ 11(b), 33.

COUNT I

Specific Performance

54. FCA incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

55. The Agreements, including the Purchase Orders and Terms, are valid and binding contracts between FCA and KAMAX.

56. The Accommodation Letter Agreement is a valid and binding contract between FCA and KAMAX.

57. FCA has satisfied all its material contractual obligations to KAMAX.

58. KAMAX threatened to take action and has actually taken action that constitutes a material breach of Clause 3 of Terms. *See Ex. 3*, Terms, §§ 3, 33.

59. In material breach of Clause 3 of the Terms, KAMAX has failed to timely deliver the Goods in the quantities required by FCA as required by the Agreements and for the agreed upon prices under the Agreements. *Id.* § 3.

60. KAMAX's failure to timely deliver fully conforming Goods to meet FCA's requirements also breaches the Accommodation Letter Agreement. *See Exhibit 4*.

61. KAMAX's actual and threatened material breach of its obligation to supply parts in accordance with Clause 3 of Terms and the Accommodation Letter Agreement has caused and will continue to cause irreparable damage to FCA, including without limitation, damage to FCA's reputation and goodwill in the marketplace, including its relationships with its suppliers, labor unions, lenders, and prospective future customers. *Ex. 3*, Terms, § 33.

62. The remedies at law and monetary damages for KAMAX's breach and threatened breach do not adequately remedy KAMAX's breach.

63. FCA is entitled to specific performance of KAMAX's contractual obligations under the Agreements to force KAMAX to continue performing until the work may be transitioned to a third-party. *Id.*

64. FCA is also entitled to specific performance because the parts are unique goods. MCL 440.2716.

65. Due to KAMAX's breach, FCA is entitled to recover from KAMAX its actual attorneys' fees and costs under the Agreements. *Ex. 3*, Terms, §§ 11(b).

COUNT II

Breach of Contract

66. FCA incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

67. The Agreements, including the Purchase Orders and Terms, are a valid and binding contract between FCA and KAMAX.

68. The Accommodation Letter Agreement is a valid and binding contract between FCA and KAMAX.

69. FCA has satisfied all its material contractual obligations to KAMAX.

70. KAMAX agreed that if it failed to make timely deliveries per FCA's Purchase Order requirements, it would be liable for "all damages suffered by FCA US as a result of [KAMAX's] non-performance, including but not limited to any premium transportation or other costs incurred by FCA US in its efforts to mitigate the impact of [KAMAX's] late performance on [FCA US's] manufacturing operations[.]" **Ex. 3**, Terms, § 3.

71. KAMAX has taken action and threatened to take action that constitutes a material breach of Clause 3 of the Terms. *See id.* §§ 3, 33.

72. In material breach of Clause 3 of the Terms, KAMAX has failed to timely deliver the Goods in the quantities required by FCA under the Agreement. *Id.* § 3.

73. KAMAX's failure to timely deliver fully conforming Goods to meet FCA's requirements also breaches the Accommodation Letter Agreement. *See Exhibit 4.*

74. KAMAX's anticipatory refusal to perform under the Agreements and supply the Goods to FCA constitutes a breach of the Agreements and Accommodation Letter Agreement.

75. If KAMAX does not resume supply FCA's requirements under the Agreements, then FCA will be unable to manufacture its automobiles, will face injured reputation and loss of market share, and will be forced to shut down a significant portion of its operations.

76. As a result of KAMAX's breach, FCA has suffered monetary damages in an amount to be determined at trial.

77. Due to KAMAX's breach, FCA is entitled to recover from KAMAX its actual attorneys' fees and costs under the contracts. Ex. 3, Terms, §§ 11(b), 33.

COUNT III

Declaratory Judgment

78. FCA incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

79. The Agreements, including the Purchase Orders and Terms, are a valid and binding contract between FCA and KAMAX.

80. The Accommodation Letter Agreement is a valid and binding contract between FCA and KAMAX.

81. FCA has satisfied all its material contractual obligations to KAMAX.

82. There is an actual controversy between FCA and KAMAX within the jurisdiction of this Court under MCR 2.605 to render a declaratory judgment as to the parties' respective rights concerning KAMAX's obligation to continue its performance under the Agreements. A declaratory judgment will serve a useful purpose in clarifying and settling the dispute over the performance obligations under the Agreements.

83. The dispute between the parties as it relates to their rights and obligations under the Agreements include KAMAX's contention that it has no contractual obligation to continue to

deliver the Goods in the quantities required by FCA.

84. FCA is thus entitled to a declaration that KAMAX has contractual obligations to continue its performance under the Agreements as required to meet the needs of FCA and honor all other obligations imposed on KAMAX by the Agreements for the duration of the Programs.

COUNT IV

Temporary, Preliminary, and Permanent Injunction

85. FCA incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

86. The Agreements, including the Terms, are a valid and binding contract between FCA and KAMAX.

87. The Accommodation Letter Agreement is a valid and binding contract between FCA and KAMAX.

88. FCA has satisfied all its material contractual obligations to KAMAX.

89. There is an actual controversy between FCA and KAMAX within the jurisdiction of this Court to render a declaratory judgment as to the parties' respective rights concerning KAMAX's obligation to continue its performance under the Agreements.

90. KAMAX has taken action and threatened to take action that would constitute a material breach of Clause 3 of the Terms. Terms, §§ 3, 33.

91. In material breach of Clause 3 of the Terms, KAMAX has failed to timely deliver the Goods in the quantities required by FCA under the Agreements. *Id.* § 3.

92. KAMAX's failure to timely deliver fully conforming Goods to meet FCA's requirements also breaches the Accommodation Letter Agreement. *See Exhibit 4.*

93. KAMAX's actual and threatened material breach of its obligation to supply parts

in accordance with Clause 3 of Terms and the Accommodation Letter Agreement has caused and will continue to cause irreparable damage to FCA, including without limitation potential damage to FCA's reputation and goodwill in the marketplace, including its relationships with its suppliers, labor unions, lenders, and prospective future customers. **Ex. 3**, Terms, § 33.

94. Without an injunction, FCA is without an adequate remedy at law. FCA is entitled to specific performance of KAMAX's contractual obligations under the Agreements. *Id.*

95. KAMAX will not be harmed by the entry of an injunction. KAMAX has supplied the Goods for years, and FCA is merely asking that they continue to do so until the work may be transitioned to a third-party.

96. To the extent any such harm is claimed, the benefits to FCA, its employees, its suppliers and sub-suppliers, KAMAX's suppliers and sub-suppliers, the suppliers' and sub-suppliers' workers, and to the public in obtaining a preliminary and permanent injunction outweigh any potential harm which KAMAX would incur.

97. The public interest weighs in favor of enjoining KAMAX from stopping supply of the Goods resulting in the shutdown of the Plants and layoff of workers.

98. FCA is entitled to recover from KAMAX its actual attorneys' fees and costs under the contracts. **Ex. 3**, Terms, §§ 11(b), 33.

WHEREFORE, Plaintiff FCA US LLC respectfully requests that this Court enter judgment in its favor and against Defendants KAMAX Inc. and KAMAX Mexico S. De R.L. De C.V. as follows:

- A. Granting specific performance under MCL 440.2716 and/or the common law requiring KAMAX to resume the manufacture and timely delivery of the Goods to the Plants in accordance with the Agreements and Accommodation Letter Agreement and to cooperate with FCA to facilitate the transition of such manufacture and supply to a third-party if necessary;

- B. Entering declaratory judgment under MCR 2.605 and/or the common law decreeing that the Agreements and Accommodation Letter Agreement are valid and binding contracts, which KAMAX is obligated to perform and finding that KAMAX is in breach of its obligations under the Agreements and Accommodation Letter Agreement;
- C. Granting temporary, preliminary, and permanent mandatory injunctive relief under MCR 3.310 and/or the common law requiring KAMAX to continue the manufacture and timely delivery of the Goods to the Plants in accordance with the Agreements and Accommodation Letter Agreement and to cooperate with FCA to facilitate the transition of such manufacture and supply to a third-party if necessary;
- D. Awarding monetary damages to FCA sufficient to compensate it for economic damages caused by KAMAX's breach of contract, including an award of pre-judgment and post-judgment interest, in an amount to be determined at trial;
- E. Awarding FCA its attorneys' fees and costs; and
- F. Awarding FCA all such other relief the Court deems just.

Dated: February 27, 2024

Respectfully submitted,

/s/ Stephen W. King
 Stephen W. King (P56456)
 Amanda L. Conti-Duhaime (P48960)
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David G. Barger, Esq.
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 McLean, Virginia 22102
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 Fax: (703) 749-1301
 Email: bargerd@gtlaw.com

Counsel for Plaintiff FCA US LLC

VERIFICATION

I declare under penalty of perjury that I have examined the foregoing Verified Complaint for Specific Performance, Damages, and Injunctive Relief and that to the best of my knowledge and belief, the foregoing factual allegations contained therein are true and correct.

Dated: February 27, 2024

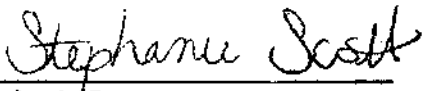

Stephanie Scott
Head of Chassis & Adaptation Purchasing, North
America
FCA US LLC

EXHIBIT 1

Material No	Material Description
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06503490	STUD/2.END-HEADER.PT.HEADER.PT.SPECIAL
06511111AA	STUD&WA/SPEC-FLAT.WASH.HEX.DRIVE.MAT.PT
06509487AA	SC.SHL/HEX.FLG.HD-PILOT.PT.PF-SAFETY.SHO
06512408AA	SC&WA/HEX.HD-CONE.WASH.KUKA.PT
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06513829AA	SC&WA/HEX.FLG.HD.LK -CONE.WASH.HEADER.PT
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68648138AA	SC/HEX.FLG.HD-DUPLICATE PART NUMBER FOR

EXHIBIT 2

Document Details	Buyer: LSX	Requester
Original Document Date: 02/01/2021 through life of the program OAL	ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type: Document Currency: Expiration Date:	USD 12/31/9999	
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227.
		CAP Phone Number: (844)-289-1227

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
20	05057112AA SCREW-STEERING COLUMN PIVOT TILT	1.000	TS	130.531 / USD	01/01/2023	12/31/9999
Tracking no: 9991351262						

This order is for approximately 65% - 100% of our requirements.

Previous PO-
Previouspart#
Ship To:
Packaging:

Weekly-00005

This contract is available for Mopar use

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

02/01/2021: Material 05057112AA, New contract 11439538 replaces contract 10134537 per UoM project requested by Sean Farrell.

FCAPP 462

[illegible]



FCA CHRYSLER AUTOMOBILES

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 06/28/2023

Contract: 11439538

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	02/01/2021 through life of the program	Ilvi Peshku	
Document Type:	OAI	Phone #: 734 392 4174	
Document Currency:	USD	ilvi.peshku@stellantis.com	
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	
		TROY MI 48098-4599 US	CAP Phone Number: (844)-289-1227

Reason for Change as of 06/28/2023

Line Item 00010 Version REVISE 05057112AA CANCEL

Line Item 00020, Version REVISE Add new line 05057112AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
20	05057112AA SCREW-STEERING COLUMN PIVOT TILT Tracking no: 9991351262	1,000	TS	130.5311 / USD	01/01/2023	12/31/9999

This order is for approximately 65% - 100% of our requirements.

Lead Time-16	Raw-6	Fab-3
Tooling Capacity	70400	Daily-70400
Work Pattern	002/	8.00
Packaging	092	
Packaging Price	6.79	

This contract is available for Mopar use

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

02/01/2021: Material 05057112AA, New contract 11439538 replaces contract 10134537 per UoM project requested by Sean Farrell.

Previous PO-
Previous part #
Ship To:
Packaging:

FCA APP 463

Seller agrees to sell and deliver the goods and services specified in FCA's order in accordance to the terms and conditions contained in the order. Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284. By accepting the order, the Seller acknowledges having actual knowledge of the terms and conditions of the order. The Seller specifically waives its signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange system or delivered to Seller in a paper or email format. Order's relating to Requests for Quotation (RFQ) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions. Aftermarket parts that are associated with a production / supply contract will be governed by the terms and conditions applicable to such production / supply contract. In order to effectuate such to be considered associated with a production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production driveably, whether under a production / supply contract or otherwise; (b) serviceable components of the production driveably, whether under a production / supply contract or otherwise; or (c) parts containing components of the production driveably, whether under a production / supply contract or otherwise.

Last Transmission Date: 01/02/2024

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	06/18/2020 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
			CAP Phone Number: (844)-289-1227

Line Item 00180 Version REVISE 06102622AA CANCEL

Line Item 00190: Version REVISE Add new line 06102622AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
190	06102622AA SC/PAN.HD-HEADER.PT.6-LOBE.REC Tracking no: 1001124371	1.000	EA	56.511/ USD	01/01/2024	12/31/9999

Item text:

Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dress) : 15.0 LB Original

Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.34 Effective Date : 01/01/2024

This order is for approximately 65% ~ 100% of our requirements.

[illegible]

This contract is available for Mopar use

Standard Text ID: 294, 099, 399, 728, 471A, 098A, 699, 156, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 06/07/2021 Contract # 0011379668 for part #06102622AA created on

GAAP 4



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Contract: 11379668

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	06/18/2020 through life of the program OA1	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	USD		
Document Currency:	12/31/9999		
Expiration Date:			
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

06/18/2020 for REQ# 1000011837 supplier committed price reduction of 3% effective on 01/01/2025 per Buyer Fabian Turmalaj (O2G)
Processed by: Katarzyna Kocur 06/07/2021 Contract # 0011379668 for part #06102622AA created on 06/18/2020 for REQ# 1000011837
supplier committed price reduction of 3% effective on 01/01/2024 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur
06/07/2021 Contract # 0011379668 for part #06102622AA created on 06/18/2020 for REQ# 1000011837 supplier committed price reduction
of 3% effective on 01/01/2023 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur

Last Transmission Date: 01/02/2024

Version

Document Details	Buyer: L5X	Requester
Original Document Date: 06/18/2020 through life of the program OA1 Document Type: USD Document Currency: 12/31/9999 Expiration Date:	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		CAP Phone Number: (844)-289-1227

Line Item 00190 Version REVISE Add new line 06102622AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
190	06102622AA SC/PAN.HD-HEADER.PT.6-LOBE.REC	1,000	EA	56.51 / 1 / USD	01/01/2024	12/31/9999

Tracking no: 1001124371

Base: 0.1017 Old Base: 0.2054 New Base: 0.183 Delta: -0.0224 PO Change: -0.34 Effective Date: 01/01/2024

Packaging: Returnable

Header Text:

[illegible]



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11379668

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	06/18/2020 through life of the program OAI	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	USD		
Document Currency:	12/31/9999		
Expiration Date:			
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

06/18/2020 for REQ# 1000011837 supplier committed price reduction of 3% effective on 01/01/2025 per Buyer Fabian Turmalaj (O2G)
Processed by: Katarzyna Kocur 06/07/2021 Contract # 0011379668 for part #06102622AA created on 06/18/2020 for REQ# 1000011837
supplier committed price reduction of 3% effective on 01/01/2024 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur
06/07/2021 Contract # 0011379668 for part #06102622AA created on 06/18/2020 for REQ# 1000011837 supplier committed price reduction
of 3% effective on 01/01/2023 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11438180

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/21/2021 through life of the program	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227

Reason for Change as of 01/02/2024

Line Item 00160 Version REVISE 06104088AA CANCEL

Line Item 00170 , Version REVISE Add new line 06104088AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
170	06104088AA SC/6LOBE.EXT.HD-FULL.BODY.HEADER.PT Tracking no: 1000249026	1,000	EA	7.0171/ USD	01/01/2024	12/31/9999

Item text:

Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dross) : 2.6 LB Original

Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.06 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-56	Raw-6	Fab-2
Tooling Capacity	115200	Daily-115200
Work Pattern	002/	8.00
Packaging		Weekly-576000
Packaging Price		00005

This contract is available for Mopar use

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 01/21/2021: Material 06104088AA, New contract 11438180 replaces

Seller agrees to sell and deliver the goods and services specified in this order, in accordance to the terms and conditions contained in the order. Standard Text ID's referenced in this order, the Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, and any other documents presented by Seller, are accepted by Buyer, and Seller and Buyer agree to the terms of the order and any additional or different terms, whether contained in this form, or otherwise presented by Seller, are rejected unless expressly agreed to by FCA. Seller specifically waives its signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA Electronic Data Interchange system or email format. Orders received in Request for Quote (RFQ) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material, however, FCA acknowledges and agrees that all FCA Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ that resulted in that contract. Seller agrees that such RFQ Production and Mopar Purchasing General Terms and Conditions will continue to govern the Order. All material parts that are associated with a production / supply contract will be governed by the terms and conditions applicable to such production / supply contract. In order to determine at each to be consistent associated with a production / supply contract, the alternate part number on the production assembly, whether under a production / supply contract or otherwise, (b) replaceable components of the production assembly, or (c) kits containing components of the production assembly.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Contract: 11438180

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/21/2021 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

contract 10240509 per UoM project requested by Sean Farrell

Last Transmission Date: 01/02/2024

Version

Document Details	Buyer: LSX	Requester
Original Document Date: 01/21/2021 through life of the program OAI	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type: USD Document Currency: USD Expiration Date: 12/31/9999		
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227.
		CAP Phone Number: (844)-289-1227

Line Item 00160 Version REVISE 06104088AA CANCEL

line item 00170. Version REVISE Add new line 06104088AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
170	06104088AA SC/6LOBE.XI.HD-FULL.BODY.HEADER.PT	1.000	EA	7.011/ USD	01/01/2024	12/31/9999

Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dress) : 2.6 LB Original

Base: 0.1017 Old Base: 0.2054 New Base: 0.183 Delta: -0.0224 PO Change: -0.06 Effective Date: 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-56	Raw-6	Fab-2	Weekly-576000	Previous PO-
Tooling Capacity	115200	Daily-115200	00005	Previouspart#
Work Pattern	002/	8.00		Ship To:
Packaging				Packaging:Returnable

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 01/21/2021: Material 06104088AA, New contract 11438180 replaces

[illegible]



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11438180

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/21/2021 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address	Delivery Details		
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mtg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		
	Invoice Information		
	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		
	CAP Phone Number: (844)-289-1227		

contract 10240509 per UoM project requested by Sean Farrell

Last Transmission Date: 01/02/2024

[illegible]



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11430846

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	01/12/2021 through life of the program	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: 30648 B Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227

on previous contract 10002591 per UoM project requested by Sean Farrell. 1/12/2021: Material 06104301AA, New contract 11430846
replaces contract 10002591 per UoM project requested by Sean Farrell CLAUSE 284 Added on 02/04/2021

Last Transmission Date: 01/02/2024

Version

Document Details	Buyer: LSX	Requester
Original Document Date:	01/12/2021 through life of the program OA1	
Document Type:	USD	
Document Currency:	12/31/9999	
Expiration Date:		
Vendor Address	Delivery Details	Invoice Information
KAMAX INC	Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd	Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US	Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648	LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
	Ship From: 30648 B	
	LAPEER MI 48446-8366 US	
	Rel Location: 30648	
	TROY MI 48098-4599 US	CAP Phone Number: (844)-289-1227

Line Item 00160 Version REVISE 06104301AA CANCEL

Line Item 00170 Version REVISE Add new line 061043014A

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
170	06104301AA SC./HEX.FLG.HD-FULL.BODY.HEADER.PT.	1.000	EA	1,247.20/1/ USD	01/01/2024	12/31/9999

Tracking no: 9991377732

Material Type : \$801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dress) : 543.7 LB Original

Base: 0.1017 Old Base: 0.2054 New Base: 0.183 Delta: -0.0224 PO Change: -12.18 Effective Date: 01/01/2024

Lead Time-70	Raw-6	Fab-2	Weekly-110880	Previous PO-
Tooling Capacity	22176	Daily-22176	00005	Previouspart#
Work Pattern	002/	8.00		Ship To:
Packaging	092	198		Packaging:
Packaging Price			UNIT	

Standard Text ID: 294.728.099.399.471A.098A.699.284

6/28/2023 This Order reflects prior communications on pricing 02/04/2021 - Adding clauses to new contract 11430846 that were found

Self-organizing to collect and deliver the correct and consistent information is a key challenge in order to deliver the correct and consistent information to the right people at the right time. Self-organizing to collect and deliver the correct and consistent information is a key challenge in order to deliver the correct and consistent information to the right people at the right time.

CA APP 4



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11430846

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	01/12/2021 through life of the program	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: 30648 B Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227

on previous contract 10002591 per UoM project requested by Sean Farrell. 1/12/2021: Material 06104301AA, New contract 11430846
replaces contract 10002591 per UoM project requested by Sean Farrell CLAUSE 284 Added on 02/04/2021



FCA US LLC

1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11441164

Version

Document Details		Buyer: LSX		Requester		
Original Document Date: 02/04/2021 through life of the program OAI		Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com				
Document Type: USD						
Document Currency: 12/31/9999						
Expiration Date:						
Vendor Address		Delivery Details		Invoice Information		
KAMAX INC		Incoterms: FCA		Payment Terms: XLZA		
1500 W Long Lake Rd		Delivery Address:		NET 45 DAYS		
TROY MI 48098-4599 US		Mfg Location: 30648 B		Invoice Instructions:		
Vendor Code: 30648		LAPEER MI 48446-8366 US		All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		
		Ship From: 30648 B				
		LAPEER MI 48446-8366 US				
		Rel Location: 30648		CAP Phone Number: (844)-289-1227		
		TROY MI 48098-4599 US				
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
220	06104428AA SC&WA/HEX.HD-CONE.WASH.MAT.PT Tracking no: 9991576451	1.000	TS	139.76/1/ USD	01/01/2024	12/31/9999
Item text:						
Material Type : CRHRUS Material Type Description : CRU HOT ROLL STEEL/MW-USD Weight (Including Dress) : 18.3 LB Original Base : 0.4287 Old Base : 0.4307 New Base : 0.3837 Delta : -0.047 PO Change : -0.86 Effective Date : 01/01/2024						
This order is for approximately 65% - 100% of our requirements.						
Lead Time-20	Raw-6	Fab-2				
Tooling Capacity	96000	Daily-96000				
Work Pattern	002/	8.00				
Packaging	092	198				
Packaging Price						
This contract is available for Mopar use						
Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284						
Header Text:						
6/26/2023 This Order reflects prior communications on pricing 02/04/2021: Material 06104428AA, New contract 11441164 replaces contract 10122614 per UoM project requested by Sean Farrell.						
Previous PO- Previouspart# Ship To: Packaging:						
UNIT						

Seller agrees to sell and deliver the goods and services specified in FCA's order in accordance to the Terms and Conditions contained in the order. Standard Text (S) represents the order. The Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, which constitute the entire and final agreement between FCA and Seller and cancel and supersede any prior or contemporaneous negotiations or agreements regarding this order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text (S) text are currently published on https://go.chrysler.com/pdp/161/. By accepting the order, the Seller acknowledges having actual knowledge of the text of the referenced Terms and Conditions, FCA's order expressly limits acceptance to the terms of the order, and any additional or different terms, whether contained in Seller's terms and conditions presented by Seller are rejected unless expressly agreed to by FCA. Seller specifically waives its signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange system or delivered to Seller in a paper or other format. Orders relating to requests for quotation (RFQ) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material, however, FCA acknowledges and agrees that if FCA Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ that resulted in final contract sourcing from such production and Mopar Purchasing General Terms and Conditions will continue to govern the Order. Aftermarket parts that use associated with a production / supply contract will be governed by the terms and conditions applicable to such production / supply contract. In order for aftermarket parts to be considered associated with a production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production assembly, whether under a production / supply contract or otherwise; (b) serviceable components of the production assembly, as (a) which containing components of the production assembly.

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11441164

Version

Document Details	Buyer: L5X	Requester
Original Document Date: 02/04/2021 through life of the program OAI	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type: USD		
Document Currency: USD		
Expiration Date: 12/31/9999		
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: 30648 B Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
220	06104428AA SC&WA/HEX-HD-CONE.WASH.MAT.PT Tracking no: 9991576451	1.000	TS	139.761/ USD	01/01/2024	12/31/9999

Item text:

Material Type : CRHRUS Material Type Description : CRU HOT ROLL STEEL/MW-USD Weight : 18.3 LB Original Base : 0.4287 Old Base : 0.4307 New Base : 0.3837 Delta : -0.047 PO Change : -0.86 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-20	Raw-6	Fab-2	Weekly-	Previous PO-
Tooling Capacity	96000	Daily-96000	00005	Previouspart #
Work Pattern	002/	8:00		Ship To:
Packaging	092	198		Packaging:
Packaging Price			UNIT	

This contract is available for Mopar use

Standard Text ID: 294, 728, 099, 399, 471 A, 098A, 699, 284

Header Text:

6/26/2023 This Order reflects prior communications on pricing 02/04/2021: Material 0610428AA, New contract 11441164 replaces contract 10122614 per UoM project requested by Sean Farrell.

FCAPP 477

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FCA US LLC

1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11429430

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/12/2021 through life of the program	Ilvi Peshku	
Document Type:	OAI	Phone #: 734 392 4174	
Document Currency:	USD	ilvi.peshku@stellantis.com	
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	
		TROY MI 48098-4599 US	CAP Phone Number: (844)-289-1227

Reason for Change as of 01/02/2024

- Line Item 00200 Version REVISE 06508760AA CANCEL
Line Item 00210 , Version REVISE Add new line 06508760AA
Line Item 00210 Version REVISE 06508760AA CANCEL
Line Item 00220 , Version REVISE Add new line 06508760AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
220	06508760AA	1.000	TS	239.55/1 / USD	01/01/2024	12/31/9999
SC&WA/HEX.HD.LK-CONE.WASH.MAT.PT.PF-SAFE						
Tracking no: 9991592732						

Item text:

Material Type : CRHRUS Material Type Description : CRU HOT ROLL STEEL/MW-USD Weight (Including Dress) : 39.1 LB Original Base : 0.4287 Old Base : 0.4307 New Base : 0.3837 Delta : -0.047 PO Change : -1.84 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-70	Raw-6	Fab-2
Tooling Capacity	76800	Daily-76800
Work Pattern	002/	8.00
Packaging	092	198
Packaging Price		
This contract is available for Mopar use		
Previous PO- Previouspart# Ship To: Packaging:		
UNIT		
Weekly-384000 00005		

Seller agrees to sell and deliver the goods and services specified in this order in accordance with the terms and conditions contained in the order. Standard Text 103 is incorporated in the order. The Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, which constitute the entire and final agreement between FCA and Seller and/or buyer, and supersede any prior or contemporaneous negotiations or agreements regarding the order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text 103 are currently published on the website <http://www.stellantis.com/purchasing>. By accepting the order, the Seller acknowledges having actual knowledge of the terms of the reference instructions and the General Terms and Conditions. FCA's order expressly binds acceptance to the terms of the order and any addendum or different form, which is contained in Seller's form. The Seller's form is hereby incorporated by reference into the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange system or delivered in a paper or email format. Orders relating to Requests for Quotation (RFQ) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material; however, FCA acknowledges and agrees that FCA Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ and resulted in that contract governing those such as production and Mopar Purchasing General Terms and Conditions will continue to apply to such production / supply contract. In order to allow material parts to be considered associated with a production / supply contract, the alternative parts must be either: (a) parts with the same part number as the production assembly, or (b) service/option components of the production assembly, or (c) kit containing components of the production assembly.



AMERICAN AUTOMOBILES

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11429430

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	01/12/2021 through life of the program OAI	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	USD		
Document Currency:	12/31/9999		
Expiration Date:			
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

6/26/2023 This Order reflects prior communications on pricing 1/12/2021: Material 06508760AA. New contract 11429430 replaces contract 10061598 per UoM project requested by Sean Farrell

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11429430 Version

Document Details	Buyer: L5X	Requester
Original Document Date: 01/12/2021 through life of the program OA1 Document Type: USD Document Currency: 12/31/9999 Expiration Date:	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: 30648 B Mfg Location: LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227

Reason for Change as of 01/02/2024

Line Item 00200 Version REVISE 06508760AA CANCEL

Line Item 00210 Version REVISE Add new line 06508760AA

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Line Item 00210 Version REVISE 06508/60AA CANCEL

Line Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
220	06508760AA SC&WA/HEX.HD.LK-CONE;WASH.MAT.PI.PF-SAFE Tracking no: 9991592732	1.000	TS	239.55/1/ USD	01/01/2024	12/31/9999

Item text:

Material Type : CRHRUS Material Type Description : CRU HOT ROLL STEEL/MW-USD Weight (Including Dress) : 39.1 LB Original Base

0.4287 Old Base: 0.4307 New Base: 0.3837 Delta: -0.047 PO Change: -1.84 Effective Date: 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-70	Raw-6	Fab-2	Weekly-384000	Previous PO- Previouspart#
Tooling Capacity	76800	Daily-76800	00005	Ship To:
Work Pattern	002/	8.00		Packaging:
Packaging	092	198		
Packaging Price				UNIT

This contract is available for Mopar use

This contract is available for Mopar use

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RECEIVED by MSC 2/16/2026 6:33:37 PM



NEW OFFER REQUIRED

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11429430

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/12/2021 through life of the program	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	CAP Phone Number: (844)-289-1227
		TROY MI 48098-4599 US	

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

6/26/2023 This Order reflects prior communications on pricing 1/12/2021: Material 06508760AA, New contract 11429430 replaces contract 10061598 per UoM project requested by Sean Farrell



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11436042

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/19/2021 through life of the program	ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	CAP Phone Number: (844)-289-1227
		TROY MI 48098-4599 US	

Reason for Change as of 01/02/2024

Line Item 00160 Version REVISE 06510798AA CANCEL

Line Item 00170, Version REVISE Add new line 06510798AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
170	06510798AA	1.000	EA	60.98/1/ USD	01/01/2024	12/31/9999
STUD/2.END.FULL.BDY-EXT.6.LOBE.FULL BODY						
Tracking no: 9991536438						

Item text:

Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Gross) : 9.04 LB Original

Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.2 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-63	Raw-6	Fab-2	Previous PO-
Tooling Capacity	43200	Daily-43200	Previous part#
Work Pattern	002/	8.00	Ship To:
Packaging	092	198	Packaging:
Packaging Price			

This contract is available for Mopar use

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 01/19/2021: Material 06510798AA, New contract 11436042 replaces

Seller agrees to sell and deliver the goods and services specified in this order in accordance with the terms and conditions set forth in the order. The order is subject to the terms and conditions of the FCA's order, which constitute the entire and final agreement between FCA and Seller and shall supersede any prior or contemporaneous negotiations or agreements regarding the order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text ID text are hereby published on <https://go.stellantis.com/p1/pag1>. By accepting this order, the Seller acknowledges having actual knowledge of the text of the reference instructions, and the General Terms and Conditions. FCA's order expressly limits its acceptance to the terms of the order and any additional or different terms, whether captioned in Seller's terms and conditions presented by Seller are rejected unless expressly agreed to by FCA. Seller specifically agrees to sign and accept the reference instructions of the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange system or delivered to Seller in a paper or email format. Order relating to Requests for Quotation (RFQs) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material; however, FCA acknowledges and agrees that if FCA Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ, then the terms of the contract governing the transaction shall be the terms and conditions of the RFQ. In order for the contract governing the transaction to be considered a production / supply contract, the information provided must be either: (a) parts with the same part number as the product on assembly, whether when a production / supply contract or otherwise, (b) serviceable components of the production assembly, or (c) parts containing components of the production assembly.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11436042

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	01/19/2021 through life of the program	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: 30648 B Mfg Location: LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227

contract 10081144 per UoM project requested by Sean Farrell



FCA US LLC

1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11436042

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/19/2021 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	
		TROY MI 48098-4599 US	CAP Phone Number: (844)-289-1227

Reason for Change as of 01/02/2024

Line Item 00160 Version REVISE 06510798AA CANCEL

Line Item 00170 , Version REVISE Add new line 06510798AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
170	06510798AA	1.000	EA	60.98/1/ USD	01/01/2024	12/31/9999
STUD/2.END.FULL.BDY-EXT.6.LOBE.FULL.BODY						
Tracking no: 9991536438						

Item Text:

Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dross) : 9.04 LB Original

Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.2 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-63	Raw-6	Fab-2	Previous PO-
Tooling Capacity	43200	Daily-43200	Previouspart#
Work Pattern	002/	8.00	Ship To:
Packaging	092	198	Packaging:
Packaging Price			

This contract is available for Mopar use

Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 01/19/2021: Material 06510798AA, New contract 11436042 replaces

Seller agrees to sell and deliver the goods and services specified in FCA's order in accordance to the terms and conditions contained in the order. Standard Text IDs referenced in the order, the Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, which constitute the entire and final agreement between FCA and Seller and cancel and supersede any prior or contemporaneous negotiations or agreements regarding the order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text ID text are currently published on <https://fca-usa.com/contract/comp/pagel/>. By accepting the order, the Seller acknowledges having actual knowledge of the text of the reference instructions and the General Terms and Conditions. FCA's order expressly limits acceptance to the terms of the order and any additional or different terms, whether contained in Seller's terms or otherwise, are rejected unless expressly agreed to by FCA. Seller specifically warrants, signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA Electronic Data Interchange system or delivered in paper or email format. Orders relating to Requests for Quotation (RFQs) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material; however, FCA acknowledges and agrees that FCA Producer and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ that resulted in final contract reaching their such production and Mopar Purchasing General Terms and Conditions will continue to govern the Order. Alternative parts that are associated with a product or supply contract or supply contract, in order for alternative parts to be considered associated with a production / supply contract, the alternative parts must be either: (a) parts with the same part number as the production assembly, or (b) parts containing components of the production assembly, or (c) parts containing components of the product on which the production assembly is based. The Seller will be responsible for the delivery of the parts to the production assembly, or for the delivery of the parts to the production assembly, or for the delivery of the parts to the production assembly.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11436042 Version

Document Details		Buyer: L5X	Requester
Original Document Date:	01/19/2021 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address	Delivery Details		
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		
	Invoice Information		
	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		
	CAP Phone Number: (844)-289-1227		

contract 10081144 per UoM project requested by Sean Farrell

Document Details		Buyer: L5X		Contract: 11434887		Version	
Original Document Date: 02/01/2021 through life of the program OA1		Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com				Requester	
Document Type: USD Expiration Date: 12/31/9999							
Vendor Address		Delivery Details		Invoice Information			
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.			
				CAP Phone Number: (844)-289-1227			
Reason for Change as of 01/02/2024							
Line Item 00190 Version REVISE 06511169AA CANCEL							
Line Item 00200, Version REVISE Add new line 06511169AA							
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date	
200	06511169AA	1.000	EA	69.58/1/ USD	01/01/2024	12/31/9999	
STUD/2.END.FULL.BDY-EXT.6.LOBE.FULL.BODY							
Tracking no: 1000245787							
Item text:							
Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dross) : 3.0 LB Original Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.07 Effective Date : 01/01/2024							
This order is for approximately 65% - 100% of our requirements.							
Lead Time-56	Raw-6	Fab-2					
Tooling Capacity	76800	Daily-76800					
Work Pattern	002/	8.00					
Packaging	092	198					
Packaging Price			UNIT		Previous PO- Previous part # Ship To: Packaging:		
This contract is available for Mopar use							
Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284							
Header Text:							
6/28/2023 This Order reflects prior communications on pricing 02/01/2021: Material 06511169AA, New contract 11434887 replaces							

[illegible]



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11434887

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	02/01/2021 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844) 289-1227

contract 10543521 per UoM project requested by Sean Farrell.

Document Details		Buyer: L5X		Contract: 11434887		Version	
Original Document Date: 02/01/2021 through life of the program OA1		Ilivi Peshku Phone #: 734 392 4174 ilivi.peshku@stellantis.com				Requester	
Document Type: USD Document Currency: 12/31/9999							
Expiration Date: 12/31/9999							
Vendor Address		Delivery Details		Invoice Information			
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		CAP Phone Number: (844)-289-1227	
Reason for Change as of 01/02/2024							
Line Item 00190 Version REVISE 06511169AA CANCEL							
Line Item 00200 , Version REVISE Add new line 06511169AA							
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date	
200	06511169AA STUD/2.END.FULL.BDY-EXT.6.LOBE.FULL.BODY Tracking no: 1000245787	1.000	EA	69.58/1/ USD	01/01/2024	12/31/9999	
Item text:							
Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dross) : 3.0 LB Original Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.07 Effective Date : 01/01/2024							
This order is for approximately 65% - 100% of our requirements:							
Lead Time-56	Raw-6	Fab-2					
Tooling Capacity	76800	Daily-76800	Weekly-384000				
Work Pattern	002/	8.00	00005				
Packaging	092	198	UNIT				
Packaging Price							
This contract is available for Mopar use							
Standard Text ID: 294, 728, 099, 399, 471A, 098A, 699, 284							
Header Text:							
6/28/2023 This Order reflects prior communications on pricing 02/01/2021: Material 06511169AA, New contract 11434887 replaces							

[illegible]



FCA CONTRACT TECHNOLOGIES

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11434887

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	02/01/2021 through life of the program OA1	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	USD		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

contract 10543521 per UoM project requested by Sean Farrell.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 02/02/2024

Contract: 11363148

Version

Document Details		Buyer: LSX		Requester		
Original Document Date: 04/28/2020 through life of the program OAI USD 12/31/9999		Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com				
Document Type:						
Document Currency:						
Expiration Date:						
Vendor Address		Delivery Details		Invoice Information		
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844) 289-1227		
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
150	06512297AA SC&WA/HEX.FLG.HD-CONE.WASH.HEX.DRIVE.MAT Tracking no: 1000664633	1.000	EA	40.66/1/ USD	01/01/2024	12/31/9999
Item Text:						
Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Gross) : 16.71 LB Original Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.37 Effective Date : 01/01/2024						
This order is for approximately 65% - 100% of our requirements.						
Lead Time-40	Raw-6	Fab-2				
Tooling Capacity	50000	Daily-50000				
Work Pattern	002/	8.00				
Packaging	092	198				
Packaging Price						
This contract is available for Mopar use						
Standard Text ID: 294, 099, 728, 399, 471A, 098A, 699, 284						
Header Text:						
01/26/2024-UPDATED MPAB SUPPLIER PAYMENT TERMS FROM XLZA TO XLZG. PER BUYER ILVI PESHKU, EBUCK 2024-0119-12, ODA-PTCR20230921.6761FA						
01/27/2020-Updated Module Code to 16398 A. Updated Partner Functions: MN to 16398 A, RL to 16398 A, GS to 16398 A, Plant 9103, per						
MPAB report on contract 0011363148 for PN 06512297AA. 6/26/2023 This Order reflects prior communications on pricing 10/29/2020						
Payment Terms changed to XLZA, per UoM project requested by Sean Farrell 04/28/2020: Material 06512297AA. New contract 11363148						
replaces contract 10888543 per UoM project requested by Sean Farrell						

Buyer agrees to sell and deliver the goods and services specified in this order in accordance with the terms and conditions contained in the order, the Global General Terms and Conditions - Direct Material - 01/01/2002, the terms of this form and any signed documents referenced in this order which constitute the entire and final agreement between FCA and Seller, and accept and warrants any price or confidential information or agreements regarding the order, the Global General Terms and Conditions - Direct Material - 01/01/2002 and Standard Text ID text are currently published on <https://go.chrysler.com/ptp/ptp16398>. By accepting the order, the Seller acknowledges having actual knowledge of the list of the referenced instructions and the General Terms and Conditions. FCA's order expressly limits acceptance to the terms of the order and any additional or different terms, whether contained in, on, or through the order, are rejected unless expressly agreed to by FCA. Seller specifically warrants the signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's electronic data interchange system or delivered in paper or email format. Orders relating to Requests for Quotation (RFQs) issued prior to January 1, 2002 may include reference to the Global General Terms and Conditions - Direct Material; however, FCA acknowledges and agrees that FCA Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ that resulted in said contract involving then such Production and Mopar Purchasing General Terms and Conditions in connection with such production / supply contract. In order for alternative parts to be considered associated with a production / supply contract, the alternative parts must be either: (a) parts with the same part number as the production / supply contract or, alternatively, (b) new/replaceable components of the production assembly, whether under a production / supply contract or otherwise. (c) new/replaceable components of the production assembly, whether under a production / supply contract or otherwise.

CA APP 490

Contract: 11363148

Version

Document Details		Buyer: LSX		Requester		
Original Document Date: 04/28/2020 through life of the program OA1		Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com				
Document Type: USD						
Document Currency: USD						
Expiration Date: 12/31/9999						
Vendor Address		Delivery Details		Invoice Information		
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227		
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
150	06512297AA SC&WA/HEX.FLG.HD-CONE.WASH.HEX.DRIVE.MAT Tracking no: 1000664633	1.000	EA	40.66/1 / USD	01/01/2024	12/31/9999
Item text: Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dross) : 16.71 LB Original Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.37 Effective Date : 01/01/2024						
This order is for approximately 65% - 100% of our requirements.						
Lead Time-40	Raw-6	Fab-2			Previous PO-	
Tooling Capacity	50000	Daily-50000		Weekly-250000	Previouspart#	
Work Pattern	002/	8.00		00005	Ship To:	
Packaging	092	198		NONE	Packaging:	
Packaging Price				UNIT 1.00		
This contract is available for Mopar use						
Standard Text ID: 294, 099, 728, 399, 471A, 098A, 699, 284						
Header Text:						
01/26/2024-UPDATED MPAB SUPPLIER PAYMENT TERMS FROM XLZA TO XLZG. PER BUYER ILVI PESHKU, EBUCK 2024-0119-12, ODA-PTCR20230921.6761FA						
01/27/2020 Updated Module Code to 16398 A. Updated Partner Functions: MN to 16398 A, RL to 16398 A, GS to 16398 A, Plant 9103, per						
MPAB report on contract 0011363148 for PN 06512297AA, 6/26/2023 This Order reflects prior communications on pricing 10/29/2020						
Payment Terms changed to XLZA, per UoM project requested by Sean Farrell 04/28/2020: Material 06512297AA, New contract 11363148						
replaces contract 10888543 per UoM project requested by Sean Farrell						

[illegible]



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 06/28/2023

Contract: 10955572

Version

Document Details		Buyer: L5X	Requester	
Original Document Date:	12/09/2016 through life of the program	Ilvi Peshku		
Document Type:	OAI	Phone #: 734 392 4174		
Document Currency:	USD	ilvi.peshku@stellantis.com		
Expiration Date:	12/31/9999			
Vendor Address		Delivery Details		Invoice Information
KAMAX INC		Incoterms: FCA		Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:		NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B		Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US		All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648		
		TROY MI 48098-4599 US		
		Rel Location: 30648		
		TROY MI 48098-4599 US		CAP Phone Number: (844)-289-1227

Reason for Change as of 06/28/2023

Line Item 00040 Version REVISE 06512515AA CANCEL

Line Item 00050, Version REVISE Add new line 06512515AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
50	06512515AA	1.000	EA	0.18/1/ USD	01/01/2023	12/31/9999
SC/HEX FLG-HD-KUKA-PT.SPECIAL						
Tracking no: 1000719510						

This order is for approximately 65% - 100% of our requirements.

Lead Time-40	Raw-6	Fab-2
Tooling Capacity	50000	Daily-50000
Work Pattern	002/	8.00
Packaging		
Packaging Price		

This contract is available for Mopar use

Standard Text ID: 294, 399, 471A, 098A, 699, 156, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing

Previous PO-
Previous part #
Ship To:
Packaging: Returnable

UNIT

FCA APP 492

Seller agrees to sell and deliver this truck and any parts specified in FCA's order in accordance to the Terms and Conditions contained in the order. Standard Text ID's referenced in the order, the Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, which contribute to the entire and final agreement between FCA and Seller and Seller and Supplier, and any other documents or agreements having actual knowledge of the text of the reference instructions and the General Terms and Conditions. FCA's order expressly binds acceptance to the terms of the order and any additional or different terms, whether combined in a separate document or otherwise presented by Seller are rejected unless expressly agreed to by FCA. Seller specifically warrants its signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange system or otherwise to Seller in a paper or email format. Order relating to Requests for Quotes (RFQs) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material however, FCA acknowledges and agrees that FCA Production and Mopar Packaging General Terms and Conditions were incorporated in the RFQ that resulted in the contract. In order for aftermarket parts to be considered such as Production / Supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production / supply contract; (b) aftermarket parts that are associated with a production / supply contract; or (c) parts that are associated with a production / supply contract. In order for aftermarket parts to be considered associated with a production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production / supply contract; (b) aftermarket parts that are associated with a production / supply contract; or (c) parts that are associated with a production / supply contract. In order for aftermarket parts to be considered associated with a production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production / supply contract; (b) aftermarket parts that are associated with a production / supply contract; or (c) parts that are associated with a production / supply contract.

RECEIVED by MSC 2/16/2026 6:33:37 PM

Last Transmission Date: 06/28/2023

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	12/09/2016 through life of the program OAI	Ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	USD		
Document Currency:	12/31/9999		
Expiration Date:			
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 TROY MI 48098-4599 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227.
			CAP Phone Number: (844)-289-1227

Line Item 00040 Version REVISE 06512515AA CANCEL

Line Item 00050, Version REVISE Add new line 06512515AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
50	06512515AA SC/HEX.FLG.HD-KUKA.PT.SPECIAL Tracking no: 1000719510	1.000	EA	0.18/1/ USD	01/01/2023	12/31/9999

	Lead Time-40	Raw-6	Fab-2
1	100	100	100
2	100	100	100
3	100	100	100
4	100	100	100
5	100	100	100
6	100	100	100
7	100	100	100
8	100	100	100
9	100	100	100
10	100	100	100
11	100	100	100
12	100	100	100
13	100	100	100
14	100	100	100
15	100	100	100
16	100	100	100
17	100	100	100
18	100	100	100
19	100	100	100
20	100	100	100
21	100	100	100
22	100	100	100
23	100	100	100
24	100	100	100
25	100	100	100
26	100	100	100
27	100	100	100
28	100	100	100
29	100	100	100
30	100	100	100
31	100	100	100
32	100	100	100
33	100	100	100
34	100	100	100
35	100	100	100
36	100	100	100
37	100	100	100
38	100	100	100
39	100	100	100
40	100	100	100
41	100	100	100
42	100	100	100
43	100	100	100
44	100	100	100
45	100	100	100
46	100	100	100
47	100	100	100
48	100	100	100
49	100	100	100
50	100	100	100
51	100	100	100
52	100	100	100
53	100	100	100
54	100	100	100
55	100	100	100
56	100	100	100
57	100	100	100
58	100	100	100
59	100	100	100
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61	100	100	100
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63	100	100	100
64	100	100	100
65	100	100	100
66	100	100	100
67	100	100	100
68	100	100	100
69	100	100	100
70	100	100	100
71	100	100	100
72	100	100	100
73	100	100	100
74	100	100	100
75	100	100	100
76	100	100	100
77	100	100	100
78	100	100	100
79	100	100	100
80	100	100	100
81	100	100	100
82	100	100	100
83	100	100	100
84	100	100	100
85	100	100	100
86	100	100	100
87	100	100	100
88	100	100	100
89	100	100	100
90	100	100	100
91	100	100	100
92	100	100	100
93	100	100	100
94	100	100	100
95	100	100	100
96	100	100	100
97	100		

Tooling Capacity 50000 Daily~50000

Work Pattern	002/	8.00

Packaging

packaging Price

This contract is available for Mopar use

Standard Text ID: 294, 399, 471A, 098A, 699, 156, 284
Header Text:

Header text: 1/28/2023 This Order reflects prior communications.

08/07/2023 11:57 AM

FC Seller agrees to sell and deliver the goods and services specified in FCA's order in accordance to the terms

transfer, all of which constitute the entire and final agreement between JCA and Seller and correct and supersede all prior and contemporaneous oral and written communications. By accepting the order, the Seller acknowledges having received the Seller's extra charges, commissions, and fees, as set forth in the order, and agrees to pay to JCA the amount of the Seller's extra charges, commissions, and fees, as set forth in the order, within the time specified in the order.

[illegible]

Production and Marketing General Terms and Conditions

49

03

RECEIVED by MSC 2/16/2026 6:33:37 PM

Contract: 11270137		Version	
Document Details		Buyer: L5X	
Original Document Date: 07/15/2019 through life of the program OA1		ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type: USD Document Currency: 12/31/9999			
Expiry Date: 12/31/9999			
Vendor Address		Delivery Details	
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: 30648 Mfg Location: 30648 TROY MI 48098-4599 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	
		Invoice Information	
		Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.	
		CAP Phone Number: (844)-289-1227	
Reason for Change as of 01/02/2024			
Line Item 00310 Version REVISE 06512925AA CANCEL			
Line Item 00320 , Version REVISE Add new line 06512925AA			
Line Item 00320 Version REVISE 06512925AA CANCEL			
Line Item 00330 , Version REVISE Add new line 06512925AA			
Item	Material	Quantity	UOM
330	106512925AA SC&WA/HEX.FLG.HD-CONE.WASH.FULL.BODY.HEX Tracking no: 1000987856	1.000	EA
		Unit Price / Per / Currency 1,546.32/1/ USD	Pricing Start Date 01/01/2024 Pricing End Date 12/31/9999
Item text:			
Material Type : CRHRUS Material Type Description : CRU HOT ROLL STEEL/MW-USD Weight (Including Dress) : 142.3 LB Original Base : 0.4287 Old Base : 0.4307 New Base : 0.3837 Delta : -0.047 PO Change : -6.69 Effective Date : 01/01/2024			
This order is for approximately 65% - 100% of our requirements.			
Lead Time-40	Raw-6	Fab-2	Previous PO-
Tooling Capacity	50000	Daily-50000	Previouspart#
Work Pattern	002/	8.00	Ship To:
Packaging	198	CHRYSLER	Packaging:Returnable
Packaging Price	5.00		
This contract is available for Mopar use			

[illegible]



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Document Details		Buyer: L5X	Contract: 11270137	Version
Original Document Date:	07/15/2019 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com		Requester
Document Type:	OAI			
Document Currency:	USD			
Expiration Date:	12/31/9999			
Vendor Address		Delivery Details	Invoice Information	
KAMAX INC		Incoterms: FCA	Payment Terms: XLSA	
500 W Long Lake Rd		Delivery Address:	NET 60 DAYS	
TROY MI 48098-4599 US		Mfg Location: 30648	Invoice Instructions:	
Vendor Code: 30648		TROY MI 48098-4599 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.	
		Ship From: 30648 B	CAP Phone Number: (844) 289-1227	
		LAPEER MI 48446-8366 US		
		Rel Location: 30648		
		TROY MI 48098-4599 US		

Standard Text ID: 294, 399, 471A, 098A, 699, 156, 284

Header Text:

6/26/2023 This Order reflects prior communications on pricing 07/05/2021 Contract # 0011270137 for part #06512925AA created on 07/15/2019 for REQ# 1000004908 supplier committed price reduction of 3% effective on 01/01/2024 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur 07/05/2021 Contract # 0011270137 for part #06512925AA created on 07/15/2019 for REQ# 1000004908 supplier committed price reduction of 3% effective on 01/01/2023 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur 07/05/2021 Contract # 0011270137 for part #06512925AA created on 07/15/2019 for REQ# 1000004908 supplier committed price reduction of 3% effective on 01/01/2022 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur 7/26/2019 Contract# 11270137 for part# 06512925AA created on 07/15/2019 for RFQ # 1000004908 supplier committed price reduction of 3 % effective on 01/01/2024 per buyer James Scott (O4J). 7/26/2019 Contract# 11270137 for part# 06512925AA created on 07/15/2019 for RFQ # 1000004908 supplier committed price reduction of 3 % effective on 01/01/2022 per buyer James Scott (O4J).

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11270137

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	07/15/2019 through life of the program	Ilvi Peshku	
Document Type:	OAI	Phone #: 734 392 4174	
Document Currency:	USD	ilvi.peshku@stellantis.com	
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLSA
500 W Long Lake Rd		Delivery Address:	NET 60 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648	Invoice Instructions:
Vendor Code: 30648		TROY MI 48098-4599 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	
		TROY MI 48098-4599 US	CAP Phone Number: (844)-289-1227

Reason for Change as of 01/02/2024

Line Item 00310 Version REVISE 06512925AA CANCEL

Line Item 00320 , Version REVISE Add new line 06512925AA

Line Item 00320 Version REVISE 06512925AA CANCEL

Line Item 00330 , Version REVISE Add new line 06512925AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
330	06512925AA SC&WA/HEX.FLG.HD-CONE.WASH.FULL.BODY.HEX	1,000	EA	1,546.32/1/ USD	01/01/2024	12/31/9999
Tracking no: 1000987856						

Item Text:

Material Type : CRHRUS Material Type Description : CRU HOT ROLL STEEL/MW-USD Weight (including Dress) : 142.3 LB Original Base
0.4287 Old Base : 0.4307 New Base : 0.3837 Delta : -0.047 PO Change : -6.69 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-40	Raw-6	Fab-2
Tooling Capacity	50000	Daily-50000
Work Pattern	002/	8.00
Packaging	198	CHRYSLER
Packaging Price	5.00	

This contract is available for Mopar use

Previous PO-
Previouspart#
Ship To:
Packaging:Returnable

Seller agrees to sell and deliver the goods and services specified in FCA's order in accordance to the terms and conditions contained in the order. Standard that is referenced in the order, the Global General Terms and Conditions - Direct Material - 01/01/2022. The terms of this form and any attached documents referenced in this order, which contain the entire and final agreement between FCA and Seller, shall control and supersede any prior or contemporaneous negotiations or agreements regarding this order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text ID text are currently published on <https://app-ext.chrysler.com/pdts/>. By accepting the order, the Seller acknowledges having actual knowledge of the text of the reference instructions and the General Terms and Conditions. FCA's order expressly takes precedence to the terms of the order, and any additional or different terms, whether contained in Seller's terms or otherwise, are rejected unless expressly agreed to by FCA. Seller specifically waives its agreed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA Electronic Data Interchange system or delivered to Seller in a paper or email format. Orders relating to Requests for Quotation (RFQs) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material; however, FCA acknowledges and agrees that FCA's Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ that resulted in final contract. Requests for such Production and Mopar Purchasing General Terms and Conditions will continue to govern the Order. Aftermarket parts that are associated with a production / supply contract will be governed by the terms and conditions applicable to such production / supply contract. In order for aftermarket parts to be considered associated with a production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production assembly, or (b) serviceable components of the production assembly, or (c) parts containing components of the production assembly.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11270137

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	07/15/2019 through life of the program OAI	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	USD		
Document Currency:	12/31/9999		
Expiration Date:			
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 TROY MI 48098-4599 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

Standard Text ID: 294, 399, 471A, 098A, 699, 156, 284

Header Text:

6/26/2023 This Order reflects prior communications on pricing 07/05/2021 Contract # 0011270137 for part #06512925AA created on 07/15/2019 for REQ# 1000004908 supplier committed price reduction of 3% effective on 01/01/2024 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur 07/05/2021 Contract # 0011270137 for part #06512925AA created on 07/15/2019 for REQ# 1000004908 supplier committed price reduction of 3% effective on 01/01/2023 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur 07/05/2021 Contract # 0011270137 for part #06512925AA created on 07/15/2019 for REQ# 1000004908 supplier committed price reduction of 3% effective on 01/01/2022 per Buyer Fabian Turmalaj (O2G) Processed by: Katarzyna Kocur 7/26/2019 Contract# 11270137 for part# 06512925AA created on 07/15/2019 for RFQ # 1000004908 supplier committed price reduction of 3 % effective on 01/01/2023 per buyer James Scott (O4J). 7/26/2019 Contract# 11270137 for part# 06512925AA created on 07/15/2019 for RFQ # 1000004908 supplier committed price reduction of 3 % effective on 01/01/2022 per buyer James Scott (O4J).

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11428347

Version

Document Details	Buyer: L5X	Requester
Original Document Date: 12/16/2020 through life of the program OAI Document Type: USD Document Currency: USD Expiration Date: 12/31/9999	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

Reason for Change as of 01/02/2024

Line Item 00130 Version REVISE 06513626AA CANCEL

Line Item 00140 Version REVISE Add new line 06513626AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
140	06513626AA SC&WA/HEX.FLG.HD-CONE.WASH.HEX.DRIVE,MAT Tracking no: 1001160871	1.000	EA	693.56/1/ USD	01/01/2024	12/31/9999

Item text:

Material Type : \$80 US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dress) : 0.28 LB Original

Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.01 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-40	Raw-6	Feb-2	Weekly-300000	Previous PO-
Tooling Capacity	60000	Daily-60000	00005	Previouspart#
Work Pattern	003/	8.00	CHRYSLER	Ship To:
Packaging				Packaging:Returnable
Packaging Price				

This contract is available for Mopar use

Standard Text ID: 294.099.399.728.471A.098A.699.156.284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 4/11/2023: Updated Module Code to 10291. Updated Partner Functions: MN

[illegible]

9

RECEIVED by MSC2/16/2026 6:33:37 PM



FINANCIAL CREDIT ASSOCIATES, L.P.

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11428347

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	12/16/2020 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incofirms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

to 10291, RL to 10291 GS to 10291, Plant 9126, per MPAB report on contract 0011428347 for PN 06513626AA.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11428347

Version

Document Details		Buyer: L5X		Requester	
Original Document Date:	12/16/2020 through life of the program	Ilvi Peshku			
Document Type:	OAI	Phone #:734 392 4174			
Document Currency:	USD	ilvi.peshku@stellantis.com			
Expiration Date:	12/31/9999				
Vendor Address		Delivery Details		Invoice Information	
KAMAX INC		Incoterms: FCA		Payment Terms: XLSA	
500 W Long Lake Rd		Delivery Address:		NET 60 DAYS	
TROY MI 48098-4599 US		Mfg Location: 30648 B		Invoice Instructions:	
Vendor Code: 30648		LAPEER MI 48446-8366 US		All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227.	
		Ship From: 30648 B			
		LAPEER MI 48446-8366 US			
		Rel Location: 30648			
		TROY MI 48098-4599 US		CAP Phone Number: (844)-289-1227	

Reason for Change as of 01/02/2024

Line Item 00130 Version REVISE 06513626AA CANCEL

Line Item 00140, Version REVISE Add new line 06513626AA

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
140	06513626AA SC&WA/HEX.FLG.HD-CONE.WASH.HEX.DRIVE.MAT Tracking no: 1001160871	1.000	EA	693.567/ USD	01/01/2024	12/31/9999

Item text:

Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Dross) : 0.28 LB Original

Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.01 Effective Date : 01/01/2024

This order is for approximately 65% - 100% of our requirements.

Lead Time-40	Raw-6	Fab-2
Tooling Capacity	60000	Daily-60000
Work Pattern	003/	8.00
Packaging		Weekly-300000
Packaging Price		00005
		CHRYSLER

This contract is available for Mopar use

Standard Text ID: 294, 099, 399, 728, 471A, 098A, 699, 156, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 4/11/2023: Updated Module Code to 10291. Updated Partner Functions: MN

Seller agrees, to extend and deliver the goods and services specified in FCA's order in accordance to the terms and conditions contained in the order. Standard Text ID's referenced in the order, the Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, and which constitute the entire and final agreement between FCA and Seller and cancel and supersede any prior or contemporaneous negotiations or agreements regarding the order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text ID's that are currently published on <https://ssa.ortho.chrysler.com/portal/gtc>. By accepting the order, the Seller acknowledges having actual knowledge of the text of the referenced instruction, and the General Terms and Conditions. FCA's order expressly limits acceptance to the terms of the order and any additional or different terms, whether contained in Seller's invoice presented by Seller are rejected unless expressly agreed to by FCA. Seller specifically waives its right of acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's electronic data interchange system or delivered to Seller in a paper or email format. Orders relating to Requests for Quotation (RFQs) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions. Direct Material; however, FCA acknowledges and agrees that FCA Production and Mopar Purchasing General Terms and Conditions will continue to govern the Order. All material sold that is not associated with a production / supply contract will be governed by the terms and conditions applicable to such production / supply contract. In order for material to be considered associated with a production / supply contract, the alternate of parts must be either: (a) parts with the same part number as the production assembly, whether under a production / supply contract or otherwise, (b) revisionable components of the production assembly, or (c) its containing components of the production assembly.



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11428347

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	12/16/2020 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OAI		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address	Delivery Details		
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: 30648 B Mfg Location: LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		
	Invoice Information		
	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		
	CAP Phone Number: (844)-289-1227		

to 10291, RL to 10291 GS to 10291, Plant 9126, per MPAB report on contract 0011428347 for PN 06513626AA.

Contract: 11533984		Version	
Buyer: L5X		Requester	
Document Details Original Document Date: 05/19/2022 through life of the program OA1 Document Type: USD Document Currency: 12/31/9999 Expiration Date: 12/31/9999 Vendor Address KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Delivery Details Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	
Invoice Information Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		CAP Phone Number: (844)-289-1227	
Reason for Change as of 01/02/2024			
Line Item 00160 Version REVISE 06513708AA CANCEL			
Line Item 00170 , Version REVISE Add new line 06513708AA			
Line Item 00170 Version REVISE 06513708AA CANCEL			
Line Item 00180 , Version REVISE Add new line 06513708AA			
Item	Material	Quantity	Unit Price / Per / Currency
180	06513708AA SC/HEX.FLG.HD-FULL.BODY.KUKA.PT Tracking no: 1001286768	1.000	EA 1,415.58/1/ USD
		Pricing Start Date	Pricing End Date
		01/01/2024	12/31/9999
Item text:			
Material Type : S001US Material Type Description : SCRAP STEEL/AMM CHIC-#1 BUSHEL-USD Weight (Including Dross) : 850.0 LB Original Base : 0.1404 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : 01/01/2024			
This order is for approximately 65% - 100% of our requirements.			
Lead Time-40	Raw-6	Fab-2	Previous PO-
Tooling Capacity	50000	Daily-50000	Previouspart#
Work Pattern	002/	8.00	Ship To:
Packaging			Packaging:Returnable
Packaging Price			
This contract is available for Mopar use			

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RECEIVED by MSC 2/16/2026 6:33:37 PM



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11533984

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	05/19/2022 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

Standard Text ID: 294, 099, 728, 399, 471A, 098A, 699, 156, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 05/19/2022 Contractual price reduction of 3.00 % effective 01/01/2027 added from accepted RFQ # 1000024884 05/19/2022 Contractual price reduction of 3.00 % effective 01/01/2026 added from accepted RFQ # 1000024884 05/19/2022 Contractual price reduction of 3.00 % effective 01/01/2025 added from accepted RFQ # 1000024884

Contract: 11533984		Version	
Document Details		Buyer: L5X	Requester
Original Document Date: 05/19/2022 through life of the program OAI		Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type: USD Document Currency: 12/31/9999			
Expiration Date:			
Vendor Address		Invoice Information	
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.	
		CAP Phone Number: (844)-289-1227	
Reason for Change as of 01/02/2024			
Line Item 00160 Version REVISE 06513708AA CANCEL			
Line Item 00170 , Version REVISE Add new line 06513708AA			
Line Item 00170 Version REVISE 06513708AA CANCEL			
Line Item 00180 , Version REVISE Add new line 06513708AA			
Item	Material	Quantity	UOM
180	06513708AA SC/HEX.FLG.HD-FULLBODY.KUKA.PT	1.000	EA
Tracking no: 1001286768		Unit Price / Per / Currency	Pricing Start Date
		1,415.58/1/ USD	01/01/2024
			Pricing End Date 12/31/9999
Item text:			
Material Type : S001US Material Type Description : SCRAP STEEL/AMM CHIC-#1 BUSHEL-USD Weight (Including Dross) : 850.0 LB Original Base : 0.1404 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -19.04 Effective Date : 01/01/2024			
This order is for approximately 65% - 100% of our requirements.			
Lead Time-40	Raw-6	Previous PO-	
Tooling Capacity	50000	Previouspart#	
Work Pattern	002/	Ship To:	
Packaging		Packaging:Returnable	
Packaging Price			
This contract is available for Mopar use			

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FCA US LLC

1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 01/02/2024

Contract: 11533984

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	05/19/2022 through life of the program	Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com	
Document Type:	OA1		
Document Currency:	USD		
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227. CAP Phone Number: (844)-289-1227

Standard Text ID: 294, 099, 728, 399, 471A, 098A, 699, 156, 284

Header Text:

6/28/2023 This Order reflects prior communications on pricing 05/19/2022 Contractual price reduction of 3.00 % effective 01/01/2027 added from accepted RFQ # 1000024884 05/19/2022 Contractual price reduction of 3.00 % effective 01/01/2026 added from accepted RFQ # 1000024884 05/19/2022 Contractual price reduction of 3.00 % effective 01/01/2025 added from accepted RFQ # 1000024884



North America - Chrysler LLC

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 02/02/2024

Contract: 11651198

Version

Document Details		Buyer: LSX	Requester
Original Document Date:	01/29/2024 through life of the program	Ilvi Peshku	
Document Type:	OA1	Phone #: 734 392 4174	
Document Currency:	USD	ilvi.peshku@stellantis.com	
Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
ALL STATE FASTENER CORPORATION		Incoterms: FCA	Payment Terms: XLSA
E 12 Mile Rd		Delivery Address:	NET 60 DAYS
Roseville MI 48066 US		Mfg Location: 12678	Invoice Instructions:
Vendor Code: 12678		Roseville MI 48066 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 12678	
		Roseville MI 48066 US	
		Ref Location: 12678 A	CAP Phone Number: (844)-289-1227
		EAST POINTE MI 48021-0356 US	

Reason for Change as of 02/02/2024

THE FOLLOWING PARTS ADDED FROM RFQ# 1000036324

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
10	06513832AA SC/6LOBEEXT.HD-EXT.6LOBE HEADER.PT.RED Tracking no: 1001305738	1,000	EA	0.2811/ USD	01/01/1900	12/31/9999

This order is for approximately 65% - 100% of our requirements.

Lead Time-55	Raw-6	Feb-2	Previous PO-
Tooling Capacity	56500	Daily-56500	Previouspart#
Work Pattern	001/	8.00	Ship To:
Packaging			Packaging:Returnable
Packaging Price			

Standard Text ID: 450, 099, 471A, 098A, 699, 399, 294, 728, 156

FCA APP507

Seller agrees to sell and deliver the goods and services specified in FCA's order in accordance to the terms and conditions contained in the order. Standard Text ID's referenced in the order, the Global General Terms and Conditions - Direct Material - 01/01/2022, the terms of this form and any signed documents referenced in this order, which constitute the entire agreement between FCA and Seller, and cancel and supersede any prior or contemporaneous negotiations or agreements regarding the order. The Global General Terms and Conditions - Direct Material - 01/01/2022 and Standard Text ID's that are currently published at: <https://goextra.chrysler.com/fcasglct/>. By accepting the order, the Seller acknowledges having actual knowledge of the text of the referenced instructions and the General Terms and Conditions. FCA's order expressly prohibits acceptance of the order and any additional or different terms, whether contained in Seller's form or otherwise presented by Seller, are rejected unless expressly agreed to by FCA. Seller specifically waives its signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange system or delivered to Seller in a paper or email format. Orders relating to Requests for Quotation (RFQs) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Material; however, FCA acknowledges and agrees that if FCA Production and Material Purchasing General Terms and Conditions were incorporated in the RFQ transmitted in final contract learning then, such production and material purchasing General Terms and Conditions shall continue to govern the Order. After market parts that are assembled with a production / supply contract applicable to such production / supply contract. In order for aftermarket parts to be considered as production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production assembly, or (b) parts containing components of the production assembly, or (c) parts containing components of the production assembly.

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 02/02/2024

Document Details		Buyer: L5X		Contract: 11651198		Version	
Original Document Date: 01/29/2024 through life of the program OA1		Ilvi Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com				Requester	
Document Type: USD Document Currency: 12/31/9999							
Vendor Address		Delivery Details		Invoice Information			
ALL STATE FASTENER CORPORATION E 12 Mile Rd Roseville MI 48066 US Vendor Code: 12678		Incoterms: FCA Delivery Address: 12678 Mfg Location: 12678 Roseville MI 48066 US Ship From: 12678 Roseville MI 48066 US Ref Location: 12678 A EAST POINTE MI 48021-0356 US		Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.		CAP Phone Number: (844)-289-1227	
Reason for Change as of 02/02/2024 THE FOLLOWING PARTS ADDED FROM RFQ# 1000036324							
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date	
10	06513832AA SC/6LOBE.EXT.HD-EXT.6LOBE.HEADER.PT.RED Tracking no: 1001305738	1.000	EA	0.2871 / USD	01/01/1900	12/31/9999	
This order is for approximately 65% - 100% of our requirements.							
Lead Time-55	Raw-6	Fab-2					
Tooling Capacity	56500	Daily-56500	Weekly-282500				
Work Pattern	001/	8:00	00005				
Packaging			CHRYSLER				
Packaging Price			Previous PO- Previous part# Ship To: Packaging: Returnable				
Standard Text ID: 450, 099, 471A, 098A, 699, 399, 294, 728, 156							

[illegible]

Contract: 11546896

Version

Document Details	Buyer: LSX	Requester
Original Document Date: 07/15/2022 through life of the program OA1 Document Type: USD Document Currency: 12/31/9999 Expiration Date:	ilvi Peshku Phone #:734 392 4174 ilvi.peshku@stellantis.com	
Vendor Address	Delivery Details	Invoice Information
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648	Incoterms: FCA Delivery Address: Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US	Payment Terms: XLZA NET 45 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call(844) 289-1227. CAP Phone Number: (844)-289-1227

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
60	06513933AA SC&WA/HEX.HD-CONE.WASH.FULL.BODY.LOCK.PA Tracking no: 1001308248	1.000	EA	65.14/100/ USD	01/01/2023	12/31/9999

This order is for approximately 65% - 100% of our requirements.

Lead Time-40	Raw-6	Fab-2	Weekly-125000	Previous PO-
Tooling Capacity	25000	Daily-25000	00005	Previouspart #
Work Pattern	002/	8.00	NONE	Ship To:
Packaging		198		Packaging:Returnable
Packaging Price		0.05		

This contract is available for Mopar use

Standard Text ID: 294, 399, 471A, 699, 098A, 156

Header Text:

01/25/2024-UPDATED MPAB SUPPLIER PAYMENT TERMS FROM XLZE TO XLZG. PER BUYER ILV I PESHKU. EBUCK 2024-0119-12, ODA-PTCR20230921.6761FA
7/19/22: Updated module code 58145 for plant 2459. MN 58145, GS 58145 per Michelle Desempelaere request on P/N 06513933AA
- On Missing Cost report, updated per MPAB report. 4/29/2020 This Order reflects prior communications on pricing
3/12/19: Modular payment terms updated from XLBA - Net 25th Prox to XLZE - Net 40 Date: 5/2/17 Contract - Add/Update Module Pay As
Built (MPAB) Vendor Code From: Blank To: 58145 Mobis, FCA Plant Code: 2459 Toledo Supplier Park

FGA APP 509



FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 02/02/2024

Contract: 11546896

Version

Document Details		Buyer: L5X	Requester
Original Document Date:	07/15/2022 through life of the program	Ilvi Peshku	
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Expiration Date:	12/31/9999		
Vendor Address		Delivery Details	Invoice Information
KAMAX INC		Incoterms: FCA	Payment Terms: XLZA
500 W Long Lake Rd		Delivery Address:	NET 45 DAYS
TROY MI 48098-4599 US		Mfg Location: 30648 B	Invoice Instructions:
Vendor Code: 30648		LAPEER MI 48446-8366 US	All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.
		Ship From: 30648 B	
		LAPEER MI 48446-8366 US	
		Rel Location: 30648	
		TROY MI 48098-4599 US	CAP Phone Number: (844)-289-1227

Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date
60	06513933AA SC&WA/HEX.HD-CONE.WASH.FULL.BODY.LOCK.PA Tracking no: 1001308248	1.000	EA	65.14/100/ USD	01/01/2023	12/31/9999

This order is for approximately 65% - 100% of our requirements.

Lead Time-40	Raw-6	Fab-2	Weekly-125000	Previous PO-
Tooling Capacity	25000	Daily-25000	00005	Previouspart#
Work Pattern	002/	8.00	NONE	Ship To:
Packaging	198			Packaging:Returnable
Packaging Price	0.05			

This contract is available for Mopar use

Standard Text ID: 294, 399, 471A, 699, 098A, 156

Header Text:

01/25/2024-UPDATED MPAB SUPPLIER PAYMENT TERMS FROM XLZE TO XLZG. PER BUYER ILVI PESHKU, EBUCK 2024-0119-12, ODA-PTCR20230921.6761FA
7/19/22: Updated module code 58145 for plant 2459. MN 58145, RL 58145, GS 58145 per Michelle Desempelare request on P/N 06513933AA
contract 11546896 - On Missing Cost report, updated per MPAB report, 4/29/2020 This Order reflects prior communications on pricing
3/12/19: Modular payment terms updated from XLBA - Net 25th Prox to XLZE - Net 40 Date: 5/2/17 Contract - Add/Update Module Pay As
Built (MPAB) Vendor Code From: Blank To: 58145 Mobis,, FCA Plant Code: 2459 Toledo Supplier Park

FCA APP 510

Seller agrees to deliver the goods and services specified in FCA's order in accordance to the Terms and Conditions contained in the order. Should a Text be required in the order, the Global General Terms and Conditions - Direct Mailer, 01-01-2022, the Terms of this form and any signed documents referenced in this order, which constitute the entire and final agreement between FCA and Seller, and which shall supersede any prior or contemporaneous negotiations or agreements regarding the order. The Global General Terms and Conditions - Direct Mailer, 01-01-2022 and Standard Text ID: 294, 399, 471A, 699, 098A, 156 are hereby incorporated by reference into this order. By accepting the order, the Seller acknowledges having actual knowledge of the full text of the referenced documents and agrees to be bound by the terms and conditions of the order. FCA's order expressly binds acceptance to the terms of the order and any additional or different terms, whether contained in Seller's terms, conditions, presentation by Seller or rejected unless expressly agreed to by FCA. Seller specifically waives its signed acceptance of the order. "Order" means a purchase order transmitted to Seller via FCA's Electronic Data Interchange System or delivered to Seller in a paper or email format. Orders relating to Requests for Quotation (RFQ) issued prior to January 1, 2022 may include reference to the Global General Terms and Conditions - Direct Mailer, however, FCA acknowledges and agrees that if FCA Production and Mopar Purchasing General Terms and Conditions were incorporated in the RFQ, they required in that contract sourcing from FCA's production and Mopar Purchasing General Terms and Conditions will continue to govern the Order. Aftermarket parts that are associated with a production / supply contract will be governed by the terms and conditions applicable to such production / supply contract, in order for aftermarket parts to be considered associated with a production / supply contract, the aftermarket parts must be either: (a) parts with the same part number as the production / supply contract or otherwise, (b) serviceable components of the production assembly, or (c) kits containing components of the production assembly.

FCA US LLC 1000 Chrysler Drive Auburn Hills MI 48326 US

Last Transmission Date: 02/02/2024

Document Details		Buyer: L5X		Contract: 11606034		Version	
Original Document Date: 05/25/2023 through life of the program OA1		ILVI Peshku Phone #: 734 392 4174 ilvi.peshku@stellantis.com		Requester			
Document Type: USD Document Currency: USD Expiration Date: 12/31/9999							
Vendor Address		Delivery Details		Invoice Information			
KAMAX INC 500 W Long Lake Rd TROY MI 48098-4599 US Vendor Code: 30648		Incoterms: FCA Delivery Address: 30648 B Mfg Location: 30648 B LAPEER MI 48446-8366 US Ship From: 30648 B LAPEER MI 48446-8366 US Rel Location: 30648 TROY MI 48098-4599 US		Payment Terms: XLSA NET 60 DAYS Invoice Instructions: All invoices must be submitted electronically. For CAP related inquiries, please call (844) 289-1227.			
				CAP Phone Number: (844)-289-1227			
Item	Material	Quantity	UOM	Unit Price / Per / Currency	Pricing Start Date	Pricing End Date	
140	106514068AA SC&WA/HEX.FLG.HD-CONE.WASH.HEX.DRIVE Tracking no: 30502X01	1.000	EA	2,800.00/1/ USD	01/01/2024	12/31/9999	
Item text:							
Material Type : S801US Material Type Description : SCRAP STEEL/AMM CHIC-#1 DEALER-USD Weight (Including Gross) : 0.28 LB Original Base : 0.1017 Old Base : 0.2054 New Base : 0.183 Delta : -0.0224 PO Change : -0.01 Effective Date : 01/01/2024							
This order is for approximately 65% - 100% of our requirements.							
Lead Time-40	Raw-6	Fab-2	Previous PO-				
Tooling Capacity	60000	Daily-60000	Previous part#				
Work Pattern	003/	8.00	Ship To:				
Packaging			Packaging: Returnable				
Packaging Price							
This contract is available for Mopar use							
Standard Text ID: 294, 099, 399, 728, 471A, 098A, 699, 156, 284							
Header Text:							
01/25/2024-UPDATED MPAB SUPPLIER PAYMENT TERMS FROM XLZA TO XLZG. PER BUYER ILVI PESHKU, EBUCK 2024-0119-12, ODA-PTCR20230921. 6761FA							
4/11/2023: Updated Module Code to 10291. Updated Partner Functions: MN to 10291, RL to 10291, Plant 9126, per MPAB							
report on contract 0011428347 for PN 06513626AA.							

[illegible]

Last Transmission Date: 02/02/2024

ICAPP 12

[illegible]

EXHIBIT 3

THIS DOCUMENT IS THE REGIONAL GENERAL TERMS AND CONDITIONS EXHIBIT FOR NORTH AMERICA AS REFERENCED ON THE CLICK-THROUGH AGREEMENT ON THE SUPPLIER PORTAL AND IS EXHIBIT A FOR NORTH AMERICA AS REFERENCED IN THE STELLANTIS GLOBAL GENERAL TERMS AND CONDITIONS – DIRECT MATERIAL (“GLOBAL GTCS”). TO THE EXTENT THIS EXHIBIT A CONFLICTS OR IS INCONSISTENT WITH THE GLOBAL GTCS, THIS EXHIBIT A SHALL CONTROL.

PRODUCTION AND MOPAR PURCHASING GENERAL TERMS AND CONDITIONS

Introduction. Seller and FCA US LLC (the “Parties”) acknowledge the following mutually beneficial goals and objectives in entering into this Order: (i) to ensure a reliable and timely supply of goods covered by the Order; (ii) to implement common or complementary processes to forecast necessary quantities, place orders, ship, receive and make payments for goods; (iii) to identify, contain and resolve promptly and fairly any issues as to timeliness and quality of goods delivered; and (iv) collaboratively to identify opportunities and implement cost savings measures related to the goods covered by the Order and the processes of creating, shipping, receiving, and Seller’s using of those goods, all in accordance with applicable law and the specific terms and conditions of the Order. This statement of these shared goals and objectives is intended to be a general introduction to the Order and is not intended to expand or limit the scope of the Parties’ obligations or alter the plain meaning of this Order’s terms and conditions as set forth hereinafter. However, to the extent the terms and conditions of this Order are unclear or ambiguous, such terms and conditions are to be construed so as to be consistent with the goals and objectives set forth herein.

1. **AGREEMENT.** Seller agrees to sell and deliver the goods or services specified in FCA US’s Order in ACCORDANCE WITH THESE GENERAL TERMS AND CONDITIONS CONTAINED IN THE ORDER, INCLUDING THE SUPPLEMENTAL CLAUSES REFERENCED IN THE ORDER, AND ANY DOCUMENTS SPECIFICALLY INCORPORATED IN THE ORDER, all of which constitute the entire and final agreement of the Parties and cancels and supersedes any prior or contemporaneous negotiation, agreements, or information provided to Seller as background in any Request for Proposal. The supplemental clauses referenced herein are as published on the date of the Order or on the date of any amendment to the Order, in each case as published on FCA US’s supplier portal (the “FCA US Supplier Portal”). Seller must have an active login to access the FCA US Supplier Portal.

By accepting the Order, Seller acknowledges having actual knowledge of the text of the referenced clauses and documents. FCA US’S ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS OF THE ORDER AND ANY ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN SELLER’S FORMS OR OTHERWISE PRESENTED BY SELLER AT ANY TIME, ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY FCA US BY INCORPORATION IN THE ORDER. “Order” as used in these General Terms and Conditions means a purchase order transmitted electronically to Seller by FCA US or delivered to Seller in a paper format. The Order may only be modified by FCA US’s issuance of an amended Order to Seller.

2. **ACCEPTANCE.** This Order constitutes FCA US’s offer to Seller and is not binding on FCA US until accepted by Seller. Seller accepts this Order:
 - a. if Seller acknowledges in writing (including any electronic communication) its acceptance of the Order,
 - b. if Seller performs any work or renders any services related to goods to be specially manufactured for FCA US pursuant to the Order after Seller’s receipt of the Order; or
 - c. if Seller delivers any of the goods or provides any of the services. SELLER SPECIFICALLY WAIVES ANY REQUIREMENT FOR SIGNED ACCEPTANCE OF THE ORDER, AND SELLER AND FCA US EACH WAIVE ANY DEFENSE TO THE VALIDITY AND ENFORCEABILITY OF THE ORDER ARISING FROM THE ELECTRONIC SUBMISSION OF THE ORDER TO SELLER AND SELLER’S ACCEPTANCE OF THE ORDER IN ACCORDANCE WITH THIS CLAUSE 2.

3. **DELIVERY.** Time is of the essence. Delivery must be effected within the time specified in the Order, or in accordance with FCA US's releases, broadcasts, and/or written requirements; provided, however, in the event FCA US's releases, broadcasts, or written requirements request a delivery outside of Seller's stated lead time (as set forth in the Order), FCA US and Seller will agree on a delivery time as proximate to FCA US's original request as is commercially reasonable. If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by FCA US as a result of Seller's non-performance, including but not limited to any premium transportation or other costs incurred by FCA US in its efforts to mitigate the impact of Seller's late performance on its manufacturing operations, will be at Seller's expense. Seller will make commercially reasonable preparations for the delivery of goods and/or the performance of services in accordance with FCA US's timing needs, including, as applicable, compliance with FCA US's IT specifications found on the FCA US Supplier Portal, and will make reasonable progress toward completing any required engineering and design activities. The term "broadcast," as used herein, means an electronic communication which indicates the parts requirements for the FCA US assembly plants. For Pay as Built (PAB) or sequencers, the broadcast is the P/N sequence. For Modular Pay as Built (MPAB), the broadcast is the collection of part numbers required to be built into the assembly as well as the sequence.
4. **PACKING, MARKING AND SHIPMENT.**
 - a. Seller will pack and mark goods and make shipments (including shipping on Saturdays and holidays, when requested) in accordance with FCA US's instructions, comply with all carrier requirements and assure delivery free of damage and deterioration. All shipments of goods to FCA US's facilities must include two packing slips, or four packing slips in the case of shipments directed to a FCA US consolidation point. Whenever shipment is made by truck, Seller will enclose one of the packing slips (or packing slip sets in the case of multiple item shipments) in an envelope and Seller will record written instructions on the bill of lading directing the delivering driver to deliver the envelope to FCA US's traffic representative upon arrival at FCA US's facility. Seller is responsible for the goods until delivery at the designated delivery point in the Order.
 - b. FCA US may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipments of the goods from the delivery point accordingly. Seller will comply with all of FCA US's transportation routing instructions, including, but not limited to, mode of transportation, utilization of assigned carrier and identification of the shipping point. Seller will be responsible for all excess costs incurred because of its failure to comply with FCA US's transportation instructions or delivery requirements/schedules.
5. **VOLUME PROJECTIONS, CAPACITY, REQUIREMENTS, AND RELEASE AUTHORIZATION.**
 - a. FCA US may provide Seller with estimates, forecasts, or projections of its anticipated future quantity requirements for goods. Each of these expressions of anticipated future requirements for goods is provided for informational purposes only, and is not intended to be, and is not, a commitment by FCA US to buy those future requirements.
 - b. (i) Seller must have a tooling and production plan in place that will enable Seller to supply FCA US's peak daily, weekly and annual requirements for the goods, including service parts, and Seller's capacity as stated in the Order will be based on such tooling and production plan. The Order may cover goods that are manufactured by Seller using the same manufacturing process and tooling that Seller uses to manufacture other goods not covered by the Order ("Common Process Group goods"). If the Order covers a Common Process Group good, Seller's total capacity for all goods within the same Common Process Group, including the goods covered by the Order, will be stated in the FCA US Capacity Database or its successor database. In the event

FCA US's peak requirements exceed Seller's capacity stated in the Order, FCA US and Seller will, upon request of either FCA US or Seller, meet promptly consistent with FCA US's capacity management policies (including its volume variance system and capacity database) to discuss what, if any, additional capital investments, together with expenses directly related to such increased demands, are reasonably required by Seller to continue to meet such peak requirements, after which Seller may submit a claim for a price adjustment or new tooling purchase order as a result of the need for additional capital investments in writing within five (5) days following such meeting. FCA US will have the right to verify all claims regarding the need for additional capital investment and the sole discretion to determine whether to accept such charges or to source peak requirements beyond Seller's capacity stated in the Order elsewhere. No changes in the Order or these General Terms and Conditions, other than those changes in price or tooling requests directly tied to the need for additional capital investments agreed to between Seller and FCA US pursuant to this Clause 5, will be made. (ii) Seller must submit accurate information into the FCA US capacity management systems and databases in accordance with FCA US's instructions and manuals provided to Seller from time to time. Such information may include, without limitation, current and potential tool capacity, work pattern, overtime, and parts capabilities regarding Common Process Group goods and must consider not only Seller's capacity limits but any constraints faced by Seller's suppliers, it being understood that Seller is responsible for monitoring its suppliers' capacity constraints and limitations, regardless of whether such supplier is a directed supplier. FCA US may withhold payment for Tooling (as defined in Clause 10 of these General Terms and Conditions) used to manufacture the goods covered by the Order until Seller submits all required information into the FCA US capacity management systems and databases. FCA US is entitled to rely on information Seller submits into such systems and databases in planning FCA US's production schedule.

- c. When deliveries are specified to be in accordance with FCA US's written releases, Seller will not fabricate or assemble any goods, nor procure required materials, nor ship any supplies, except to the extent authorized by such written releases or provisions of this Order specifying minimum fabrication or delivery requirements.
6. **INSPECTION AND REJECTIONS; QUALITY.** FCA US may, in its sole discretion, inspect, evaluate, and test all goods (including all Tooling, fixtures, all equipment, and all material used directly or indirectly in manufacture of the goods), and all services at times and places designated by FCA US. Seller will provide and maintain a Quality Management System that complies with ISO/TS 16949, the "FCA US Group LLC Customer Specification Requirements for use with ISO/TS 16949," the "Process Planning & Audit" manual and any document specified in the "Quality Management System" application on the FCA US Supplier Portal or any successor website. Seller will promptly comply with any revisions to ISO/TS 16949, the "FCA US Group LLC Customer Specific Requirements for use with ISO/TS 16949," the "Process Planning & Audit" manual, and any document specified in the "FCA US Quality Management System" application and "Supplier Quality Manuals and Forms" reference on the FCA US Supplier Portal or any of its successors. Seller will perform inspections as designated by FCA US and Seller will make inspection systems, procedures and records available to FCA US upon request. Seller must be, and remain throughout the Term, registered with the FCA US electronic FCA US Quality Management System ("CQMS") and any other electronic Advanced Quality Planning (AQP) system designated by FCA US. Notwithstanding payment or any prior inspection of goods, FCA US may revoke acceptance, reject or require correction and return the goods to Seller (at Seller's expense and risk of loss) regarding any goods delivered or services rendered that do not conform to applicable requirements. The Order is issued for the goods specifically identified in the Order and any substitution of material, without FCA US's prior written approval, will be a breach of the Order. Without limiting its remedies, after providing notice to Seller, FCA US may (a) replace or correct any non-conforming goods or services and charge or debit Seller the cost of such replacement or correction, (b) cancel the Order for default under Clause 21 hereof, (c) commence arbitration or other legal action to recover damages suffered by FCA US in

accordance with Clause 26 hereof, and/or (d) cause the removal of Seller as an approved FCA US supplier.

Seller will comply with all Third-Party Containment and Problem Resolution ("3CPR") program policies and project requirements for the 3CPR Web Based System, as updated from time to time, and documented on the FCA US Supplier Portal.

Within 24 hours of initiation by FCA US of a 3CPR project on suspect materials of Seller, Seller will hire the 3CPR Provider identified by FCA US for the purpose of undertaking the required 3CPR project at each affected facility. Seller is required to provide a fully funded minimum \$5,000 (USD or CAD) for projects in the U.S. or Canada and \$2,000 USD for projects in Mexico hard copy purchase order within twenty-four (24) hours of the creation of the 3CPR project. Seller will bear the costs of the 3CPR project. However, if Seller disputes the charges, FCA US will initially bear the costs of the 3CPR project and will, in its reasonable discretion, examine the extent to which 3CPR costs should be borne by FCA US and Seller, respectively, based on an allocation of responsibility.

7. **LABOR DISPUTES.** Seller will notify FCA US immediately of any actual or potential labor dispute affecting Seller or its suppliers which delays or threatens to delay timely performance of the Order, and will include all relevant information to FCA US. Seller will notify FCA US in writing three (3) months in advance of the expiration of any current labor contract of Seller. Seller will ensure that union representation is disclosed and updated in the supplier profile maintained by suppliers through the FCA US Supplier Portal or its successor system. Seller will notify FCA US of any change in union related status, such as contract ratification or extension, within twenty-four (24) hours of occurrence (or such other time as may be commercially practicable). Seller must submit a written contingency plan to FCA US Purchasing two (2) weeks prior to such contract expiration detailing how Seller plans to continue production in the event of a labor dispute. Any additional costs incurred from this plan will be at Seller's expense. The supply of goods described in this Clause 7 will be subject to FCA US's audit rights under Clause 29 of these General Terms and Conditions. Suppliers will be liable for any costs associated with part shortages or downtime (CLS or CLD) at an FCA US Assembly or Manufacturing plant due to a labor dispute.

8. **GENERAL WARRANTY.**

- a. Seller warrants that the goods or services will
 - i. comply with all performance standards and product characteristics, including without limitation specifications, drawings, descriptions or samples, furnished and/or specified by FCA US,
 - ii. be merchantable, and
 - iii. be free from defects in material and workmanship. Seller further warrants that to the extent that Seller designs any goods, or FCA US relies on Seller's expertise in any aspect of the design of the goods communicated by Seller to FCA US, those goods will be fit and sufficient for the purposes intended. The warranty term will be coterminous with the warranty extended to FCA US's customers by FCA US on the date of the Order, or any other date agreed upon by FCA US and Seller in the Order (except to the extent, prior to the commencement of initial volume production in connection with the applicable Request for Proposal, that FCA US and Seller agree that the goods must meet quality or durability requirements for a longer term, in which case the warranty term will be such longer term).
- b. Seller's liability for FCA US's expense of reimbursing warranty claims made by FCA US's dealers

due to Seller's breach of Clause 8(a) hereof or any warranties implied by law or otherwise made by Seller shall be determined in accordance with the Supplier Associated Warranty Reduction Program Policies and Procedures or any successor program or policies as published on the FCA US Supplier Portal (as referenced in Clause 1 hereof) on the date of the Order or on the date of any amendment to the Order.

- c. Seller further warrants that FCA US will receive good title upon delivery of goods, services, Tooling, fixtures, or equipment under this Order, free and clear of all liens and encumbrances and that all goods, services, Tooling, fixtures, or equipment will be free from any actual or claimed patent, copyright or trademark infringement.
 - d. These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by FCA US.
9. **PRICES.** The prices stated in this Order are firm and are not subject to adjustment for changes in volume, changes in the price of raw materials or labor, changes in currency valuation, or for any other reason, unless
- a. a clause specifically incorporated in the Order (with FCA US's written consent) expressly provides that the prices will be adjusted on a particular basis, and then only to the extent specified in that clause, or
 - b. a document specifically incorporated in the Order (with FCA US's written consent) expressly provides that the prices will be adjusted on a particular basis, and then only to the extent specified in that document.

10. **PROPERTY AND TOOLING.**

- a. **Property and Tooling.**
 - i. Tangible property of every description including without limitation all tools, equipment, material, drawings, manufacturing aides, dies, test and assembly fixtures, jigs, gauges, patterns, casting patterns, cavities, molds and documentation, including engineering specifications, PPAP books, and test reports together with any accessions, attachments, parts, accessories, substitutions, replacements, and appurtenances thereto that is necessary for the manufacture of component and service parts for FCA US ("Tooling") for which (i) FCA US issues a purchase order, or (ii) FCA US does not issue a purchase order, but which is used exclusively by Seller in connection with its manufacture of component and service parts for FCA US ("FCA US Tooling") is owned by, is property of, and is being held by Seller as a bailee at will for FCA US, except for Unpaid Tooling (as defined below). Upon payment in full of the applicable price for any item of Unpaid Tooling such item will thereafter be included in the definition of FCA US Tooling under the Order.

With respect to each item of FCA US Tooling, Seller grants to FCA US, at the time of payment for such FCA US Tooling, in addition to any other license granted to FCA US under this Order: a non-exclusive, world-wide, paid-up, irrevocable and perpetual license under any (i) intellectual property of Seller that is incorporated into or used to make or design the goods under the Order, and (ii) knowledge and know how concerning the use of such FCA US Tooling, in each case as necessary and sufficient to enable FCA US to make, have, offer for sale, import, export, or modify such goods or any vehicles that FCA US manufactures using such goods, and (ii) to ensure that FCA US can

make full beneficial use of the rights provided herein, Seller will provide the following: Tooling, dies, and molds for such goods, including without limitation, any computer aided design data for such Tooling, and in each as applicable, the specifications, bills of material, supplier information for any purchased components used in such Tooling, and manufacturing process information regarding such Tooling. In the case of Unpaid Tooling which is the subject of a purchase order, the applicable price under this Clause 10 will be the amount set forth in the applicable order less any payments already made by FCA US in respect of such Tooling and any amounts required to satisfy liens with respect to such Tooling. In all other cases, the applicable price under this Clause 10 will be the greater of net book value (defined as book value less depreciation applied to such Tooling by Seller using a consistently applied GAAP method) and orderly liquidation value, less any amounts required to satisfy liens with respect to such Tooling. FCA US reserves the right, in determining the applicable price for any payment under this Clause 10, to deduct appropriate amounts for incomplete or nonconforming Tooling. Seller acknowledges and agrees that FCA US is a third party beneficiary of any agreement between Seller and a party other than FCA US for the production of FCA US Tooling or Unpaid Tooling, and that FCA US will have ownership of, and access to, FCA US Tooling and/or Unpaid Tooling (if subject to an ownership dispute) held by any such party. Seller will comply with FCA US's instructions concerning bailed property and will keep Unpaid Tooling and FCA US Tooling (whether or not completed) in its possession and/or control, tagged and safely stored apart from Seller's property, in good condition, fully covered by insurance, free of liens and encumbrances (other than statutory liens) and will replace or repair any such Tooling when lost, damaged or destroyed. Seller will not relocate any Unpaid Tooling or FCA US Tooling without FCA US's consent. Without limiting any of FCA US's rights and remedies under this Clause 10 (including, specifically, FCA US's ownership of FCA US Tooling), Seller also grants FCA US a purchase money security interest in and to all FCA US Tooling, and Seller, upon request from FCA US, agrees to reasonably cooperate in any act necessary to perfect or otherwise establish the priority of such interest, including, without limitation, identifying the date on which Seller takes possession of the FCA US Tooling and the filing of applicable financing statements.

- ii. For purposes of the Order, the term "Unpaid Tooling" means any FCA US Tooling for which FCA US has not fully paid the applicable price (as calculated above) for such Tooling to either Seller or any of its predecessors-in-interest as defined above.
- iii. Neither Seller, nor any other person or entity other than FCA US has any right, title or interest in the FCA US Tooling other than Seller's obligation, subject to FCA US's respective unfettered discretion, to use FCA US Tooling in the manufacture of FCA US's component and service parts.
- iv. In the event of a dispute between Seller and FCA US over the applicable price for Unpaid Tooling, the applicable price will be assumed to be the amount proffered by FCA US and FCA US will have the right to immediate possession and use of the Tooling pending resolution of the dispute (and Seller may not withhold delivery of possession of the Unpaid Tooling to FCA US pending such resolution), but will remain subject to any claim or right to payment of Seller for the disputed amounts (despite Seller's relinquishment of possession).
- v. Seller will submit all required information regarding FCA US Tooling through the FCA US "Tooling Process" system or its successor system, and will comply with all other requirements, policies, and procedures of FCA US regarding FCA US Tooling, including without limitation, use of the FCA US "Tool Record Form" or its successor.

- vi. Seller will adhere to the FCA US procedure in effect at the time for submitting requests for reimbursement for FCA US Tooling costs, including but not limited to the use of the FCA US "Tool Record Form" or its successor. All requests for reimbursement for tooling costs are subject to review, approval and audit by FCA US.
 - vii. All FCA US Tooling will be transferred as FCA US may direct at any time. If Seller makes any unauthorized transfer or re-location of FCA US Tooling, Seller will reimburse FCA US for any costs incurred by FCA US in returning the FCA US Tooling to FCA US or moving the FCA US Tooling as directed by FCA US. If FCA US determines in good faith that Seller has made any use of FCA US Tooling inconsistent with this Order or with FCA US's interest in such FCA US Tooling, then Seller acknowledges and agrees that (A) FCA US will have a lien on any proceeds obtained by Seller as a result of such inconsistent use, (B) FCA US will be entitled to have a constructive trust imposed on such proceeds, and Seller will disgorge such proceeds upon receipt of written notice from FCA US, and (C) the damages incurred by FCA US, including lost profits, as a result of such inconsistent use will be a claim owed to FCA US under Clause 14 hereof, and will entitle FCA US to the rights and remedies set forth in such Clause 14, including, without limitation, deduction, set-off, and recoupment. Seller will maintain internal control policies sufficient to prevent any such inconsistent use of FCA US Tooling or Unpaid Tooling by Seller or any of Seller's employees.
- b. Bailed Property.
- i. Property of every description, including but not limited to FCA US Tooling, and any sub-components, raw materials, and racks provided to Seller by FCA US in connection with Seller's performance of this Order (the "Bailed Property") is, and will at all times remain, the sole and exclusive property of, and is being held by Seller as a bailee at will for FCA US.
 - ii. Seller will take possession of the Bailed Property and keep such Bailed Property in its possession or control free from any loss or damage and safely stored apart from Seller's property marked to identify all Bailed Property in such location as the property of FCA US in a manner satisfactory to FCA US.
 - iii. Seller acknowledges that title to all such Bailed Property remains in FCA US, and that the Bailed Property will be subject to the direction and control of FCA US. Seller has no rights or interest in any Bailed Property except to use such Bailed Property as directed by FCA US and Seller cannot grant any rights or interest to any person including but not limited to an affiliate of Seller or a third party.
 - iv. Seller has no right to retain possession of any Bailed Property after receipt of a written demand, which may be given to Seller by FCA US at any time, for return of the Bailed Property.
 - v. Seller will not permit any act to be done to the Bailed Property which is not necessary for the performance of this Order.
 - vi. If this Order is terminated for any reason, FCA US will have the right to enter upon Seller's premises and remove all of the Bailed Property without recourse to any legal proceeding.
 - vii. Seller will notify all of its secured and judgment creditors that it is processing FCA US's

Bailed Property. Such notification will be given in a form, manner and at times reasonably acceptable to FCA US. To the extent permitted by law, Seller will not allow any liens (consensual or otherwise), security interests, encumbrances or claims of any nature to be imposed on the Bailed Property through Seller or as a result of Seller's actions. If a lien, security interest, encumbrance, or claim of any nature is imposed on the Bailed Property through Seller or as a result of Seller's actions, Seller will, to the extent permitted by law, immediately take all actions necessary to remove such lien, security interest, encumbrance, or claim.

- viii. Seller will follow FCA US's instructions regarding the Bailed Property, including without limitation incorporating Bailed Property in processed goods and shipping processed goods as FCA US may direct.
- ix. Seller will provide FCA US with reports periodically or as FCA US may, in its sole discretion, otherwise direct regarding the amount and status of the Bailed Property in Seller's possession or control.

11. **INSURANCE AND INDEMNIFICATION.**

- a. Insurance. Seller will obtain and continuously maintain in force during the Term (i) statutory worker's compensation insurance, (ii) employer's liability insurance, (iii) commercial general liability insurance, including contractual liability and products and completed operations liability, (iv) automobile liability insurance, including owned, hired and non-owned liability, (v) crime insurance, including employee theft, and (vi) all-risk property insurance covering Seller's property, including Tooling and Unpaid Tooling and all FCA US property, raw materials and finished products, including Bailed Property and FCA US Tooling, while in Seller's possession or in Seller's care, custody and control, all in amounts and coverages sufficient to cover all claims hereunder. Unless FCA US instructs otherwise in writing, coverage for specific above-referenced categories of insurance will be not less than the following: \$1,000,000 in employer's liability insurance; \$5,000,000 in commercial general liability insurance; and \$5,000,000 in automobile liability insurance. Such policies will name FCA US as an additional insured thereunder; be primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for or maintained by FCA US; and provide that the insurer will give FCA US thirty days prior written notice of cancellation or material change in coverage. Seller waives, and Seller will cause its insurers to waive, any right of subrogation or other recovery against FCA US or its subsidiaries, including their respective employees, officers, directors, agents or representatives. FCA US may require Seller to furnish evidence of the foregoing insurance, but FCA US's failure to request evidence of insurance will in no event relieve Seller of its obligation under this Clause 11. Seller will be financially responsible for any of Seller's premiums, deductibles, retentions, self-insurance, co-insurance, uninsured amounts, or any amounts in excess of policy limits. Seller may satisfy the insurance requirements under this Clause 11 through a combination of self-insurance and catastrophic excess insurance.
- b. Indemnification. Seller will defend, indemnify, and hold FCA US and its subsidiaries, including their respective employees, officers, directors, agents or representatives harmless against all claims, suits, actions or proceedings ("Claims") and pay (i) all liabilities, losses, damages (including without limitation judgments, amounts paid in settlement and other recoveries), (ii) fees and expenses (including without limitation fees of counsel and experts) and (iii) other costs (collectively, "Expenses") in connection with any breach or nonperformance by Seller of the Order, or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Seller or its employees, agents, or subcontractors in connection with performing the Order, either on FCA

US's property or in the course of their employment (including without limitation, Expenses arising out of, or in connection with, vehicle recall and customer satisfaction campaigns, provided however that if FCA US and Seller agree upon an Authority Definition Plan ("ADP") for goods supplied under the Order setting forth at a minimum an allocation of responsibility for design-related defects in the goods, then Seller's indemnification obligation for campaign Expenses will be determined based on the ADP).

12. CHANGES.

- a. FCA US may, at any time, make changes in the Order (including, without limitation, changes to the term of the Order described in Clause 38 hereof). Any claim by Seller for a change in price adjustment based on costs actually incurred, or to be incurred, as a result of the change must be asserted in writing within ten (10) days from date of receipt by Seller of FCA US's notification of any change. FCA US will have the right to verify all claims hereunder by auditing relevant records, facilities, work or materials of Seller. Seller agrees to proceed with the Order as changed under this Clause 12.
- b. All engineering changes, whether initiated by FCA US or Seller, will be processed pursuant to FCA US practices in effect at the time of the change using the FCA US "Change Notice (CN)" system, or its successors. On or before the date seven (7) days after FCA US has provided Seller with a documented solution (currently referred to as an "alternative selection" in the CN system), including applicable design requirements, Seller will provide FCA US with all price changes (calculated as set forth below) and timing requirements to implement such solution; provided, however, FCA US may, in its reasonable discretion, determine to extend such seven (7) day response period in circumstances where the complexity of the solution merits a longer response period. In addition, once FCA US and Seller have agreed to the price and milestone date changes (currently referred to as the completion of "SPIN" in the CN system), Seller shall have 24 hours to input data into the CN system reflecting the agreed upon changes for FCA US's approval. All FCA US approved engineering changes to the part specification will be promptly implemented by Seller as directed by FCA US. Price changes for FCA US approved engineering changes are to be based solely on the design cost variance from the superseded design and must be substantiated with appropriate documentation satisfactory to FCA US.
- c. Seller certifies the location(s) from which it will ship the goods covered by the Order are as specified in the Order. If Seller at any time intends to change such location(s), Seller must notify FCA US prior to the change so that the effect of such change can be evaluated, and negotiated as necessary, for its effect on transit time, packaging methods, and any other significant impact on FCA US. If Seller does not notify FCA US of any increased transportation charges in advance of a change in shipping point(s), Seller will be responsible for such costs. Seller may not change manufacturing locations without first receiving FCA US's written approval.
- d. No changes in the Order or these General Terms and Conditions, other than those changes in price and transportation charges as provided in Clause 12, will be made.

13. PARTS; SERVICE.

- a. Seller will make and sell to FCA US subcomponents (i.e., serviceable components to support service operations) for the goods covered in the Order for FCA US's service, after-market, and warranty requirements in such quantities and for such period of time as determined by FCA US in its sole discretion at any time; unless otherwise directed by FCA US in writing at any time, parts should be produced and made available to FCA US and its designees for no less than fifteen years after the end of the duration of the applicable vehicle production program (the "Service

Part Coverage Period"). Any change in this time period requirement will not be considered by FCA US until the goods have reached the end of their retention period (e.g., service life). While the goods that are covered by the Order are still used in production of vehicles for FCA US, the aggregate of the prices for the subcomponents for FCA US's service, after-market, and warranty requirements will be no greater than the price in the Order for their respective corresponding production goods plus costs actually incurred by Seller for special packaging. Neither Seller nor its sub-suppliers may sell any obsolete or surplus goods covered in the Order to third parties without FCA US's written consent.

- b. For at least the first five years after a good is no longer used in production of vehicles for FCA US, the aggregate of the prices of the subcomponents for FCA US's service, after-market, and warranty requirements will be no greater than the price last stated in the Order for their respective corresponding production goods plus costs actually incurred by Seller for special packaging.
- c. After five years from the end of the duration of the applicable vehicle production program, the aggregate of the prices of the subcomponents for FCA US's service, after-market, and warranty requirements will be no greater than the price last stated in the Order for their respective corresponding production goods, plus or minus (i) any changes in the cost of materials since the end of the duration of the applicable vehicle production program, plus (ii) a volume-related price adjustment reflecting the actual increase in the cost per part of producing fewer subcomponents, plus (iii) a set-up charge reflecting the actual cost of preparation for the part production run, plus (iv) any additional costs actually incurred for special packaging. All of the foregoing components of the price will be documented to FCA US's reasonable satisfaction, including, but not limited to, set-up detail, machine productivity, scrap allowance, labor inefficiencies and excess raw material requirements.
- d. FCA US has no obligation to change minimum order quantities, lead times or similar commercial terms throughout the Service Part Coverage Period.
- e. Where Seller sells FCA US service subcomponents to third parties while purchasing such items on FCA US's behalf (e.g., remanufactured and/or "kitted" goods), Seller must sell such subcomponents to such third parties at the same price at which it sells them to FCA US, with the same level of technical support (e.g., testing) provided by Seller as if FCA US had furnished such subcomponents directly to Seller. This authorization by FCA US to effectuate such third party sales is premised on the understanding that such third parties have agreed to use such subcomponents solely for FCA US/Mopar production. FCA US's permission to sell and/or its imposition of requirements under this subparagraph may be withdrawn, at any time, at FCA US's discretion.
- f. If the subcomponents are manufactured in a country other than the country in which the goods are delivered to FCA US, Seller will mark the subcomponents shipped for FCA US's service, after-market, and warranty requirements "Made in (country of origin)."
- g. Seller will comply with all FCA US vehicle service requirements as documented on the FCA US Supplier Portal on the date of the Order or any amendment to the Order.
- h. Seller will, at its expense, comply with all Mopar APQP policies and project requirements including but not limited to utilizing a third party APQP provider.

14. PAYMENT; FCA US'S COMMITMENTS; CLAIMS ADJUSTMENT.

- a. Payment terms are as set forth in the Order. Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by FCA US (collectively, the "Invoice") after delivery of goods and performance of services, and the payment period set forth in the Order will not commence until FCA US has received a correct and complete Invoice which meets all of FCA US's applicable requirements. FCA US will use commercially reasonable efforts to assist Seller in correcting any invoice that has been rejected as incomplete or otherwise incorrect.
- b. FCA US is committed to paying Seller the amounts which are due to Seller pursuant to the terms of the Order and these General Terms and Conditions, and to provide Seller with periodic information concerning its financial condition and ability to fulfill its payment obligations.
- c. FCA US may at any time and without notice deduct, set-off, or recoup Seller's claims for money due or to become due from FCA US against any claims that FCA US has or may have arising out of this or any other transaction between FCA US and Seller.
- d. The "FCA Parties" (defined as FCA US LLC, FCA Canada Inc., and FCA Mexico, S.A. de CV) assign to each other the right to payment from Seller and each of its affiliates, and the FCA Parties are entitled to collect each amount owed from Seller to the FCA Parties.
- e. Upon Seller's request, FCA US will substantiate the basis for any deduction, set-off, or recoupment within fifteen (15) days of such request or within such other period as may be agreed upon by the Parties.

15. CUSTOMS; EXPORTS.

- a. Seller will promptly notify FCA US in writing of material or components used by Seller in filling this Order, which Seller purchases in a country other than the country in which the goods are delivered to FCA US and any duty included in the purchase price of the goods. Seller will furnish FCA US with any documentation and information necessary to establish the country of origin, comply with the destination country's rules of origin requirements, any special trade programs, and content reporting.
- b. The rights to and benefits of any duty drawback, including rights developed by substitution and rights which may be acquired from Seller's suppliers and export credits, to the extent transferable to FCA US, are the property of FCA US. Seller will provide all documentation and information and take any necessary steps to obtain refunds or to drawback any duty, taxes or fees paid, and to receive export credits from, the government of the country of origin or export country.
- c. The responsibility for customs duty and customs brokers' fees will be determined in accordance with the delivery point and transportation code stated in the Order. If FCA US is responsible for customs duties, it will be responsible for normal duties only. Seller will be responsible for any special duties, including but not limited to, marking, anti-dumping and countervailing duties, to the extent permitted under the law of the country of importation.
- d. Seller will provide FCA US with all documentation and information required by law or regulation or otherwise necessary to determine admissibility, timely release, customs clearance and entry, and the proper minimum duty to be paid upon the importation of the goods into the destination country.

- e. Seller will advise FCA US if the importation of the goods requires an import license and will assist FCA US in obtaining any such license.
 - f. Seller warrants that the information regarding the import or export of the goods supplied to FCA US is true and correct, and that all sales covered by this Order will be made at not less than fair value under the anti-dumping laws of the countries to which the goods are exported.
 - g. Seller must comply with all pertinent requirements of U.S. Customs and Border Protection's supply chain security program known as C-TPAT or a local security program recognized by U.S. Customs and C-TPAT. Seller must provide proof of participation by responding to the annual risk assessment survey initiated by FCA US. Seller must seal international shipments with a high security seal that meets C-TPAT standards and the seal number must be included on the Seller's ASN.
 - h. Seller and FCA US recognize that export control regulations may limit or prohibit the transfer of items to foreign nationals, including foreign nationals in the United States. The goods, services and/or technical data (collectively "Items") delivered under this Order may be subject to U.S., foreign and other applicable export control laws and regulations (collectively "Export Control Laws"), including, but not limited to, the International Traffic in Arms Regulations or the Export Administration Regulations (collectively "U.S. Export Laws") and/or (Export Control List(s)). Seller and FCA US will comply with all U.S. and other country's applicable Export Control Laws and shall not export, re-export or transfer items without first obtaining all required licenses and approvals. Any penalty, fine, expense (including reasonable attorneys' fees) or liability incurred by FCA US as a result of violation(s) of U.S. or foreign export control laws and regulations, or this clause, by the Seller, will be promptly reimbursed by Seller. Items that are identified during the course of this Order will be handled in the following manner:
 - (1) the sending party will notify the other party of the Item's export classification prior to any shipment or transmission;
 - (2) the party receiving notice under (1) above shall have an opportunity to accept or reject the delivery of the Item prior to shipment or transfer by the sending party;
 - (3) FCA US and Seller will make reasonable efforts to cooperate in obtaining required licensing and implementing required internal controls for the involved Items;
 - (4) rejection of an Item will not constitute a breach of this agreement; and
 - (5) FCA US and Seller will assess the impact of the Item's rejection to determine if the Order can continue. Any notice regarding export controls will be in writing and sent to the FCA US Corporate Customs Department. Compliance with these laws and regulations includes, but is not limited to, abiding by U.S. sanctions, embargoes and prohibitions on transactions with restricted parties. This includes, but is not limited to, the prohibition on the transfer of commodities, materials, software and technology (i.e., all Items) subject to this agreement, to U.S. sanctioned countries (e.g., Iran, Syria, North Korea, Sudan, and Cuba).
16. **USE OF FCA US'S NAME.** Seller will not, without the prior written consent of FCA US, in any manner publish the fact that Seller has furnished or contracted to furnish FCA US goods and/or services, or use the name or trademarks of FCA US, its products, or any of its affiliated companies in Seller's advertising or other publication. Seller will not place its, or any third party's trademark or other designation on the good if the good bears a FCA US trademark or an identifying mark specified by FCA US, or if the good is

peculiar to FCA US's design (a "Marked Part"). Seller warrants that (i) it will sell each Marked Part, and similar goods, only to FCA US and (ii) it will not sell any Marked Part or similar goods to third parties without FCA US's prior written consent. Seller acknowledges that any sale by Seller of a Marked Part in violation of this Clause 16 is a willful violation of FCA US's trademark rights. Any goods manufactured by Seller based on FCA US's drawings, specifications, or other information disclosed to Seller by FCA US in connection with the Order may not be used for Seller's own use or sold to any third parties without FCA US's prior express written authorization; provided, however, this prohibition will not apply to goods manufactured by Seller based on Seller's designs using tooling other than FCA US Tooling, Unpaid Tooling which could become FCA US Tooling pursuant to Clause 10 of these General Terms and Conditions, or any intellectual property, knowledge, or know how subject to a nonexclusive, world-wide, paid-up, irrevocable and perpetual license to which FCA US is entitled under Clause 10 hereof, unless the manufacture of such goods would result in a breach by Seller of Clause 17 of these General Terms and Conditions. Seller will mark goods supplied to FCA US in accordance with FCA US's published marking standards.

17. INFORMATION DISCLOSED; DATA RIGHTS; TRADEMARKS.

- a. "FCA US Data" means
 - i. all information and data that FCA US makes available to Seller in connection with the performance of the Order, including without limitation performance standards, product characteristics, specifications, drawings, descriptions, samples, designs, manufacturing data and other information, and
 - ii. any and all data (excluding Seller-provided data regarding its internal costs of producing goods or services that it provides to FCA US under the Order) that is entered into or processed by Seller directly or indirectly using any system that Seller owns or controls directly or indirectly for the purpose of performing Seller's obligations under the Order; provided, however, with respect to any and all data encompassed by any intellectual property conceived, developed, or acquired by Seller in the course of performing work under the Order, the rights to such data (whether ownership or license) shall be determined by the rights to the intellectual property of which such data is a part as set forth in the applicable supplemental clause or clauses referenced in the Order.
- b. FCA US owns and retains all of its right, title and interest in FCA US Data, including any FCA US patents, patent applications, copyrights, trade secrets, trademarks, trade dress, and any other proprietary rights in FCA US Data, and in any derivative or improvement of any FCA US Data made by FCA US or by Seller as Work Product. Unless expressly provided in the Order or otherwise agreed to in a writing signed by FCA US, no rights or license is granted under the Order to use FCA US Data other than the right for Seller to use FCA US Data as required to perform Seller's obligations under this Order. Seller will not use or disclose FCA US Data for any other purpose. Seller will handle all FCA US Data in such a manner to insure that it is not used for any purpose detrimental to the interests of FCA US. Seller may not disclose FCA US Data to any third party without FCA US's prior written consent. Seller agrees to immediately discontinue any use of FCA US Data and/or items bearing designated FCA US-owned trademarks or logos upon FCA US's request or at the termination of the Order and agrees to do one or more of the following at FCA US's option: (1) destroy any such item and present to FCA US an affidavit of destruction; (2) return to FCA US any such item; or (3) remove and destroy any FCA US-owned trademark or logo from any such item and present to FCA US an affidavit of removal and destruction.
- c. Any rights that Seller may have to disclose, manufacture, use or distribute goods or services developed under or related to this Order in each case are subject to Seller's obligations

concerning FCA US Data set forth in this Clause 17.

18. **PATENTS; NONINFRINGEMENT WARRANTY AND INDEMNITY.** No rights are granted to Seller under any FCA US patents except as may be necessary to fulfill Seller's obligations under the Order. Seller represents and warrants that any good or service provided under the Order or any work product resulting from any services performed by Seller under the Order ("Work Product"), including use of any Work Product for its intended purpose or making, having made, selling, offering to sell, importing, or using any good made by using the Work Product for its intended purpose, will not infringe any Intellectual Property of any third party. Seller agrees to investigate, defend, indemnify and hold harmless FCA US, its affiliated companies, their respective customers, distributors and dealers, and their respective customers, against any and all Claims made against any of them that any good or service or any Work Product, including use of any Work Product for its intended purpose or making, having made, selling, offering to sell, importing, or using any good made by using the Work Product for its intended purpose, infringes any Intellectual Property of any third party. Seller will pay all Expenses that are incurred or sustained by reason of any such Claim.
19. **ASSIGNMENT.** The Order may not be assigned or delegated, in whole or in part, without FCA US's prior written consent, including, but not limited to, the subcontracting of work to be performed hereunder or the transfer of FCA US Tooling to third parties for the performance of work hereunder, and any attempted assignment or delegation in violation of this Clause 19 will be void and of no legal effect.
20. **FINANCIAL REPORTING.**
 - a. Seller will promptly furnish to FCA US any information regarding the Seller's operations, business affairs and financial condition or such other information as FCA US may reasonably request in addition to the information about Seller to be provided periodically as set forth in section (b) below.
 - b. Seller will furnish directly to FCA US, or to FCA US's designated third party service provider for collecting and processing supplier financial information, in the format designated by FCA US:
 - (1) Quarterly Financial Statements. Within the earlier of (i) sixty (60) days after the close of each quarterly accounting period of Seller and (ii) the date the statements described herein are due (after the expiration of any automatic grace period) to any federal regulatory agency under applicable law, the balance sheet of Seller, as of the end of such period, the related statements of income and retained earnings, and statements of cash flow for such period, each prepared on a basis consistent with Seller's past practices and certified by an officer of Seller as representing fairly in all material respects the financial position, results of operation, and cash flows for the periods covered by such statements.
 - (2) Annual Financial Statements. Within the earlier of (i) one hundred twenty (120) days after the close of each fiscal year of Seller and (ii) the date the statements described herein are due (after the expiration of any automatic grace period) to any federal regulatory agency under applicable law, the balance sheet of Seller as of the end of such fiscal year, and the related statements of income and retained earnings and statements of cash flows for such fiscal year, setting forth comparative figures for the preceding fiscal year and certified by an officer of Seller as representing fairly in all material respects the financial position, results of operation, and cash flows for the periods covered by such statements, and, if an audit is performed, audited by independent certified public accountants and including a copy of such auditor's report thereon.

- (3) Notice of Events of Default. If a default or an event of default has occurred and is continuing under any contract to which Seller is a party, the effect of which could be reasonably anticipated to have a material adverse impact on Seller's financial condition or its ability to perform its obligations under the Order, then Seller will furnish notice of such default or event of default to FCA US.
 - (4) Annual Information Survey. Once each calendar year, Seller will provide FCA US with its responses to FCA US's Annual Information Survey including but not limited to the Automotive Sales Mix Template and the Manufacturing Sales Mix Template.
 - (5) Updates to Supplier Information. Seller must update the information provided on FCA US's Supplier Information System not less than once each quarter of Seller's calendar year.
 - (6) Change in Control. Seller must disclose to FCA US a change in control under which another person or company acquires beneficial ownership of thirty five percent (35%) or more of the outstanding voting stock or voting rights of Seller within fifteen (15) days of the disclosure to Seller of any such event.
- c. FCA US agrees to use commercially reasonable efforts to keep Seller's Confidential Information from disclosure to (i) individuals or businesses outside of FCA US other than the present or future parent, subsidiary, or affiliate entities of FCA US or its parent entity (excepting any such present or future entities which, in their core business, are Tier 1 automotive suppliers and/or direct competitors of Seller), as well as FCA US's advisors, consultants, and service providers who need to know and who are subject to a confidentiality obligation regarding Seller's Confidential Information, and (ii) FCA US employees who do not need access to such information. Such Confidential Information may be used by FCA US for any reason related to or in connection with its risk management functions. "Confidential Information" as used in this Clause means information provided to FCA US pursuant to Clause 20(b) above that is either (i) Seller's information concerning its operations, systems, services, personnel, financial affairs, marketing, investment performance and investment, research, development efforts, (ii) information received from third parties by Seller under a confidentiality obligation, or (iii) any other information relating to the business of the Seller not made public directly or indirectly by Seller. Notwithstanding the foregoing, nothing herein shall prevent FCA US, if FCA US becomes compelled to disclose Confidential Information by a legal authority having competent jurisdiction over Seller or FCA US (by special deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process; each such process, a "demand"), from responding to such demand without Seller's prior written consent; provided, however, that FCA US will have given Seller written notice of any such demand promptly after the receipt thereof. In any event, the term "Confidential Information" does not include information (A) which was or becomes generally available to the public, other than as a result of a wrongful disclosure by FCA US; (B) which FCA US was aware of prior to its disclosure to FCA US by Seller; (C) which FCA US learns of from a third party under no applicable obligation of confidentiality to Seller; or (D) which FCA US obtains in connection with any subsequent court, arbitration or other legal proceedings. Seller may, with FCA US's written consent (which will not be unreasonably withheld) comply with the reporting requirements set forth in this Clause 20 by delivering parent-level financial information.

21. CANCELLATION FOR DEFAULT.

- a. FCA US may cancel the whole or part of this Order without liability, except for payment due for goods and services delivered and accepted, and may exercise any of its legal rights, including

without limitation its remedies under Clause 23 of these General Terms and Conditions, upon the occurrence of any of the following specified events (each an "Event of Default"):

- (1) Seller fails to timely deliver goods or perform services and Seller fails to give FCA US a remediation plan within one day of FCA US's notice to Seller of such failure, obtain FCA US's acceptance of such plan, and perform such plan to FCA US's satisfaction; or
 - (2) Seller violates any other provision in, fails to meet any other requirements contained in, or fails to perform any other provision under the Order at the time specified therein and to the extent such other failure is capable of being cured, fails to so cure such failure within thirty (30) days after such Event of Default; or
 - (3) Seller (i) becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or (ii) voluntarily commences any proceeding or files any petition under any bankruptcy, insolvency or similar law or seeking dissolution, liquidation or reorganization or the appointment of a receiver, trustee, custodian, conservator or liquidator for itself or a substantial portion of its property, assets or business or (iii) takes corporate action for the purpose of effecting any of the foregoing in (i) or (ii) above; an order for relief is entered in a case under the Bankruptcy Code in which Seller is a debtor; or involuntary proceedings are or an involuntary petition is commenced or filed against Seller under any bankruptcy, insolvency or similar law, unless any such petition is dismissed within forty-five (45) days; or
 - (4) Seller repudiates the Order (absent a legal right to do so,) in writing, including via email, takes any action evidencing its intention not to perform (including threatening non-delivery of goods), or omits to take any action required to be performed by Seller, which is necessary for Seller to timely deliver goods and services under the Order; or
 - (5) Seller fails to pay any trade payables or other accounts payable owed to FCA US, or its subsidiaries or affiliates, incurred in the ordinary course of such Seller's business that are not reasonably disputed and have been outstanding for more than sixty (60) days after the date such payable is due.
- b. Seller may terminate this Order due to FCA US's material breach of the Order that is not remedied within thirty (30) days of Seller's notice to FCA US of the material breach.
 - c. Upon Seller's receipt of any notice of termination under this Clause 21, Seller will stop work on the date and to the extent specified in such notice and terminate all orders and subcontracts that relate to the terminated Order or the applicable terminated portion thereof.
 - d. If a Court of competent jurisdiction determines that any purported termination by FCA US under this Clause 21 was made without legally sufficient cause, then the purported termination will be a termination subject to Clause 22 of these General Terms and Conditions, and Seller's remedies, if any, will be limited to those set forth in Clause 22.

22. TERMINATION AT FCA US'S OPTION.

- a. Upon giving Seller written notice of termination at FCA US's option, FCA US may terminate this Order in whole or in part at any time, and for any business reason (including, without limitation, Seller's non-competitiveness as defined in Clause 32 hereof); provided, however, FCA US may not terminate the Order pursuant to this Clause 22 for Seller's cost competitive deficiencies unless Seller has had notice and opportunity to cure such deficiencies pursuant to Clause 32 hereof.

- b. Upon Seller's receipt of any notice of termination at FCA US's option, Seller will, within fifteen (15) days thereafter (during which time FCA US will review any request by Seller for reconsideration of the termination notice, but FCA US will be under no obligation to change its decision), stop work at such time and to the extent specified in such notice, terminate all orders and subcontracts that relate to the terminated Order or the applicable terminated portion thereof, and cooperate reasonably with FCA US in wind-down related functions. Within sixty (60) days after the effective date of such termination, Seller will submit all claims resulting from such termination. Seller may not include in its claim (i) selling, general or administrative costs, (ii) interest costs or the cost of capital, (iii) lost profit or lost opportunity costs, (iv) fixed overhead absorption, (v) capital equipment, (vi) facility costs, (vii) plant modification costs, (viii) labor assignment costs, including without limitation severance costs or labor inefficiencies, (ix) training costs, and (x) other costs related to obtaining the Order. In the case of Tooling for which FCA US has issued an Order that has not been completed, Seller's claim may include substantiated actual costs incurred for direct labor, direct material, and applied factory overhead, but must be reduced by the amount of the scrap value of the not yet completed Tooling. FCA US will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. FCA US will pay Seller for finished work accepted by FCA US as well as for the documented cost to Seller of work in process and raw material allocable to the terminated work which is not in excess of any prior FCA US authorization. Payment of a valid claim made under this Clause 22 will constitute FCA US's only liability for termination hereunder with title and right of possession to all delivered goods and services vesting in FCA US immediately upon FCA US's tender of such payment. The provisions of this Clause 22 will not apply to any cancellation by FCA US for default by Seller or for any other cause recognized by law or specified by this Order. If a dispute arises regarding the amount of such costs to which Seller is entitled hereunder, then the dispute will be finally resolved in accordance with Clause 26 below, and, to the extent that the termination is only a partial termination of the Order, FCA US will not be in material breach of the Order for failing to pay the amount of costs claimed by Seller prior to conclusion of an adjudication or arbitration pursuant to Clause 26 hereof.

23. REMEDIES.

- a. Upon the occurrence of any Event of Default as described in Clause 21 hereof, FCA US will have the right to cancel or terminate in whole or part the Order, take possession of and title to all or any part of any work performed by Seller under this Order upon written notice to Seller, and take any other action permitted under applicable law. FCA US will also have the right to take immediate possession of any and all of FCA US Tooling (as defined in Clause 10 hereof) at any time without payments of any kind to Seller. Should FCA US elect to exercise such right, Seller must cooperate with FCA US in FCA US's taking possession of FCA US Tooling, including allowing access to Seller's facilities.
- b. If FCA US exercises its right to terminate or cancel the Order in whole for the occurrence of an Event of Default by Seller under Clause 21 hereof, then:
 - i. Seller grants to FCA US a non-exclusive, world-wide, paid-up, irrevocable license under any intellectual property of Seller that is incorporated into or used to make or design the goods or Work Product, to make, have made, sell, offer for sale, import or export or modify such goods or Work Product. The license granted to FCA US under this Clause 23(a)(i) will remain in effect for the life of the applicable vehicle program(s) in which such goods or Work Product are utilized (now or in the future), including any service parts therefor;

- ii. In addition, upon written request from FCA US, Seller will provide the following for such goods or Work Product: (A) any design aides, including without limitation, any computer aided design data and design aides, (B) specifications, (C) bills of material, (D) Seller information for any purchased components used in such goods or Work Product, and (E) manufacturing process information regarding such goods or Work Product; and
- iii. To the extent FCA US may have paid for prototype tooling for the goods or Work Product under a separate purchase order or other agreement, then in order to ensure that FCA US could make full beneficial use of the rights provided in this Clause 23, Seller will provide the following for such goods and Work Product: (a) any prototype tools (e.g. dies and molds), including without limitation, any computer aided design data for such prototype tools, and (b) in each case as applicable, the specifications, bills of material, Seller information for any purchased components used in such prototype tools, and manufacturing process information regarding such prototype tools.
- c. In addition to all other rights and remedies, FCA US may, upon fourteen (14) days' written notice to Seller of actual or threatened recurring non-performance concerning capacity or quality, engage (or require that Seller engage) a third party acceptable to FCA US for the purpose of supporting Seller's remediation of such capacity or quality deficiencies. Seller will pay all costs associated with such remediation efforts, and will reimburse FCA US for any reasonable costs incurred by FCA US hereunder, which may be recovered by means of FCA US's rights of setoff, recoupment, or deduction under Clause 14 hereof.
- d. FCA US's rights and remedies herein reserved to FCA US are cumulative and in addition to any other rights and remedies available at law or equity. No waiver of any breach of (i) any provision of this Order, or (ii) any agreed-upon cure remediation plan arising under these General Terms and Conditions, will constitute a waiver of any other breach or a waiver of such provision.

24. **REQUIRED COMPLIANCE.**

- a. In providing goods or services hereunder, Seller and its subcontractors will comply with (i) any and all applicable global, federal, state, provincial and local law, regulations, executive orders and other rules of law as in effect at any time during the Term; and (ii) any and all FCA US policies (including CS-9003 and sustainability guidelines) addressing such legal requirements. Seller will provide and maintain an Environmental Management System that complies with ISO 14001. In particular and without limitation, Seller and its subcontractors will not act in any fashion or take any action that will render FCA US liable for a violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity, political party or instrumentality to assist it or FCA US in obtaining or retaining business or to gain an unfair business advantage. Seller further represents that neither it nor any of its subcontractors will utilize forced, compulsory, or child labor in connection with the supply of goods or the provision of services under this Order. FCA US may request Seller from time to time to certify in writing its compliance (and that of its subcontractors) with the foregoing, and Seller will comply with each such request.
- b. In addition, to the extent applicable for the goods or services provided hereunder, Seller will comply with all applicable Environmental Requirements that apply to Hazardous Materials. Environmental Requirements includes without limitation all global, federal, state, provincial, and local laws, rules and regulations pertaining to the protection of human health, safety, wildlife or the environment. Hazardous Materials includes, without limitation, any material or substance that is regulated by an Environmental Requirement. In particular and without

limitation, Seller will comply with all applicable global regulations regarding the registration, restriction, prohibition, and/or recyclability of chemicals, including without limitation those identified in the Global Automotive Declarable Substance List and FCA US's CS-9003. Seller will defend, indemnify, and hold FCA US harmless from and against any claims, losses, damages, costs and expenses resulting from or arising out of any failure to comply with any Environmental Requirement. Seller specifically certifies that all goods sold to FCA US which are required to be registered on an official inventory maintained by the pertinent governmental jurisdiction have been registered in full compliance with applicable law, and Seller will provide immediate notice to FCA US of any use restrictions, reporting requirements, or other obligations imposed with respect to such goods.

25. **SUPPLIER DIVERSITY PROGRAM.** FCA US has an established supplier development program to develop and maintain a qualified diverse supply base. FCA US actively seeks diverse suppliers and encourages Seller to use diverse suppliers. A diverse supplier is a business establishment which meets one or more of the following criteria:

- a. a small business, as defined in Title 15, Section 632 of the United States Code and related regulations;
- b. a small business owned and controlled by socially disadvantaged individuals (at least fifty-one percent (51) percent of the business is owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals);
- c. a business that is at least fifty-one percent (51) percent owned by a woman or women who also control and operate the business;
- d. a small business that obtains HUBZone (Historically Underutilized Business Zone) certification (maintains a principal office in a HUBZone, at least fifty-one percent (51) percent of the business is owned and controlled by one or more U.S. citizens, and at least thirty-five percent (35%) of its employees reside in a HUBZone);
- e. a business that is at least fifty-one percent (51) percent owned by a service-disabled veteran (an individual who has served in the U.S. armed forces and has received an honorable discharge documented by DD Form 214, Certificate of Release of Discharge from Active Duty) or veterans who also control and operate the business;
- f. a business that is at least fifty-one percent (51) percent owned by a veteran or veterans who also control and operate the business; or
- g. other categories of diverse businesses as FCA US may include in its diversity supplier development program. Seller will report monthly to FCA US in accordance with FCA US's diversity supplier development program requirements, on the content provided by any such suppliers for the goods or services purchased hereunder as well as the basis for claiming that such content was provided by such a supplier.

26. **DISPUTE RESOLUTION; GOVERNING LAW.**

- a. The Order and all transactions between FCA US and Seller will be governed by and construed in accordance with the laws of Michigan as if entirely performed therein. In the case of FCA Canada Inc., this Order between FCA Canada Inc. and Seller will be governed by and construed in accordance with the laws of the province of Ontario, Canada as if entirely performed therein. The 1980 United Nations Convention on Contracts for the International Sale of Goods is not

intended to and does not apply to the Order or any transactions pursuant hereto, and FCA US and Seller specifically waive its application to the Order or any transactions pursuant hereto.

- b. For all disputes arising out of the Order, Seller irrevocably consents to the personal jurisdiction of the state and federal courts in and for Oakland County, Michigan, USA, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum. Any suit regarding or relating to this Order may only be brought in the state or federal court in and for Oakland County, Michigan, USA, which are the exclusive venue for any such suit.
 - c. Any dispute arising out of or in connection with the Order or these General Terms and Conditions (other than FCA US's rights to injunctive relief, enforcement of Seller's delivery obligations, enforcement of FCA US's rights and remedies under Clause 32 hereof, and possession of Tooling, Unpaid Tooling, or other Bailed Property), or any other dispute, may, by agreement in writing of both Parties (or by FCA US's unilateral election, in the case of disputes relating to quality, warranty, or indemnification under Sections 6, 8, or 11 of these General Terms, including claims in connection with vehicle recall and customer satisfaction campaigns), be referred to and finally resolved by binding arbitration in accordance with the Expedited Rules of Arbitration set forth in Annex A to these General Terms and Conditions. Any unilateral election to arbitrate hereunder must be preceded by negotiations to resolve the dispute (provided, however, such negotiations may be terminated by either party at any time in their sole discretion, with seven (7) days' advance notice of such termination furnished to the other party) and, upon election of either party during such negotiation period, a non-binding mediation session, which must be completed within forty-five (45) days of the delivery of written notice by either party to the other requesting mediation. The unilateral arbitration election hereunder may be made by FCA US immediately following the completion of such mediation.
27. **ELECTRONIC COMMUNICATION.** FCA US may prescribe any aspect of electronic communication between Seller and FCA US, and Seller will follow each of FCA US's prescriptions regarding any of those aspects.
28. **COMPLIANCE WITH APPLICABLE REQUIREMENTS; FORMULA AND INFORMATION DISCLOSURE.**
- a. Seller will comply with all FCA US requirements then in effect regarding (i) the handling, transportation, labeling, processing, registration, notification, prohibition, use, disposal or recyclability of the goods, containers and packing, including without limitation, the formulation and use of raw materials and other substances in the goods ("Environmental, Health and Safety Requirements"), and (ii) disclosures on the content and origins of such raw materials and substances, including conflict mineral disclosures and chemical and/or substance of concern disclosures (collectively, "Disclosure Requirements"). Seller promptly will provide to FCA US, in such form and detail as directed by FCA US, (i) the formula or list of all ingredients in the goods, (ii) the amount of all ingredients and the percentage of each ingredient in the goods, (iii) an updated formula or list of ingredients promptly upon any change from that provided to FCA US, and (iv) a list of the countries of origin for each ingredient contained in the goods; provided, however, FCA US may require such information from Seller only to the extent necessary to enable FCA US to comply with applicable law. Upon FCA US's request, Seller promptly will certify to FCA US that Seller is in compliance with all Environmental, Health and Safety Requirements and Disclosure Requirements.
 - b. Prior to and with shipment of the goods, Seller will furnish to FCA US (i) sufficient warning and notice in writing (including placing appropriate labels on the goods, containers, or packaging) of any material that is an ingredient or a part of any of the goods that is or could become hazardous

so as to warrant special handling instructions as may be necessary to advise carriers, FCA US and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to FCA US, (ii) together with such special handling instructions for such materials.

29. **RIGHT TO AUDIT.** Seller grants to FCA US access to all of Seller's information, including, but not limited to, books, records, payroll data, receipts, correspondence, chemical data in connection with Seller's obligations under Clause 28 hereof, and other electronic and non-electronic documents relating to the goods or services to be provided under the Order, FCA US Tooling and Unpaid Tooling, Seller's obligations under the Order, any payment made to Seller, or any claim made by Seller, as reasonably required for the purpose of auditing or verifying Seller's performance of its obligations under this Order and its charges therefor. Seller will preserve this information and these documents for a period of four (4) years after the final payment is made under this Order. Seller will segregate its information and documents as directed by FCA US, and otherwise cooperate with FCA US to facilitate the audit or verification process. In addition, FCA US has the right to visually inspect and audit any facility or process relating to the goods or services to be provided under the Order, including those relating to production quality. Seller acknowledges that FCA US has the right to audit and make copies of all pertinent documents, data and other information relating to any of Seller's subcontractor's or supplier's obligations under the Order. Upon FCA US's request, Seller will permit FCA US to visually inspect and audit any such Seller's subcontractor's or supplier's facilities or processes relating to the goods or services to be provided under the Order. The provisions of this Clause 29 are not intended to expand FCA US's possessory or ownership interests in the property of either FCA US or Seller beyond those set forth elsewhere in the Order or these General Terms and Conditions. The information conveyed to FCA US under this Clause 29 will be "Confidential Information" within the meaning of Clause 20 hereof.
30. **ASSIGNMENT OF ANTITRUST CLAIMS.** Upon FCA US's request (which FCA US may make, in its discretion, provided it has a material interest in any claim described herein), Seller will execute a written assignment of all right, title, and interest in and to all causes of actions under any applicable antitrust laws arising out of or relating to Seller's purchase of raw materials or ingredients used in goods sold or resold to FCA US. If FCA US recovers damages on account of any such assigned claim, and a portion of such damages is reasonably allocable to Seller, FCA US will, net of its attorneys' fees in liquidating the claim, return such allocable amount to Seller.
31. **SURVIVAL.** The provisions of these General Terms and Conditions of the Order intended by their terms to survive termination, cancellation or expiration of the Order will survive any termination, cancellation or expiration of the Order, including without limitation Clauses 2, 5, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 23, 26, 29, 30, 33, 34, 39, and 40.
32. **COMPETITIVENESS.** Seller will at all times be and remain competitive with respect to each good or service supplied to FCA US pursuant to the Order on a total cost basis taking into account each of the following attributes: cost, quality, delivery, reliability of supply, technology, financial stability, and performance of obligations under the Order. FCA US reserves the right, at any time during the term of the Order, to market test any good or services to be supplied under the Order to determine the competitiveness of the Supplier of a good or a service. To be "competitive" means to be (i) equal to or better than all other suppliers and potential suppliers of that good or service in as many of the listed attributes as any other supplier or potential supplier of similar goods or services, judged on a total cost basis, and (ii) in support of all FCA US requirements set forth in the Order to the extent that another qualified and cost-competitive supplier supports those requirements. Cost competitiveness comparisons will take into account applicable engineering, research, and development costs. If Seller is uncompetitive with respect to attributes other than cost, FCA US may terminate the Order pursuant to Clause 22 of these General Terms and Conditions. If Seller is not cost competitive with respect to a good

or service, FCA US may notify Seller of its non-competitiveness by specifying the cost competitive deficiency in a written notice (the "Cure Notice"). FCA US agrees not to deliver a Cure Notice within twelve (12) months of the commencement of volume production. Upon notification, Seller must cure such deficiency by (i) submitting to FCA US within thirty (30) days of such notice of non-competitiveness a plan acceptable to FCA US for the remediation of the non-competitiveness as soon as practicable, and (ii) if FCA US, in its reasonable discretion, accepts the plan, using Seller's reasonable best efforts to perform the plan. Seller's plan will identify the actions needed to remediate its deficiency with respect to cost competitiveness and an aggressive timeline for the completion of each such action. FCA US will notify Seller of its acceptance or rejection of Seller's remediation plan within thirty (30) days of receipt of such plan. FCA US must accept a plan from Seller which is more likely than not to promptly remediate a cost competitive deficiency. However, FCA US will be entitled to use its discretion in evaluating both the probability of success and the promptness of any such plan. In the event FCA US delivers a Cure Notice to Seller under this Clause 32, FCA US may not terminate the Order pursuant to Clause 22 of these General Terms and Conditions unless (i) Seller does not submit a remediation plan; (ii) FCA US rejects Seller's remediation plan; (iii) Seller fails to perform any material requirement of its remediation plan, or fails to meet any of the deadlines set forth therein; or (iv) upon the completion of Seller's remediation plan, Seller remains uncompetitive with respect to cost.

33. **EQUITABLE RELIEF.** Seller acknowledges that a material breach of its obligation to supply goods in accordance with Clause 3 of the Order or to transfer FCA US Tooling, Unpaid Tooling, or other Bailed Property to FCA US in accordance with Clause 10 of the Order, would cause irreparable damage to FCA US, including without limitation potential damage to FCA US's relationships with its customers, suppliers, labor unions, lenders, and prospective future customers, the exact amount of which would be difficult to ascertain, and that the remedies at law and monetary damages for any such breach would be inadequate. Accordingly, in the event of any action taken or threatened by Seller hereunder that, if taken, would constitute a material breach of its obligations under Clause 3 or Clause 10 of the Order, FCA US and its successors and assigns are entitled to injunctive or other equitable relief and/or a decree for specific performance, without the posting of any bond or other security, in addition to any other remedies it may have for damages or otherwise. Seller may not take any action or position inconsistent with this acknowledgement, and FCA US will be entitled to recover its attorney fees and costs in connection with the enforcement of this Clause 33.
34. **NOTICE.** Notices must be in writing. E-mail notification will be sufficient and acceptable written notice. Any e-mail notice sent will be deemed to have been received on the second business day after such notice was sent (if not first rejected by automatic response). Any written notice sent using any other manner will be deemed to have been received upon the earlier of (i) actual receipt by the party to whom the notice is directed, and (ii) the second business day after delivery, in the case of U.S. and Canadian deliveries, or the fifth business day after delivery for all other deliveries. Any notice to FCA US must be sent to its head of Production Purchasing.
35. **SEVERABILITY.** If any term of the Order is invalid or unenforceable under any law, regulation, executive order or other rule of law, such term will be deemed to be reformed or deleted, as the case may be, but only to the extent necessary to comply with such law, regulation, order or rule, and the remaining provisions of the Order will remain in full force and effect.
36. **COST SAVINGS PROGRAMS.** Seller will provide to FCA US, in writing by October 1 for each upcoming year during the term of the Order, Seller's plan for implementing cost savings and productivity improvements to reduce Seller's costs in accordance with the then-current FCA US cost savings program.
37. **SELLER'S CONTRACTS WITH ITS SUPPLIERS AND SUBCONTRACTORS.**
 - a. Seller will ensure that its suppliers and subcontractors for any goods or services to be provided

under the Order comply with the obligations, and provide FCA US with no less than the rights, specified in Clauses 17, 24, and 28 of these General Terms and Conditions. Seller will also use commercially reasonable efforts to ensure that such suppliers and subcontractors comply with the obligations, and provide FCA US with no less than the rights, specified in Clauses 16 and 39 of these General Terms and Conditions.

- b. If FCA US directs Seller in a writing signed by an officer of FCA US to use a supplier or subcontractor regarding the goods or services to be provided under the Order, then (i) FCA US will be responsible for negotiating the prices charged Seller by such supplier or subcontractor, (ii) Seller will be responsible for every other aspect of the supply relationship between Seller and such supplier or subcontractor, and (iii) Seller agrees to enforce the rights arising out of its agreement with such supplier or subcontractor for the benefit of FCA US, or upon FCA US's request, will assign to FCA US Seller's rights under such agreement for the benefit of FCA US.
38. **TERM.** This Order is a contract for a definite term. The term of the Order is stated on the first page of the Order ("Term"). If the Term is for less than the duration of the applicable vehicle production program, at FCA US's option, the Term may be extended for an additional model year with advance notice to Seller equal to the longer of ninety (90) days or the lead time set forth in the Order (either by FCA US's notifying Seller of the extension or by FCA US's issuance of part releases for some or all of the goods identified in the Order for a future model year), with the Order being extended for each good for which Seller receives a release or other appropriate communication extending this Order for such additional model year.
39. **DISPOSAL OF SCRAP.** Any goods, assemblies, subassemblies, or materials related to this Order which are disposed of by Seller in any manner other than through sale to FCA US under the terms of the Order are scrap ("Scrap") and must be mutilated or otherwise rendered unusable for anything other than material content. If the goods, assemblies, subassemblies, or materials are the subject of a cancellation claim, mutilation must occur only after audit inspection and receipt of disposal instructions from FCA US. FCA US has the right to examine all pertinent documents, data and other information relating to the mutilation of any and all Scrap. In addition, FCA US has the right to visually inspect and audit any facility or process relating to the mutilation of Scrap. Seller must maintain all relevant documents, data and other written information relating to its obligations to mutilate Scrap under the Order for at least four (4) years following the later of last delivery of the goods or final payment under the Order. Such documents, data and written information relating to Seller's obligations to mutilate Scrap will be made available to FCA US upon FCA US's request.
40. **FCA US COMPUTER NETWORK; ACCESS CONFIDENTIALITY.**
 - a. If FCA US grants Seller access to FCA US's computer network, Seller understands that the access extends only to those employees of Seller who have a need for the access to perform work for FCA US. Seller must inform its employees that the data files they review are confidential and must not be communicated to others nor used for any purpose other than performing FCA US's work.
 - b. FCA US does not grant any intellectual property right including, but not limited to, trade secret, patent or copyright, by granting Seller access to FCA US's computer network. No right to use FCA US-owned or leased hardware, facilities or software application programs, including by way of example but not of limitation, communication software or software design programs, may be inferred from FCA US's granting access to its computer network to Seller.
 - c. FCA US may terminate Seller's access to FCA US's computer network in FCA US's sole discretion. Upon termination of Seller's access privileges, Seller must return any copy of data file obtained

from FCA US's computer network or any information obtained from the data file that Seller possesses. Seller's confidentiality obligation with respect to each datum of information obtained from FCA US survives termination of its access privileges and continues until the data becomes public knowledge.

- d. Seller must inform FCA US whenever Seller suspects that data obtained from FCA US's computer network has been wrongfully released to a third party or that an unauthorized third party has accessed FCA US's computer network. Seller must defend, indemnify, and hold FCA US harmless from the wrongful disclosure of any information obtained from FCA US's computer network.
- e. Seller assumes all risk of accessing FCA US's computer network. FCA US makes no warranty, either express or implied, regarding its computer network, including implied warranties of merchantability and fitness for a particular purpose. FCA US's computer network and data files may contain errors or viruses. FCA US is not liable for any damage arising from Seller's use of FCA US's computer network including, but not limited to, loss of profit, use, goodwill, work stoppage, computer failure or malfunction, interruption of business, or any direct, indirect, special, exemplary, incidental or consequential damage arising out of the use or performance of FCA US's network.

41. TAXES.

- a. The goods purchased hereunder are for resale or for an exempt purpose and are exempt from state and local sales or use taxes. FCA US's Office of Tax Affairs will provide an appropriate Certificate of Exemption upon Seller's written request. The following direct payment permit numbers are applicable for the states indicated:

Illinois (Belvidere Assembly Plant) 5572-5570 (Valid 9/2/12 – 7/1/15)
 Indiana (Kokomo Casting Plant) TID-Loc #0136356540-002
 Indiana (Kokomo Transmission Plant) TID-Loc #0136356540-001
 Indiana (Tipton Transmission Plant) TID-Loc #0136356540-005
 Indiana (IN Transmission Plant) TID-Loc #0136356540-003
 Michigan (FCA US Group LLC) ME-0167670
 Michigan (GEMA LLC) 20-0232860
 Michigan (FCA Transport LLC) ME-0167777
 Michigan (Auto Transport Services LLC) 45-5062723
 Ohio (Toledo Machining Plant) 98 002923
 Ohio (Toledo Assembly Complex) 98 002921
 Wisconsin.....008 1026854886-06

- b. For shipments to locations in Canada, this Order is subject to the goods and services tax (GST) and in the harmonized provinces, the harmonized sales tax (HST) and the Quebec sales tax (QST), where applicable, however is exempt from provincial sales tax;

British Columbia vendor number	1000-9880
Saskatchewan vendor number	1602309
Manitoba vendor number	100963941MT0003

The GST/HST and the QST amount must appear on all invoices as a separate line item and the GST/HST and QST numbers must appear on all invoices. Failure to comply with this requirement may result in delay in payment and return of invoice to Seller.

ANNEX A

EXPEDITED RULES OF ARBITRATION

- i. For disputes less than Twenty-five Million Dollars (\$25,000,000), the number of arbitrators will be one (1). For disputes in excess of Twenty-five Million Dollars (\$25,000,000), the number of arbitrators will be three (3). FCA US and Seller will attempt to agree on the appointment of the arbitrator, in the case of a single arbitrator. In the case of a 3-person panel, each party will appoint one (1) arbitrator. FCA US and Seller will attempt to agree on the appointment of the third arbitrator, who will serve as chairperson of the arbitration panel. In the case of either a 1-member or a 3-member arbitration, if such agreement is not reached within five (5) business days of the referral to arbitration, the arbitrator (or third arbitrator, as the case may be) will be selected by the American Arbitration Association ("AAA") pursuant to the AAA arbitrator selection process.
- ii. The place of arbitration will be Detroit, Michigan, U.S.A., with Michigan-based arbitrators.
- iii. The arbitral proceedings shall be conducted in the English language.
- iv. Each party will submit a request for production of documents (and related electronic search terms) and identify custodians who may have knowledge or information regarding the dispute within twenty (20) business days of the referral to arbitration. Documents will be exchanged within seventy-five (75) days after identification of custodians. Third-party discovery will be permissible. All discovery issues shall be resolved by the arbitrator(s). The parties agree that subpoenas and discovery-related orders issued by the arbitrator(s) will be enforceable by court order, and that attorneys' fees and costs incurred in connection with the enforcement of such orders will be awarded by the arbitrator(s). No other written discovery will be permitted.
- v. Each party will be allowed to depose up to six (6) witnesses. Seller and FCA US must submit a detailed disclosure of any proposed expert testimony (including findings and opinions) in a written report to be served within one hundred twenty (120) days after the referral to arbitration. After the disclosures and reports are issued, depositions of the fact and expert witnesses may occur but each deposition may not exceed eight (8) hours.
- vi. The hearing date will be scheduled within fifteen (15) months after the referral to arbitration. The pre-hearing deadlines established in subsections (iv) and (v) hereof may be modified by agreement of the parties or direction of the arbitrator(s), provided that such modifications do not render impracticable the fulfillment of the fifteen month deadline set forth herein.
- vii. Thirty (30) days prior to arbitration, Seller and FCA US will submit proposed arbitration awards to the arbitrator(s), which will simultaneously be exchanged by Seller and FCA US.
- viii. Seller and FCA US will be limited to up to six (6) witnesses that are identified pursuant to subsection (v) hereof, together with two (2) rebuttal witnesses. Seller and FCA US will exchange written direct testimony for each witness, exhibits and pre-hearing briefs two weeks before the hearing. The evidence at the hearing will be limited in scope to the

exhibits and disclosures made at that time. The pre-hearing brief will address all issues of law, or such issues will be waived.

- ix. The hearing will be limited to no more than three (3) days per party, with hearings on consecutive days.
- x. Witnesses as the hearing must be presented for cross-examination. (Affidavits will not be allowed). If a witness cannot attend the hearing in person, the proponent of that witness must have previously offered the other party the opportunity to cross-examine the witness under oath, in which case the deposition record will be admissible.
- xi. The arbitrator(s) will choose one award from the submitted awards without modification.
- xii. All statute of limitations and repose will be tolled during the arbitration proceeding.
- xiii. The parties agree to share the costs of the arbitrator(s).
- xiv. The arbitration process will be confidential.
- xv. Judgment on the decision or award may be entered in any court of competent jurisdiction.
- xvi. Any referral of arbitration under these General Terms will be made with a full reservation of rights and remedies, and will not constitute a waiver, forfeiture, or election of any such rights and remedies.

EXHIBIT 4

(Filed Under Seal)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

FCA US LLC, a Delaware limited liability
company,

Plaintiff,

v.

KAMAX INC., a Delaware corporation, and
KAMAX MEXICO S. DE R.L. DE C.V., a
Mexican corporation,

Defendants.

Case No. 2024-205863-CB

Hon. Victoria Valentine

BUSINESS COURT DOCKET

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**FCA US LLC'S OPPOSITION TO KAMAX INC.'S MOTION FOR SUMMARY
DISPOSITION AND TO DISSOLVE PRELIMINARY INJUNCTION**

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SUMMARY OF THE ARGUMENT

This is a simple price gouging case. Kamax wants more money for the parts it provides because its foreign owners have demanded that its North American operations become more profitable. In order to make its corporate parent happy, Kamax attempted to unilaterally increase the prices it charges FCA for parts even though the parties' contracts do not allow it to do so. When FCA objected to Kamax's latest demands for more money,¹ Kamax upped the *ante* and began playing a high stakes game of "chicken" by threatening to stop shipping parts to FCA unless it gave into Kamax's commercial extortion. When FCA would not do so, Kamax made good on its threats, stopped supplying parts to FCA, and caused two of FCA's plants to shut down on February 27 and 28, 2024, with 15 of its other plants facing imminent shutdown. To avoid a supply chain disaster, FCA was forced to ask the Court to issue a temporary restraining order and preliminary injunction requiring Kamax to comply with its contractual obligations and supply parts to meet FCA's requirements. This Court granted the temporary restraining order and preliminary injunction to maintain the status quo and prevent catastrophic harm to FCA, its employees, and numerous other suppliers. Now, in an effort to escape the damages Kamax knows it caused, Kamax argues that it was justified in ceasing the supply of goods to FCA because it believes the recent decision by the Michigan Supreme Court in *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176 (July 11, 2023), rendered the parties' contracts unenforceable. Kamax is wrong.

In *Airboss*, the Michigan Supreme Court was asked to consider whether the words "*blanket order*" in general terms and conditions sufficed to state a quantity term.² The Court found that the

¹ Kamax's demand for more money came even after FCA had provided it with multiple accommodations in 2022 and 2023 totaling about \$9 million, representing about 30% of FCA's annual spend with Kamax. See **Exhibit A**, Stephanie Scott Declaration ("Scott Decl."), ¶ 23.

² In *Airboss* the language of the terms and conditions stated that the order was a "blanket order" – but did not state that it was a "blanket order for the buyer's requirements." Had the parties used that language, the Court likely would have found that a sufficient quantity term existed to create a requirements contract

language was *too vague* to obligate the buyer to purchase *anything* from the supplier, thus no requirements contract was formed. *Airboss*, 511 Mich. at 192. The Court noted that a buyer must, by the language used, be obligated to buy *at least something* from the supplier—whether it be: *one* part, *all* parts, or even a *portion of* the supplier’s parts. *Id.* That is satisfied here because the parties purchase orders (POs) require FCA to purchase approximately 65%-100% of its requirements from Kamax.³ Thus, *Airboss*’ holding does nothing to undermine the enforceability of the parties’ contracts here.

Likewise, there is no merit to Kamax’s argument that quantity term cannot be a mathematical range. The Court of Appeals in *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, ruled that mathematical ranges suffice, and this ruling was not disturbed by *Airboss*. 331 Mich. App. 416 (2020). As such, it remains binding on this Court.⁴

Because there are enforceable requirements contracts between the parties, there can be no unjust enrichment nor conversion, and thus, Kamax’s Motion, in its entirety should be denied.

because it infers the purchase would be for “all” of the buyer’s requirements. *See Airboss*, 511 Mich. at 192. That was the case with respect to the language in *Higuchi Int’l Corp. v. Autoliv ASP, Inc.*, where the Court found that the language “[t]his blanket contract is issued to cover [buyer’s] requirements” was sufficient. 2023 U.S. Dist. LEXIS 145649 (E.D. Mich. Aug. 18, 2023).

³ Each purchase order specifies the part FCA is ordering and will utilize in at least 65%-100% of its total requirements.

⁴ Kamax argues that *Cadillac Rubber*’s range of “1 part to 100% of all parts” would no longer suffice as a quantity term after *Airboss*, because it would not inform a supplier of the exact number of parts it must provide (i.e., is it 1 part, 8 parts, or 78 parts?). *See Mot.* at 13-14. But Kamax misses the point. The UCC applies to contracts for the sale of goods. For there to be sale of goods, the buyer must agree to buy *something* (i.e., a quantity). Whether that quantity is “all,” 1/3, or even 10-20% of the buyer’s requirements, what matters is that the buyer is minimally obligated to buy something from the seller. The statute of frauds only bars contracts where the buyer would not, on its face, be required to buy *any* goods from the seller. The quantity term in *Airboss* was one of those examples, and the Court overturned existing law and held the term “blanket order,” without more, was too vaguely worded to infer that the buyer agreed to buy anything from the seller. *Id.* Here, FCA is required to buy *at least* 65% of its requirements from Kamax. That number could also be 68%, 73%, or 100%, but in all instances FCA is minimally obligated to buy at least 65% of its requirements from Kamax.

BACKGROUND

Kamax is not a mom-and-pop shop. Kamax is part of a large German conglomerate that produces specialty component parts with manufacturing plants all over the world, including Mexico, China and Europe. It has 19 locations worldwide, approximately 4,000 employees, and is estimated to generate billions in annual revenue worldwide from the sale of its parts.⁵ Kamax supplies parts to most automotive manufacturers in the United States and has done so for over thirty (30) years.

Kamax supplies approximately 180 specially manufactured parts to FCA. Scott Decl. ¶ 6. These parts are largely safety-critical components, utilized in various vehicle systems including engines and braking systems, among others, across FCA's wide range of family vehicles. *Id.* ¶ 7. Kamax does not supply these parts to FCA gratuitously. Instead, the parties have, for approximately 30 years, operated under a requirements contract framework for the parts Kamax supplies (the "Agreements"). *Id.* ¶¶ 6-13. The Agreements are comprised of the relevant purchase order terms and conditions which Kamax accepted (*i.e.*, Production and Mopar Purchasing General Terms and Conditions or the "Terms").⁶ Under the Terms, Kamax agreed that:

- It would deliver the parts specified in FCA's POs requested in conjunction with FCA's releases. Terms, § 3.
- If Kamax fails to make deliveries or perform services at the agreed time, all damages suffered by FCA will be at Kamax's expense. *Id.*
- The prices stated in the purchase order for the part being supplied by Kamax are **firm and are not subject to adjustment for changes in volume**, changes in the price of raw material or labor, changes in currency, or for any other reason, unless the parties agree otherwise. *See id.*, § 9.

⁵ <https://www.kamax.com/en/company/kamax-at-a-glance/>

⁶ FCA stipulates that a copy of the Terms which govern most of the parts at issue is attached as Exhibit 3 to Kamax's Motion, and that the exemplar of purchase orders that exist between the parties attached as Exhibit 4 to Kamax's Motion are accurate and contain the language that "this order is for 65%-100% of [FCA's] requirements."

Correspondingly, FCA agreed to pay Kamax for the parts it provided and to communicate its estimated future requirements, otherwise known as “forecasts,” on a going forward basis. FCA routinely provided Kamax its forecasts which are updated on a weekly basis. *See* Scott Decl. ¶ 21. These forecasts project FCA’s needs up to 18-months in advance. Kamax also receives short term estimates of its requirements which are updated on a daily basis. *Id.*

In addition to the Terms, FCA issued a PO to Kamax for each specific part it purchases. *Id.* ¶ 14. Kamax accepted the POs and performed under them from the outset of the parties’ relationship through February 20, 2024. *Id.* ¶¶ 14-33. The POs, among other things, specifically identify: (1) the part that Kamax agreed to supply; (2) the unit price for that part; (3) the order is for between 65%-100% of FCA’s requirements; (4) that it is for the life of the program; (5) what FCA’s payment terms were; and (6) any amendments of the terms of the parties’ bargain.⁷ *Id.* ¶ 14. After the PO is in place, FCA issues daily releases to Kamax to put it on notice of the number of parts FCA requires on a given day. *Id.* ¶ 21.

Prior to this dispute, Kamax never told FCA that it believed the POs were ambiguous and/or that the quantity term was vague in any way. *Id.* ¶ 17. To the contrary, Kamax knew that it was the sole supplier of parts listed in the parties’ POs. *Id.* Similarly, when FCA sent Kamax its forecasts to Kamax (detailing what parts would likely be needed and when), Kamax never took the position that it had no continuing obligation to furnish parts to FCA. *Id.* ¶ 31. In fact, the exact opposite is true. Kamax repeatedly held itself out as being continuously obligated to supply parts to FCA pursuant to the Agreements. *Id.* ¶ 22. If that were not the case, Kamax would have never asked FCA to help subsidize the increased costs of producing the parts, as it did most recently in

⁷ *See* Mot. at Ex. 4, Purchase Order Exemplar.

2022 and 2023.⁸ *Id.* Likewise, FCA would have never agreed to pay Kamax approximately \$9 Million for these costs, most of which was *retroactively applied to parts which were already delivered and paid for*, if Kamax did not have a continuing obligation to meet FCA's requirements. *Id.* ¶¶ 22-25. But because the parties' Agreements are long-term fixed price requirements contracts, FCA agreed to assist Kamax with the market pressures it faced so that FCA would continue to have a reliable supply of goods available to it for its manufacturing process. *Id.*

FCA's willingness to help its suppliers, however, is not without limits. In September 2023, just three months after FCA agreed to provide Kamax with over \$4.7 Million in retroactive price increases, Kamax came back to FCA demanding even more money and threatening to stop supply of the Goods. *Id.* ¶ 26. This time, Kamax's demands were not because of outside market pressures, but because it wanted to improve its bottom line (at the expense of FCA's own). Indeed, in 2023 Kamax underwent a reorganization where its parent company pushed its operating units, including its North America operations, to stand on their own. This new "regionalization" strategy, however, had its warts. Kamax's new President and CEO of the Americas, Mats Ceder, began focusing on "lean production" in order to maximize profits.⁹ In that vein, Kamax audited each of its contracts with automobile manufacturers, including FCA, to determine the profit margin it was making off of each part supplied. In conjunction with this effort, Kamax determined that it was not making

⁸ In 2022, FCA paid approximately \$2.7 Million in price increases attributable to raw materials and inflation, paid as a lump sum to Kamax, and in June 2023, FCA paid about \$2.2 Million in price increases attributed to raw materials and an additional \$2.5 Million, representing a 7.5% price increase, retroactively applied to January 1, 2023, paid on a cost per-unit basis. Kamax continues to receive quarterly raw material adjustments at 100% of index, for the life of the programs Kamax serves, and FCA is still paying the increased price for parts. Scott Decl. ¶ 23. FCA also agreed to non-monetary accommodations in November 2023 in exchange for Kamax's assurance it would not make any additional threats to stop supply of parts and recognized its ongoing obligation to supply parts "to meet FCA's requirements[.]" **Exhibit B**, Accommodation Letter Agreement.

⁹<https://www.kamax.com/en/story/kamax-treibt-regionalisierung-voran-neue-geschaeftsfuehrung-in-europa-und-amerika/>

enough profit from approximately 60 parts that it was supplying to FCA.¹⁰ So it chose to either ratchet up the costs or to stop making them.

On November 6, 2023, Kamax executed the Accommodation Letter Agreement, under which Kamax agreed not to:

(i) repudiate all or any portion of, or any obligation under, an installment of or an entire [Purchase] Order; (ii) take any action evidencing its intention or threat not to fully and timely perform each and all of its obligations under an installment of or an entire [Purchase] Order (including announcing or threatening non-delivery or the stop shipment of goods); or (iii) fail or omit to take any action required to be performed by Kamax that is necessary for Kamax to fully and timely deliver fully conforming goods or services to meet FCA's requirements or otherwise perform under a release or a [Purchase] Order.

Exhibit B, Accommodation Letter Agreement.

In exchange for Kamax's promises FCA agreed to, among other things, assess in good faith whether the 60 parts Kamax found to be unprofitable could be resourced and to determine resourcing opportunities where commercially reasonable. But *less than two weeks* after signing the Accommodation Letter Agreement, Kamax breached its obligations by once again demanding price increases for its parts and threatened to stop supply to FCA on February 20, 2024, if its unwarranted demands were not met. Scott Decl. ¶ 29; **Exhibit D**, Price Increase Demands. In essence, Kamax told FCA it had a mere 90 days to look for a new supplier for the parts, and if it wanted these parts in the interim, then it had to pay what Kamax projects would be an extra \$4.5 million a year to get them.¹¹ Kamax's desire to improve its own profitability at the expense of FCA's violated Clause 9 of the Terms which does not grant Kamax the right to unilaterally increase its prices. *See* Terms, § 9 (providing that unless the parties specifically agree otherwise, the prices

¹⁰ *See Exhibit C*, Mark Mahaffy, testimony, Prelim. Inj. Hr'g, *FCA US, LLC v. Kamax, Inc.*, No. 24-205863-CB (Mar. 15, 2024), ("Mahaffy Tr.") at 24:14-27:24.

¹¹ Some parts had a 3,500% price increase without any justification. *See Ex. D*.

in the PO “are firm and are not subject to adjustment for changes in volume, changes in the price of raw materials or labor, changes in currency valuation, or for any other reason”).

Kamax knew that if it stopped supply of the parts to FCA it would cause a huge supply chain disruption in all of FCA’s manufacturing plants but did so anyway to make more money. Despite being told by FCA that it must honor its Agreements and continue supply the Goods at the agreed upon prices, on February 20, 2024, Kamax followed through with its threats and stopped supply of the Goods. Kamax would not even agree to continue supply of the Goods until the Court could rule on a TRO or preliminary injunction. As a result, FCA was forced to shut down two of its plants for two days; its remaining 15 plants were also at the brink of closure for lack of parts. Scott Decl. ¶¶ 33-34. This, Court, rightly intervened and granted FCA’s TRO on February 28, 2024 (and later entered a preliminary injunction) ensuring the continuous supply of parts to FCA in exchange for payment for such parts. *Id.* ¶ 35.

Now, after pocketing \$9,000,000 from FCA, Kamax argues (without, of course, agreeing to refund FCA its \$9,000,000), that the parties have *no agreement* of any kind and that it can arbitrarily decide when and if it wants to supply the goods to FCA. Kamax contends this is the case because the parties POs are “release by release” contracts rather than “requirements contracts”. Kamax’s arguments fail for one primary reason: the parties’ POs state a sufficient quantity term to create a requirements contract. Kamax accepted and has performed under the POs and is obligated to comply with them through the life of the applicable FCA vehicle program.

ARGUMENT & AUTHORITIES

A. STANDARD OF REVIEW

A motion for summary disposition brought under MCR 2.116(C)(10) “tests the factual sufficiency of the complaint,” *Shinn v Mich. Assigned Claims Facility*, 314 Mich. App. 765, 768;

887 N.W.2d 635 (2016), and should be granted when “there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law[.]” *West v Gen Motors Corp*, 469 Mich. 177, 183; 665 N.W.2d 468 (2003).

“The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence.” *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich. App. 684, 693; 818 NW2d 410 (2012). When considering the motion, the court must consider the admissible evidence in a light most favorable to the nonmoving party, *FCA. Liparoto Constr, Inc. v Gen Shale Brick, Inc*, 284 Mich. App. 25, 29; 772 N.W.2d 801 (2009). The party opposing summary disposition also may overcome the motion by establishing a dispute of material fact, which “exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Bahri v IDS Prop. Cas. Ins. Co.*, 308 Mich. App. 420, 423; 864 N.W.2d 609 (2014) (quotation marks and citation omitted).

B. REQUIREMENTS CONTRACTS UNDER MICHIGAN LAW

(1) What Constitutes a Requirements Contract?

Requirements contracts are a type of open quantity contract in which the quantity term is defined as all or some portion of the buyer’s “requirements.” Allen Blair, “You don’t have to be Ludwig Wittgenstein”: How Llewellyn’s Concept of Agreement Should Change the Law of Open-quantity Contracts, 37 SETON HALL L. REV. 67, 78-80 (2006) [hereinafter Blair, Llewellyn’s Concept of Agreement]; *see also* BLACK’S LAW DICTIONARY (11th ed.), p. 410 (defining “requirements contract” as “[a] contract in which a buyer promises to buy, and a seller to supply, all the goods or services that a buyer needs during a specified period”). A requirements contract provides businesses with “some measure of security and flexibility,” benefitting both buyers and

sellers. *Id.* at 78. It assures the buyer that it has a continuous supply of goods at a fixed price and the seller that it has a continuous customer. Travis W. McCallon, Old Habits Die Hard: The Trouble with Ignoring Section 2-306 of the UCC, 39 TULSA L. REV. 711, 711 (2004) [hereinafter McCallon, Old Habits].

(2) How Are Requirements Contracts Used in the Automotive Industry?

Requirements contracts are both essential and ubiquitous in the automotive industry. Background on the industry's manufacturing operations helps to see why. The industry's "just-in-time" model is famous for maximizing efficiency by continuously identifying and eliminating all forms of corporate waste and variance. A. Erdil & A. Ekerim, A General Overview of the Production Management-Just-In-Time Approach: An Application in a Business of Automotive Sector, PRESSACADEMIA PROCEDIA (PAP) v. 7, pp.39-46 (2018) [hereinafter Erdil & Ekerim, A General Overview]. This system of lean production, most often used in repetitive manufacturing, moves goods through the system and completes tasks "just in time" to maintain the schedule. *Id.* Orders for parts are placed only a few days—sometimes hours—before the product is needed. Lane Kenworthy, et al., "The More Things Change ...": Business Litigation & Governance in the American Automobile Industry, 21 LAW & SOC. INQUIRY 631, 648 (1996).

Requirements contracts are uniquely suited to support this structure, which would breakdown if these types of contracts were not readily enforced. First, "[a]rguably the most important area of [just-in-time management] is supplier partnerships." Dean R. Manna, Just-In-Time: Case Studies of Supplier Relationships Across Industries, 24 J. Applied Bus. Res. 75 (2008) [hereinafter Manna, Case Studies]. Supply contracts "are the paradigmatic long-term relationships" that benefit from requirements contracts because they "require a great deal of relationship-specific investments in the form of machinery, location of plants, and precontractual

technology research.” Omri Ben-Shahar & James J. White, Boilerplate & Economic Power in Auto Manufacturing Contracts, 104 MICH. L. REV. 953, 954 (2006). These suppliers develop and fabricate highly specialized parts. Indeed, the supplier is typically the only producer of the particular part, and the buyer is likely the only manufacturer that requires it.

Second, the “‘just-in-time’ nature of the automotive supply chain provides potential for large-scale disruption if just one of the down-line companies is unable to fulfill its obligations under contract.” *Cooper-Standard Auto, Inc. v. Daiking Am. Inc.*, 568 F. Supp. 3d 846, 848 (E.D. Mich. 2021) (citing *Eberspaecher N. Am., Inc. v. Nelson Glob. Prod., Inc.*, No. 12-11045, 2012 WL 1247174, at *6 (E.D. Mich. Apr. 13, 2021)). The “potentially catastrophic effects” that a supply-chain disruption could wreak are well-established in precedent. *See Eberspaecher*, 2012 WL 124174, at *6 (citing cases).

Third, one-off contracts, including release-by-release agreements where a blanket quantity term is used, cannot sustain these manufacturing practices. Requirements contracts support long-term manufacturer-supplier relationships that allow greater cooperation between the parties, reliance on single sourcing, and supplier involvement in component design, and implementation of just-in-time delivery. *See Kenworthy*, Business Litigation, at 648. Release-by-release contracts would allow a supplier to halt deliveries and demand higher prices (as happened here) at its will or allow a buyer simply to stop buying from a seller whenever it wanted. Such one-off dealings do not allow for a reliable flow of goods to occur which is vital in the manufacturing process.¹²

(3) Stating a Quantity Term to Satisfy the Statute of Frauds.

Michigan recognizes the enforceability of requirements contracts—with one caveat—it must be able to satisfy the statute of frauds by stating a quantity term. *See MCL § 440.2306(1)*;

¹² In many cases, for the supplier to be capable of producing a specially engineered part, FCA pays millions of dollars in “tooling” and equipment costs to enable the supplier to produce and supply the part to meet its requirements on a long-term basis. *See Terms*, § 10.

MCL § 440.2201(1). To that end, the law recognizes that the *total quantity* (i.e., the buyers requirements) may not be initially known to a buyer and seller, but there must be an agreement to buy and sell *something* (a “quantity term”) — whether it is one good, all goods, or even a portion of the goods the buyer needs. See *Airboss*, 511 Mich. at 192. In a requirements contract, a quantity term that measures the quantity by the buyer’s requirements, or some portion of it, is precise enough to pass muster under Section 2-201 of the UCC even though the total quantity will remain unknown initially until the buyer’s needs are known.

Release-by-release contracts, on the other hand, do not exist to meet a buyer’s requirements nor do they reflect a long-term supply agreement. A release-by-release contract is essentially a one-time “spot buy” of parts, akin to purchasing a readily available part off the shelf at a local hardware store.¹³ Under a release-by release arrangement, there is no contract governing the quantity of parts the supplier must provide, the price for the parts, or even whether the supplier is capable of providing the parts ordered. Rather, the buyer simply would issue a release to the supplier with an order for parts (an offer to purchase goods) which the supplier can fulfill or reject. Under a release-by-release contract framework, the buyer is not obligated to buy anything from the seller, and the supplier is not obligated to furnish anything to the supplier if it does not want to. Mutuality only exists when a release is accepted by the supplier.

The “key difference between a requirements contract and a release-by-release contract rests in the level of mutual obligation between the parties and the risk each party bears.” See *Airboss*, 511 Mich. at 180. As a result, countless courts look to the nature of the language used in the purchase order when determining what type of contract, if any, the parties have. If there is a minimum obligation for the buyer to purchase some goods from the seller based on the buyer’s

¹³ Practically, release-by-release contracts are generally not used in the automotive industry between OEMs and long-term parts suppliers, and they are a court-created concept by the holding in *Airboss*.

needs, then it is treated as a requirements contract. *Id.* If the face of the purchase order does not create a minimum obligation on the buyer to purchase goods from the supplier, then the buyer's subsequent release is treated as an offer to purchase parts from the seller. *See id.*

The Michigan Supreme Court demonstrated the issue of mutuality in the following illustrations:

- In “Scenario 1”, the buyer tells the seller, Orchard X, that: “*As a blanket policy, I will buy all my apples from Orchard X for \$3.00/bushel*”. In this example, the court found a sufficient quantity term was stated because the buyer committed to buy “all” of its apples from Orchard X (the seller). So while the total number of apples that may be purchased is unknown, the buyer commits himself to purchasing *all* of his need for apples from Orchard X. The term “all” then is sufficient to state a quantity term.
- Contrast this example “Scenario 2” where the buyer tells Orchard X that: “*As a blanket policy, I will only purchase apples for \$3.00 a bushel*”. Here, on its face, the buyer does not commit to buying *anything* from the seller.

See id. at 192-193.

Thus, a quantity term will be found to exist if the buyer commits itself to buying something from the seller. In *Airboss*, that was missing. The purchase order in that case stated that it was for a “*blanket order*.”¹⁴ There were no details found in the purchase order to state what, if anything, the buyer had to buy from the seller. The Court held that this language alone was too imprecise to enforce. *Id.* The Court, however, provided examples of what does suffice to state a quantity term such as: “*all*”, a number, “*a non-exclusive part of the buyer's total need*”, or “*a portion*” of the supplier's parts. *Id.* at 194-199. A quantity term can also be stated in the form of a percentage,

¹⁴ Notably, the buyer's blanket order did not mention nor reference its requirements, had it done so, its holding may have been different and akin to the holding reached in the district court in *Higuchi*, whereby the federal court found that a “blanket order for my requirements” meant “all of [the buyer's] requirements[.]” *Higuchi Int'l Corp.*, 2023 U.S. Dist. LEXIS 145649, *10.

because it, by its very nature, denotes a “portion of” what will be purchased. Kamax’s counsel has published his agreement with this fact and stated:

[I]f the contract is for “100% of buyer’s requirements for parts”—or “13% of buyer’s requirements for parts,” for that matter—the obligations are balanced because *once the buyer knows how many parts it needs, simple math turns that 100% or 13% into an integer. And that integer applies equally to the buyer’s obligation to buy and the seller’s obligation to deliver.*

Jason Killips, *Section 2-201 Isn’t Optional: Option Provisions, Requirements Contracts and Cadillac Rubber*, MICH. BUS. L. J., Fall 2021, at 46, 48 (emphasis added),¹⁵ *see also* Killips, J., *Amicus Curiae Brief of Aisin World Corp. of America, Inc., et al.*, at 18 n.2, MSC No. 163523 (Mich. 2022) (“Killips Amicus Brief”), *Airboss*, 511 Mich. 176 (No. 35433) (stating “there is no reason that a requirements contract could not be for any share of the buyer’s requirements—say ‘one third’ or ‘60%’—so long as the contract explicitly said so. Such a contract would obligate the buyer to purchase that specific share of its requirements exclusively from the seller, and obligate the seller to deliver that specific share of the buyer’s requirements.”).

Finally, if a buyer commits to buying a mathematical range (i.e., “a non-exclusive part of buyer’s total needs”) from seller, that too suffices to state a quantity sufficient to satisfy the statute of frauds. In *Cadillac Rubber*, the buyer agreed to buy a quantity between “not less than one part and not more than 100% of all parts” from the seller. *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, 331 Mich. App. 416 (2020). The seller later argued that this range was too indefinite to state a quantity term. The Court of Appeals disagreed and found it stated a quantity term because the buyer agreed to buy something on the face of the order from the seller, thus mutuality existed, and the agreement was enforceable. *See id.* And while Court of Appeals

¹⁵ This article was cited by the Court in *Airboss*, 511 Mich. at 184.

decided this case before *Airboss*, the Michigan Supreme Court considered the holding in *Cadillac Rubber* and left it *undisturbed*. See *Airboss*, 511 Mich. at 194.

(4) The Agreements Are Requirements Contracts With a Sufficient Quantity Term.

Here, the parties' Agreements are enforceable requirements contracts. FCA's POs state "[t]his order is for approximately 65% - 100% of [FCA's] requirements." See Mot. at Ex. 4. This is a sufficiently precise quantity term to satisfy the statute of frauds and is thus enforceable. Specifically, a quantity term is stated because the mathematical range of "65% to 100%" can be distilled into known integers (a set share) once FCA's total needs are known. In essence, Kamax can determine the number of parts it will have to provide at the very least (65%) or at the very most (100%).¹⁶ Likewise, FCA agrees it will buy *at least* 65% if not *all* of its total needs from Kamax. In no event, can FCA buy *zero* parts from Kamax. Thus, mutuality exists, and *Airboss*' test is satisfied.

Kamax, contends (without any authority) that FCA's mathematical range of 65%-100% does not suffice because *Airboss* somehow overruled or supplanted *Cadillac Rubber* which held that a range of "no less than 1 part to no more than 100% of parts" stated a sufficient quantity term. *Cadillac*, 331 Mich. App. at 430. As discussed above, the Michigan Supreme Court, however, did not reverse *Cadillac Rubber*. Instead, the Court considered its holding and left it intact. As such, *Cadillac Rubber* remains good law and is binding on this Court. Importantly, Judge Warren was recently asked to consider whether FCA's purchase orders containing the "65%-100% of its

¹⁶ Kamax references that the POs state "1" or "1.000" in the narrow box labeled "Quantity". However, this figure is simply a software system default which is automatically populated. The quantity term on the Purchase Orders is found immediately below the "Quantity" box which states that "[t]his order is for approximately 65% - 100% of [FCA's] requirements." Similar language of the "1" default was noted in *Magna Seating, Inc. v. Adient US, LLC*, 2021 WL 2026125 (Ct. App. Mich. 2021), but the court ignored the software default and analyzed the more explicit quantity term. *Id.* However, to the extent the Court believes there is any conflict between those terms, then Kamax's Motion should be denied to allow for parol evidence as to what the parties intended by these terms.

requirements” language sufficed after *Airboss* and agreed that *it did* because *Cadillac Rubber* “remains the law of the fair land of Michigan until it is finally (if ever) completely vanquished by the judicial knights of the Michigan Supreme Court.”¹⁷

Similarly, the Western District of Michigan in *Dieomatic v. General Aluminum Man, LLC*, considered whether a range sufficed after *Airboss*, and found that it did. 2023 WL 5804426 (W.D. Mich. 2023) (following *Cadillac Rubber*’s holding). Other courts have also found that ranges are acceptable to state a quantity term. See, e.g., *Nora Beverages, Inc. v. Perrier Group of Am., Inc.*, 164 F.3d 736, 749 (2d Cir. 1998) (stating “a description of quantity in terms of a range satisfies the statute of frauds); *Johnson Controls v. TRW Vehicle Safety Sys.*, 491 F. Supp. 2d. 707 (E.D. Mich. 2007) (a quantity term was stated with “no less than one unit and no more than 100% of its requirements”). Thus, there is no legal basis to hold otherwise.

Next, Kamax argues that because FCA is given discretion as to how much, within that range, it may order (e.g., 65%, or 80% or 100%), then this amounts to having essentially “no quantity at all,” (citing *Acemco, Inc v Olympic Steel Lafayette, Inc*, 2005 WL 2820716 (Mich. App. 2005). However, the present case is nothing like *Acemco*. In that case, the buyer (Acemco) issued a purchase order to Olympic, a supplier, stating “during the term of this Agreement, the Seller agrees to sell to the Buyer such quantities of the Products as Buyer *may* specify in its purchase orders, which the buyer *may deliver at its discretion*”. See *id.* (emphasis added). The Court of Appeals found that this language failed to state a quantity term because the buyer had the discretion to buy *nothing* from the seller. For that reason, the Court found the agreement lacked mutuality and was not enforceable. *Acemco*, 2005 Mich. App. LEXIS 2656. In this case, however, FCA *must* buy 65% to 100% of its requirements from Kamax. The language of the parties’ POs does

¹⁷ **Exhibit C**, *FCA US, LLC v. Maclean-Fogg Component Solutions, LLC et al.*; Case No. 24-206687-CB, Opinion at p. 17.

not allow FCA to order less than 65% of its requirements from Kamax, though here Kamax knows FCA purchases 100% of its requirements of the Goods from Kamax. As such, *Acemco* is inapplicable.¹⁸

(5) *Airboss* Requires the Buyer to Commit to Purchase Something From the Supplier—And That “Something” Can Be Stated in Numerous Ways.

Next, Kamax suggest that FCA’s purchase orders are unenforceable because *Airboss* requires an *exact* amount to be stated in the purchase order. Not so. *Airboss* only stated that the term “blanket order” was not sufficient because it was too *imprecise*. The Court recognized that a quantity term can be expressed in different ways such as by denoting that a buyer will purchase “all” parts, a specific number parts, “a non-exclusive part of the buyer’s total need,” or even “a portion” of the buyer’s requirements. *See Airboss*, 511 Mich. at 194, 199. *Airboss* does not require magic words to be sprinkled on every PO to make it valid; instead, what matters is whether the buyer commits to a minimum purchase obligation (i.e., “a set share”) from the supplier on the face of the purchase order (i.e., whether that share is 1 part, 80% of its parts, or a range between 1-100% of parts). Here, the “set share” and/or “non-exclusive part of [FCA’s] needs” is 65%-100% of its requirements.

Courts in Michigan have held that even less precise language than that which FCA uses is enforceable. *See, e.g., Higuchi Int’l Corp. v. Autoliv ASP, Inc.*, 2023 U.S. Dist. LEXIS 145649 (E.D. Mich. Aug. 18, 2023) (Kamax’s counsel successfully argued that “[t]his blanket contract is

¹⁸ While the Michigan Supreme Court declined to analyze whether *Cadillac Rubber* and *Acemco* were inapposite, a careful reading of both cases shows they can easily be reconciled. *Acemco* stands for the same proposition that *Airboss* did: if the buyer is not obligated potentially to buy anything, there is no contract. *Cadillac Rubber* on the other hand, requires the buyer to buy at least something from the supplier, thus mutuality exists. While Kamax may argue that it is unfair that the buyer ultimately gets to determine how much within the range she will buy, that is what the parties agreed, and that does not negate the enforceability of the contract. This is especially so given that requirement contracts need not be exclusive. *Airboss*, 511 Mich. at 194 (“A seller can agree to provide a nonexclusive part of the buyer's total need.”).

issued to cover [buyer's] requirements"); *Dayco Prods., LLC v. Thistle Molded Grp., LLC*, 2019 U.S. Dist. LEXIS 16927 (E.D. Mich. Feb. 4, 2019) (Kamax's counsel argued that a requirements contract existed when the contract was for the buyer's "requirements" and allowed the purchaser to communicate the quantity to be purchased from time to time); *Eberspaecher N. Am., Inc. v. Nelson Global Prods., Inc.*, No. 12-11045, 2012 U.S. Dist. LEXIS 136214 (E.D. Mich. Sept. 23, 2012) (Kamax's counsel argued quantity term "Buyer's requirements which shall be defined as those quantities ordered by Buyer from time to time . . . but not exceeding 20% . . . above the quoted volume/capacity requirements" was sufficient).

Notably, the courts in both *Higuchi* and *Dayco* found that purchase orders for "the requirements of Buyer" were enforceable because the courts *inferred* the language to mean "all of the requirements of the Buyer" See *Higuchi*, 2023 U.S. Dist. LEXIS 145649, *10-28; *Dayco Prods.*, 2019 U.S. Dist. LEXIS 16927, *11-12. Here, FCA's POs not only state that they are for "[FCA]'s requirements," they are *even more specific* than both *Higuchi* and *Dayco* because they quantify what amount of their requirements will be purchased from Kamax (i.e., 65%-100%). Thus, if the language of the purchase orders in *Higuchi* and *Dayco* suffice, then so too does the language here. Therefore, the Court should deny Kamax's Motion, confirm the enforceability of the parties' Agreements as requirements contracts, and rule in favor of FCA on this matter per MCR 2.116(1)(2).

(6) The Word "Approximately" Does Nothing to Negate the Quantity Term.

The use of the modifier "approximately" does not negate the quantity term nor provide FCA with the discretion not to order any of its requirements from Kamax. Instead, the term "approximately" simply modifies the range given: 65% to 100%. Scott Decl. ¶¶ 16-19. "Approximately" means nearly correct or exact. See, e.g., *JVI, Inc. v. Truckform Inc.*, 2012 U.S.

Dist. LEXIS 181769, at *57 (D.N.J. Dec. 26, 2012); *James L. Webb Paving Co. v. Clark*, 2003 WL 1848646 (Del. 2003) (citing BLACK'S LAW DICTIONARY (5th ed.)). The use of this word does not render the quantity term meaningless; rather, it is simply to be read in conjunction with the quantity term it precedes.¹⁹ See Lawrence Anderson on the Uniform Commercial Code Commentary, 2-204:222 (holding that using a term like “about” or “more or less” does not take away from the quantity stated). Similar cases have also recognized that a sufficiently definite quantity term may use the term “approximately.” See, e.g., *Louisville v. Rockwell Mfg. Co.*, 482 F.2d 159, 164 (6th Cir. 1973) (finding that a contract for “approximately 7650” parking meters was sufficient to create a requirements contract); *BRC Rubber & Plastics, Inc. v. Continental Carbon Co.*, 900 F.3d 529 (7th Cir. 2018) (holding “the approximation of the annual quantity does not undermine the definiteness of the contract”); *Empire Gas Corp. v. Am. Bakeries, Co.*, 840 F.2d 1333 (7th Cir. 1988) (stating a contract for “approximately 3,000 units, more or less depending upon the requirements of the Buyer” stated a quantity term); *Udell v. Cohen*, 282 A.D. 685, 686 (App. Div. 1st Dept. 1953); *Horn Waterproofing Corp. v. Horn Const. Co., Inc.*, 104 A.D.2d 851 (2d Dept. N.Y. 1984).²⁰

Nonetheless, Kamax contends the term “approximate” is too indefinite to enforce because it is not clear if, for example, 63% or even 50% could be considered “approximate” to the stated range. But if FCA only ordered 63% of its requirements from Kamax, Kamax could sue FCA for breach. See, e.g., *Atlantic & Pac. Packing Co., Inc. v. Weinstein*, 272 A.D. 1073 (2nd Dept. 1947) (finding a breach of contract when the contract called for “approximately” 2,500 cases of salmon

¹⁹ At minimum, if the Court finds that the quantity term at issue here is ambiguous, it should allow parol evidence and the parties past practices and dealings to determine the parties’ intent to establish a requirements contract as the Court did in *Cadillac Rubber*, 331 Mich. App. at 416.

²⁰ MCL 440.2306(1) further contemplates that the parties will use estimates or forecasts to make the actual requirements more precise and the parties cannot unreasonably request a disproportionate amount to their prior requirements.

and the seller only supplied 2,200); *Simcala, Inc v American Coal Trade, Inc*, 821 So. 2d 197 (Ala. 2001) (ordering less than the estimated amount of buyer's need in the purchase order would be a breach of contract); *Udell*, 282 A.D. at 685; *Wood v. Saylor Tie & Timber Co.*, 67 S.W.2d 826 (Ct. App. Mo. 1934) (stating "to estimate does not mean to guess. It implies computation or calculation. Its lexical meaning is to ...calculate approximately...[t]he writing is clearly sufficient under the statute of frauds. It need not be pieced out by parol. A reasonable approximation to 10,000 ties in the fulfillment of the contract is required, and no more. What is a reasonable approximation becomes a question for the court.") (citations omitted). The term "approximately" does not negate the quantity term.

Finally, to the extent that Kamax argues that the term "approximately" potentially means "zero" or some other percentage other than the range between 65% and 100%, then Kamax has raised a fact issue as to the meaning of that term thereby precluding it from summary disposition. *See, e.g., Busch v. Dyno Nobel*, 40 Fed. Appx. 947 (6th Cir. 2002) (finding that a quantity term existed when the buyer ordered "up to ten million pounds" from the seller, but holding that parol evidence was necessary to determine whether it was intended to mean 10 million pounds or of some agreed minimum amount under that amount). Thus, at minimum, if the Court finds ambiguity, it must deny Kamax's Motion and consider parol evidence following the development of the record to determine whether the parties intended to enter into a requirements contract.

C. KAMAX'S COUNTERCLAIMS FAIL AND SHOULD BE DISMISSED

(1) The Parties' Requirements Contracts Bar Kamax's Unjust Enrichment Claims.

Under Michigan law, a contract will be implied only if there is no express contract covering the same subject matter. *See Sudden Serv. v. Brockman Forklifts, Inc.*, 647 F. Supp. 2d 811 (E.D. Mich. 2008) (citing *Belle Isle Grill Corp. v. City of Detroit*, 256 Mich. App. 463 (2003)). For the

reasons stated above, the parties are bound by requirements contracts for the parts Kamax supplies to FCA so there is no merit to Kamax's claim. Moreover, even if the court were to find that no contract exists, which is not the case, Kamax's claim would still fail because it has been paid by FCA for the parts it has been delivering; thus, there is no "unjust" enrichment. To the extent that Kamax contends that FCA's payment is somehow inadequate and that the money it is receiving is not the market value for such parts, then a fact issue exists as FCA contends that it is paying the agreed price for the parts which is equal to or more than market value. *See* Scott Decl. ¶ 35.

(2) Kamax's Conversion by Way of Injunction Claim Must Fail.

Last, Plaintiff contends that it is entitled to approximately \$14,000,000 (\$4.5 million x 3) by way of its common law and statutory conversion under the auspices that FCA is "wrongfully" taking its parts from it. This again is wrong. The parties have enforceable Agreements, and thus, FCA is permitted to continue to receive parts from Kamax through the life of the vehicle programs. Because there is a contract, the economic loss rule precludes recovery. *Dicastal North America, Inc. v. Markowitz Metals Group, LLC*, 633 F. Supp. 3d 999 (stating there is no conversion when a contract exists allowing for the consensual transfer of goods). FCA is not intentionally dispossessing Kamax of its property (i.e., it is not a thief in the night sneaking off with Kamax's parts). Instead, FCA is receiving parts from Kamax pursuant to a lawful injunction. Thus, there is no "*wrongful* dispossession of property". FCA has been paying for the parts Kamax provided, and Kamax has accepted payment without any reservation. Scott Decl. ¶ 35.

CONCLUSION

For the foregoing reasons, FCA requests that this Court enter an order denying Kamax's Motion, dismissing Kamax's Counterclaim, finding that the Agreements are enforceable requirements contracts, granting judgment in FCA's favor under MCR 2.116(1)(2), and awarding all such other relief that the Court deems equitable and just.

Date: May 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed on May 8, 2024. Notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system, and the filing may be accessed through that system.

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EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

FCA US LLC, a Delaware limited liability company,	)	
	)	
<i>Plaintiff,</i>	)	
	)	Case No. 2024-205863-CB
v.	)	
	)	Hon. Victoria Valentine
KAMAX INC., a Delaware corporation, and	)	
KAMAX MEXICO S. DE R.L. DE C.V., a	)	<u>BUSINESS COURT DOCKET</u>
Mexican corporation,	)	
	)	
<i>Defendants.</i>	)	

DECLARATION OF STEPHANIE SCOTT

I, Stephanie Scott, hereby declare as follows:

1. I am over 18 years old. The statements contained in this Declaration are based upon my personal knowledge, company records, and matters made known to me. If sworn, I can testify competently to all of the facts stated in this declaration.

2. I am Head of Chassis & Adaptation Purchasing, Stellantis North America. I have served in my current role since July 2023. I have been with the company since October, 2011 and have served in various roles since joining FCA.

3. Plaintiff FCA US LLC ("FCA"), formerly known as Chrysler, now does business as Stellantis North America. FCA is a wholly owned subsidiary of Stellantis, N.V.

4. FCA is an original equipment manufacturer ("OEM") and, including its predecessors, has manufactured automobiles in the United States for over 100 years in various locations throughout North America, including the greater Detroit metropolitan area. FCA manufactures Jeep, Dodge, Ram, and Chrysler vehicles.

5. I have knowledge of the business relationship between Defendants Kamax Inc. and Kamax Mexico S. De R.L. De C.V. (together, "Kamax"), a Tier 1 supplier for FCA. I understand that Kamax has 19 locations worldwide, approximately 4,000 employees, and generates billions in annual revenue worldwide from the sale of its parts.

6. For approximately 30 years, Kamax has supplied hundreds of different specially engineered parts to FCA and its predecessors. Specifically, Kamax supplies over 180 unique fastener parts to FCA that our company uses to manufacture automobiles in 17 of its eighteen total major assembly and powertrain manufacturing plants throughout North America.

7. The goods are critical fastener parts used in the production of vehicles across 16 different vehicle programs operated by FCA. These are safety-critical components, utilized in various vehicle systems including engines and braking systems, among others, across FCA's wide range of family vehicles.

8. Production at all 17 relevant FCA plants is contingent upon the steady supply of these parts. Without the Kamax parts, production at all affected plants will grind to a halt and be forced to shut down. FCA relies on and has contracts with over 2,500 direct suppliers and further relies on thousands of sub-suppliers to provide the components that FCA uses to manufacture its automobiles and products at its plants.

9. Kamax is the sole supplier of the goods. Given that the goods are unique parts which are specially engineered, FCA cannot readily source them from other suppliers.

10. When FCA evaluates a supplier to source a part like the ones provided by Kamax, it takes on average approximately 40 weeks for a supplier to pass the initial qualification process, and a total of between 12 and 18 months for a supplier to be onboarded to begin delivering the part.

11. The process to become an approved FCA supplier involves submitting detailed information for evaluation in response to a Requests for Quotation (“RFQ”) issued by FCA for a part or parts it needs.

12. When the supplier submits its proposal in response to an RFQ, it does so using FCA’s “eSupplier Connect” portal, where it first clicks “accept” to FCA’s Production and Mopar Purchasing General Terms and Conditions (“Terms”). A true and correct copy of the Terms which govern the majority of the parts at issue is attached as Exhibit 3 to Kamax’s Motion.

13. Pursuant to the Terms, the purchase orders between FCA and Kamax are established on a fixed-price basis, requiring timely delivery of goods in accordance with FCA’s requirements. That means, Kamax cannot unilaterally increase its prices for the parts it agreed to provide.

14. Once FCA onboards the supplier, the process culminates with FCA issuing Purchase Orders for the parts at issue, which reincorporate the Terms. The Purchase Orders, among other terms, specifically reflect among other things: (1) the part that Kamax agreed to supply; (2) the unit price for that part; (3) the order is for between 65%-100% of FCA’s requirements; (4) that it is for the life of the program; (5) what FCA’s payment terms were; and (6) any amendments of the terms of the parties’ bargain.

15. FCA issued approximately 180 purchase orders to Kamax. A true and correct copy of a demonstrative purchase order is shown in Ex. 4 to Kamax’s Motion.

16. All of the purchase orders for Kamax’s goods state the following quantity term: “This order is for approximately 65%-100% of our requirements.” On the face of the purchase order, FCA agrees to purchase *at a minimum* sixty-five percent (65%) of FCA’s total requirements for the part associated with the purchase order that it needs from Kamax. FCA cannot purchase

any less than 65% of its requirements from Kamax, nor would it. FCA, to the contrary, orders 100% of its requirements for the goods from Kamax, as it has for decades.

17. The use of the word “approximately” in the purchase orders simply modifies the range given to denote FCA’s will order its between 65% and 100% of its requirements from Kamax. Prior to this dispute, Kamax never told FCA that the term was unclear in any way.

18. Kamax received the purchase orders for each part it supplies FCA and accepted them by virtue of delivering the goods FCA has ordered.

19. Kamax’s Motion for Summary Disposition references that the Purchase Orders state a “1” or “1.000” in the narrow box labeled “Quantity”. However, this figure is simply a software system default which is automatically populated. The quantity term on the Purchase Orders is found immediately below the “Quantity” box which states that “[t]his order is for approximately 65% - 100% of [FCA’s] requirements.”

20. For the last three decades, FCA and Kamax have treated each other as long-term partners in the supply of goods as a result of the requirements contract that existed between them which requires the supply of the parts until the end of FCA’s vehicle programs.

21. Further, in addition to working in closely together with Kamax, FCA would also provide Kamax with FCA’s estimates of its future requirements, otherwise known as “forecasts,” which are updated on a weekly basis. These forecasts project FCA’s needs up to 18-months in advance. Kamax also receives short term estimates of its requirements which are updated on a daily basis. FCA then issues daily releases against those requirements detailing the specific parts needed each day. Kamax has never questioned why it receives forecasts. If anything, it uses the forecasts regularly to carry out the supply of goods to FCA pursuant to the parties’ requirements

contract. If Kamax believed that it only had to supply parts to FCA whenever it wanted, it would have had no need for these forecasts and continuous projections.

22. Likewise, Kamax knew that it was required to supply goods to FCA on a continuous basis as a result of the requirements agreement between them and has repeatedly acknowledged its obligation to supply parts to FCA to meet its requirements pursuant to the parties' agreements. If that was not the case, Kamax would have never asked FCA to help them with the costs associated with the increase in raw materials and inflation. For instance, in 2022, Kamax asked FCA to assist it with the cost of inflation and raw materials necessary to continue the supply of parts to FCA. FCA accommodated this request and paid Kamax \$2.7 million in a lump sum. FCA would have never paid a one-off supplier \$2.7 million for it to be able to decide, in its discretion, whether it wanted to continue to supply goods to FCA on an ad hoc basis.

23. Similarly, in June 2023, Kamax again came to FCA and asked it to help subsidize Kamax's operational costs and costs of production. In this regard, FCA made the following accommodations, that FCA would have never done if it knew that Kamax contended that it could just simply stop supplying goods to FCA whenever it wanted:

- FCA paid about \$2.2 Million in price increases attributed to raw materials, retroactively applied to January 1, 2023, paid on a cost per-unit basis. To date, Kamax continues to receive quarterly raw material adjustments at 100% of index, for the life of the programs Kamax serves; and
- FCA paid about \$2.5 Million, representing a 7.5% price increase, retroactively applied to January 1, 2023, paid on a cost per-unit basis. FCA continues to pay this increased price for the parts notwithstanding the parties agreed that prices for parts would be fixed.

24. Notably, the June 2023 price accommodations were applied *retroactively*, meaning that FCA agreed to pay Kamax more money for parts which it had already supplied and for which

FCA paid for. FCA would not agree to retroactively pay more money for parts it already purchased if Kamax did not have an ongoing obligation to continue to supply parts to meet FCA's needs.

25. From 2022 to the present, FCA has provided approximately \$9,000,000 in price increases and other accommodations to Kamax, which represents about 30% of FCA's annual spend with Kamax. FCA would have never done this if Kamax was not bound by the parties' requirements contract. Indeed, FCA does not make similar accommodations to one-off suppliers simply to assist them with the cost of doing business.

26. In September 2023 Kamax again began threatening to stop supply of the parts and demanded that FCA agree to find an alternative supplier for a portion of the parts which Kamax no longer wished to supply. Kamax also asked FCA to refrain from imposing debits against Kamax relating to its late deliveries (a right that FCA has under the Terms). Kamax asked for this relief because it knew it continued to have a long-term obligation to FCA to provide those parts.

27. In response, FCA further attempted to accommodate Kamax, and offered an Accommodation Letter Agreement, which FCA signed on November 6, 2023. Pursuant to the Accommodation Letter Agreement, FCA agreed to refrain from imposing any contractually authorized debits for 6 months and to assess, in good faith, whether the parts requested by Kamax could be sourced from another supplier and evaluate the resourcing opportunity.

28. FCA's accommodations were in exchange for Kamax's promises to, among other things:

- Not repudiate all or any portion of, or any obligation under, an installment of or an entire Purchase Order;
- Not take any action evidencing its intention or threat not to fully and timely perform each and all of its obligations under an installment of or an entire Order (including announcing or threatening non-delivery or the stop shipment of goods); or

- Not fail or omit to take any action required to be performed by Kamax that is necessary for Kamax to fully and timely deliver fully conforming goods or services to *meet FCA's requirements* or otherwise perform under a release or an Order.

29. Just two weeks after signing the Accommodation Letter Agreement, KAMAX violated its promises by sending a letter on November 20, 2023 threatening to stop supplying the Goods to FCA on February 20, 2024 unless FCA agreed to pay substantial additional price increases for the goods. Notably, Kamax did not contend that it did not have a contractual obligation to supply the goods to FCA.

30. FCA responded to Kamax's letter on November 29, 2023, rejecting Kamax's price increase demands, reiterating that Kamax may not quit its obligation to supply the goods to FCA, and restated its willingness to evaluate a new supplier for the goods.

31. On February 19, 2024, one day before Kamax threatened to stop ship, Kamax's counsel sent a letter to FCA, which contended *for the first time* that Kamax did not have a contractual obligation to deliver the Goods to FCA.

32. To my knowledge, this is the first time in the parties 30-year relationship that Kamax has contended that the parties do not have a requirements contract.

33. Kamax stopped supply of the Goods on February 20, 2024, and did not resume supply until after the Court entered the Temporary Restraining Order (TRO) on February 28, 2024.

34. Kamax's stop of supply of the Goods beginning February 20, 2024, led to the shutdown of two of FCA's plants: the Toledo South Assembly Plant (manufacturing the Jeep Gladiator) and the Toledo North Assembly Plant (manufacturing the Jeep Wrangler), which impacted approximately 5,000 workers. FCA's remaining plants were placed at severe risk of imminent shutdown. Further shutdowns of FCA's plants were only prevented by the TRO.

35. On March 31, 2024, the Court entered a preliminary injunction requiring Kamax to carry out its obligation under the parties' requirements contract and supply the parts under contract with FCA. The Court Ordered FCA to pay for those parts and FCA has continued to do so regularly. FCA is not wrongfully taking Kamax's parts nor dispossessing them of it without compensation. The price that FCA is paying for Kamax's parts is the contractually agreed upon price for the parts which Kamax has accepted without reservation.

I declare under the penalties of perjury that this declaration has been examined by me and that its contents are true to the best of my information, knowledge, and belief.


STEPHANIE SCOTT

Dated: May 8, 2024

EXHIBIT B



Delivered via email

September 14, 2023

Kamax Inc.
Attention: Mark Mahaffy
1606 Star Batt Drive
Rochester Hills, MI 48309

Re: Accommodation Letter Agreement ("Letter Agreement")

Kamax Inc. ("Kamax") has requested FCA US LLC ("FCA US") modify certain terms governing our relationship relating to the parts listed in Exhibit A (the "Parts") and we have exchanged several letters in that regard. Your most recent communication dated June 20, 2023, indicated that Kamax will discontinue shipments to FCA US unless FCA US agrees to the certain changes demanded by Kamax.

Under protest and conditioned upon a reservation of all rights, claims and remedies of FCA US, the following accommodations will be provided by FCA US:

- **Payment Terms:** Effective September 30, 2023 and continuing for up to six (6) months thereafter ("Accommodation Period"), FCA US agrees to modify the payment terms pertaining to the Parts from FCA US' standard payment term to NET 15. Upon expiration or termination of the Accelerated Payment Term Period, the payment term shall return to FCA US's standard payment term, as in effect prior to this Letter Agreement.
- **Debit Hold:** During the Accommodation Period, FCA US agrees not to unilaterally implement any debits against Kamax relating to late deliveries, quality issues, warranty campaign and Mopar (Vehicles Off Road Debits) relating to the Parts; provided, however, (i) the foregoing does not prevent FCA US from implementing debits in instances where FCA US reasonably determines Kamax fails to act in good faith; and (ii) FCA US reserves all rights relating to damages incurred during the Accommodation Period.
- **Resourcing Evaluation:** FCA US agrees to assess, in good faith, whether certain Parts may be resourced and, in cases where FCA US determines there is a commercially reasonable possibility of resourcing certain Parts, FCA US agree to evaluate, in good faith, resourcing opportunities relating to such Parts. However, to be clear, FCA US cannot guarantee that any resourcing will occur or, in the event resourcing was to occur, that such resourcing will be completed by a particular date.

The foregoing accommodations are conditioned on the following:

- Kamax hereby agrees that it shall not: (i) repudiate all or any portion of, or any obligation under, an installment of or an entire Order; (ii) take any action evidencing its intention or



threat not to fully and timely perform each and all of its obligations under an installment of or an entire Order (including announcing or threatening non-delivery or the stop-shipment of goods); or (iii) fail or omit to take any action required to be performed by Kamax that is necessary for Kamax to fully and timely deliver fully conforming goods or services to meet FCA's requirements or otherwise perform under a release or an Order.

- Kamax agrees to allow FCA US' designated third party full daily access to its facilities at the Lapeer, MI plant location, during the Accommodation Period, to oversee manufacturing activities (including, but not limited to, production and throughput).
- Kamax agrees to keep this letter and its contents (including, but not limited to, the accommodation payment) confidential and not to disclose, without the written consent of FCA US, the existence of this letter or the accommodation to any third party.

Kamax shall provide its agreement to the terms of this letter by executing a copy of this letter and return the same to me. Notwithstanding the foregoing, Kamax's acceptance of any portion of these accommodations shall constitute Kamax's agreement to the terms of this Letter Agreement.

All of FCA's rights, claims and remedies are expressly reserved, whether available by contract, applicable law, or otherwise.

Sincerely,

Stephanie Scott

Stephanie Scott
Head of North America
Chassis & Adaptation Purchasing

Kamax Inc.

Signature: Brian Badowski

Name: Brian Badowski

Title: Sales Director

Date: 11/6/2023



Exhibit A
Parts

Stellantis PN
68196015AA
06507575AA
06101962
68305239AA
06509443AA
06504548
06508087AA
05057112AA
06509456AA
06511145AA
06512808AA
06513251AA
06104454AA
06036748AA
06104301AA
06105051AA
06511777AA
06508424AA
06102400AA
06102414AA
06508203AA
06508830AA
06505668AA
06104308AA
06513100AA
06511168AA
06503465
06508154AA
06511219AA
06104302AA
06508414AA
06509462AA
06512400AA
06508819AA

RECEIVED by MSC 2/16/2026 6:33:37 PM



06509054AA
06512787AA
06512788AA
06512156AA
06512408AA
06512514AA
06512871AA
06513035AA
06513292AA
06511825AA
06513626AA
06508760AA
06513678AA
06512353AA
06513205AA
06513453AA
06508200AA
06032878
06503490
06512450AA
06512452AA
06512641AA
06512718AA
06104185AA
06513136AA
06512030AA
06104258AA
06511800AA
06511845AA
06508267AA
06104426AA
06511919AA
06512276AA
06513933AA
06513829AA
06512435AA
06512671AA
06512104AA
06511169AA
06511832AA



06104088AA
06511896AA
06512896AA
06512897AA
06104422AA
06511111AA
06511059AA
06512505AA
06512546AA
06511813AA
06512935AA
06513000AA
06513469AA
06510970AA
06510867AA
06509494AA
06508711AA
06507594AA
06507889AA
06104424AA
06510798AA
06509848AA
06508734AA
06509863AA
06513221AA
06512938AA
06512393AA
06512377AA
06512515AA
06508544AA
06107364AA
06510940AA
06511599AA
06511576AA
06511821AA
06104102AA
06104428AA
06512593AA
06513571AA
06513707AA



06513708AA
06513799AA
68366551AA
06512446AA
06509487AA
06512729AA
06512297AA
06508183AA
06512111AA
06104462AA
06511079AA
06513777AA
06513778AA
06513978AA
06513329AA
06513308AA
06512349AA
06513627AA
06510526AA
06513683AA
06512925AA
06513528AA
06513485AA
06513533AA
06513518AA
06513554AA
06102621AA
06102622AA
06513499AA
06513534AA
06513552AA
06513555AA
06513532AA
06513589AA
06509055AA
06512266AA
06512741AA
06509128AA

EXHIBIT C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FCA US, LLC,

Plaintiff,

vs

Case No. 24-205863-CB

KAMAX, INC., and KAMAX MEXICO
S DE RL DE CV,

Defendants.

_____/

HEARING

BEFORE THE HONORABLE VICTORIA A. VALENTINE

Pontiac, Michigan - Friday, March 15, 2024

APPEARANCES:

For the Plaintiff: AMANDA L. CONTI-DUHAIME (P48960)
STEPHEN W. KING (P56456)
King & Associates, PLLC
355 South Old Woodward Avenue
Suite 100
Birmingham, Michigan 48009
(248) 792-2398

For the Plaintiff: MICHELLE D. GAMBINO (pro hac vice)
DAVID G. BARGER (pro hac vice)
Greenberg Traurig
1750 Tysons Boulevard
Suite 1000
McLean, Virginia 22102
(703) 749-1300

Videotape Transcription Provided By:
Deanna L. Harrison, CER 7464
About Town Court Reporting, Inc.
248-634-3369

APPEARANCES CONTINUED:

APPEARANCES CONTINUED:

For the Defendants: JASON D. KILLIPS (P67883)
CHRISTOPHER R. STRUBLE (P83714)
DANIEL N. SHARKEY (P53837)
Brooks Wilkins Sharkey & Turco, PLLC
401 South Old Woodward Avenue
Suite 400
Birmingham, Michigan 48009
(248) 971-1730

1 THE WITNESS: It went from \$3 to \$36. 3,400 per
2 1,000 to 36,000 per 1,000.

3 THE COURT: Okay.

4 BY MR. STRUBLE:

5 Q Mr. Mahaffy, what were KAMAX's total sales to FCA in '23 -
6 - 2023?

7 A 2023, about 35 million.

8 Q On balance across all the parts that the attachment
9 summarizes, what is the percentage increase that KAMAX is
10 seeking?

11 A Somewhere in the 15 percent range.

12 Q And why has KAMAX raised its prices?

13 A That's a good question, and one we take seriously.

14 The -- the main driver of the price increase is
15 the volume changes on a number of parts. So we talked
16 about some of the old parts and if you look at that part,
17 that went from 3,400 to 36,000 as an example, the volume
18 maybe 20 years or 10 years ago was 5 or 10 million pieces
19 a year, and now, you know, and I don't know that part
20 specifically, I'd have to go back and look at the data,
21 but the volume of that part now might be 5,000 or 10,000
22 pieces, so we've seen a dramatic shift in the volume on a
23 lot of parts. FCA has undergone a lot of program changes.
24 We have a lot of legacy parts. And so if you're taking a
25 part from 5 million pieces a year to 5,000 pieces a year,

1 that's -- that's a lot less volume to spread cost over,
2 and that's why you see sometimes the big jump on a
3 particular part in price. Overall, the annual spend on
4 that part is probably not that significant of a jump when
5 you multiply it by the volume of the part, but on a
6 percentage basis, it looks large.

7 And then the other part of it is, you know,
8 we've had historic inflation cost, right? I think 20
9 percent inflation if you -- you know, cumulative inflation
10 over the last couple of years. We have skilled -- very
11 skilled operators that run these specialty parts in
12 Lapeer, and so tremendous labor costs increase, material
13 cost increase, chemical cost increase, freight increases,
14 but again, the main driver was the volume changes on a lot
15 of these parts.

16 Q Okay.

17 What portion of KAMAX's business do the
18 pressures that you just described impact?

19 A All of it.

20 Q Mr. Mahaffy, how many passenger vehicle OEMs does KAMAX
21 supply?

22 A We supplied every OEM, except for Toyota and Hyundai Kia
23 in the U.S. market, North American market.

24 Q In a numeric value, how many --

25 A It's roughly 10.

1 Q Roughly 10.

2 A Yeah.

3 Q Did KAMAX seek price increases from all of those other
4 customers?

5 A We did, with the exception of Tesla.

6 Q Why was Tesla the exception?

7 MR. BARGER: Objection, Your Honor, relevance.

8 MR. STRUBLE: Your Honor, the -- this goes
9 directly to the issue of why KAMAX needs the price
10 increase, and their argument is that it's -- it's not
11 needed.

12 MR. BARGER: We haven't argued it's not -- I'm
13 sorry, Your Honor, I didn't mean to cut him off.

14 MR. STRUBLE: Go ahead.

15 MR. BARGER: We haven't argued it's not needed
16 at all. Simply this is an issue of what's required under
17 the contract and what their obligation is. Whether
18 they've chosen to seek price increases from us and other
19 manufacturers, the other manufacturers simply aren't
20 relevant to this case.

21 MR. STRUBLE: I'll move on, Your Honor.

22 THE COURT: Okay. So you're withdrawing your
23 question?

24 MR. STRUBLE: Yes.

25 THE COURT: Go ahead.

1 BY MR. STRUBLE:

2 Q Mr. Mahaffy, so when did KAMAX approach FCA about
3 increasing the part -- the prices for the parts that it
4 supplies?

5 A Increasing the price, this -- this letter was sent in
6 November; the discussion on some of the low volume parts
7 started in February, February of last year, February 2023.

8 Q Okay.

9 So what happened after the communication in
10 February of '23?

11 A Initially, we were working with them for a couple of
12 months on trying to find other solutions on the low volume
13 parts, see if they could find some other suppliers, do a
14 last time buy. We continued to struggle to make the low
15 volume parts with the complexity in the plant. In June,
16 we had sent a letter formally asking -- in June '23, we
17 had sent a letter asking that they resource those parts,
18 and we had asked to -- that that happen in 90 days again,
19 or we would reject releases. At that time, we did not ask
20 for a price increase. We got to September, those parts
21 still hadn't been resourced to another vendor, we hadn't
22 found an acceptable solution for both of us to find a
23 better way to make those parts, and then in November, we
24 -- we sent the letter that we already discussed.

25 Q Okay.

CERTIFICATION

I certify that this transcript, consisting of 153 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine, on Friday, March 15, 2024, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



Deanna L. Harrison, CER 7464
About Town Court Reporting, Inc.
248-634-3369

EXHIBIT D

From: Mahaffy, Mark
To: ILVI PESHKU; VICTOR HUGO ARENAS DELGADO
Cc: Badowski, Brian
Subject: [EXTERNAL]FW: KAMAX Price Adjustment - 2024
Date: Tuesday, December 19, 2023 10:28:05 AM
Attachments: image001.png
KAMAX - 2024 Price Adjustment.xlsx
KAMAX - 2024 Stellantis Price Adjustment.pdf

EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Victor, Ilvi,

Hope you guys are good today. I wanted to follow up on the bad news below and attached. Direction from our CEO is that we need to hold firm on this.

Please note that pricing is effective Jan 1 2024 and that releases will be rejected starting Feb 20th, 2024 without an agreement. Let us know next steps – not sure if you are working this week – if not would be good if we can discuss that first week of January. I know this is frustrating for all of us involved.

The good news is that our delivery performance is dramatically improving.

Thanks,

Mark

Mark Mahaffy
Vice President - Americas
Sales, Applications, Product
c.248.928.4197

Ask about our **KXtreme Ultra High Tensile** fasteners
UHT 3



From: Badowski, Brian <Brian.Badowski@kamax.com>

Sent: Monday, November 20, 2023 4:50 PM
To: Ilvi Peshku <ilvi.peshku@stellantis.com>
Cc: Mahaffy, Mark <Mark.Mahaffy@kamax.com>
Subject: KAMAX Price Adjustment - 2024

Hi Ilvi

As discussed, here is a notice regarding pricing and our proposal for 2024. This adjustment is primarily due to increases of our wages to our labor force as well as other costs that have seen inflationary increases.

The list comprises of all parts that have shipped this year, so a portion of this list are parts that we asked Stellantis to resource earlier this year.

Please review with your team and let us know next steps.

Thanks
Brian

Stellantis PN	KAMAX Part	Current Q4 Price (\$/1000)	2024 New Price (\$/1000)
06512787AA	S5.130936.30	\$ 1,476.42	\$ 1,581.38
06512408AA	S5.130739.00	\$ 150.00	\$ 158.91
06511168AA	S5.109410.00	\$ 1,182.80	\$ 1,246.08
06512297AA	S5.130637.00	\$ 414.60	\$ 464.52
06511821AA	S5.130438.00	\$ 257.80	\$ 277.35
06509054AA	S5.107976.00	\$ 217.33	\$ 226.94
06511169AA	S5.130350.00	\$ 696.50	\$ 781.09
06509863AA	S5.131343.00	\$ 2,029.08	\$ 2,175.51
06513933AA	S5.131410.00	\$ 651.40	\$ 816.28
06513626AA	S5.131203.00	\$ 693.57	\$ 751.30
06511825AA	S5.131117.00	\$ 1,081.47	\$ 1,132.04
06509443AA	S5.108329.10	\$ 325.50	\$ 332.29
06512788AA	S5.130937.10	\$ 150.03	\$ 199.23
06508760AA	S5.107824.10	\$ 244.81	\$ 247.63
06513308AA	S5.131103.00	\$ 126.69	\$ 133.78
06511219AA	S5.131344.00	\$ 1,890.27	\$ 2,036.70
06512030AA	S5.130642.10	\$ 89.50	\$ 123.20
06513829AA	S5.131327.00	\$ 564.50	\$ 624.27
06509456AA	S5.108384.00	\$ 540.00	\$ 805.78
06513136AA	S5.131062.00	\$ 88.50	\$ 816.57
06511576AA	S5.130353.00	\$ 542.80	\$ 560.83
06104301AA	S5.107851.00	\$ 1,259.38	\$ 1,316.02
06512515AA	S5.130782.00	\$ 180.00	\$ 192.39
06512808AA	S5.130932.00	\$ 585.97	\$ 623.28
06513251AA	S5.131080.00	\$ 547.51	\$ 844.25
06513221AA	S5.131320.00	\$ 1,212.79	\$ 1,220.46
06513329AA	S5.131096.00	\$ 120.00	\$ 169.16
06104422AA	S5.107137.10	\$ 133.89	\$ 148.19
68305239AA	S5.107137.10	\$ 133.89	\$ 148.19
06512400AA	S5.130815.00	\$ 240.00	\$ 341.61
6503465	S5.104397.00	\$ 61.90	\$ 119.84
06104088AA	S5.130069.00	\$ 70.70	\$ 72.76
06512938AA	S5.131058.00	\$ 544.00	\$ 551.35
06511832AA	S5.130518.10	\$ 196.80	\$ 232.85
06509128AA	S5.108001.30	\$ 130.20	\$ 135.25
06513100AA	S5.131095.00	\$ 679.95	\$ 714.03
06512111AA	S5.130558.00	\$ 1,333.10	\$ 1,335.20
06511111AA	S5.109373.00	\$ 360.00	\$ 368.55
06510798AA	S5.109231.00	\$ 611.80	\$ 631.96
06512897AA	S5.131037.00	\$ 1,477.20	\$ 1,569.47
06104308AA	S5.108073.10	\$ 1,480.30	\$ 1,510.84
06507889AA	S5.106914.20	\$ 434.82	\$ 436.26
06513035AA	S5.131044.00	\$ 905.95	\$ 1,893.62
06512925AA	S5.131093.00	\$ 1,574.29	\$ 1,736.97
06512276AA	S5.130725.00	\$ 172.67	\$ 177.64
06513453AA	S5.131151.00	\$ 1,600.00	\$ 1,746.65
06507594AA	S5.106863.00	\$ 91.46	\$ 91.88
06512671AA	S5.131029.10	\$ 276.62	\$ 308.39
06513678AA	S5.131330.00	\$ 243.33	\$ 258.15
06104462AA	S5.107152.20	\$ 298.70	\$ 334.46
06510526AA	S5.109258.00	\$ 118.80	\$ 132.59
06511145AA	S5.109398.00	\$ 450.00	\$ 462.61
06511919AA	S5.130470.10	\$ 113.10	\$ 113.71

06512353AA	\$5.130733.00	\$	75.15	\$	77.43
06513292AA	\$5.131104.00	\$	3,703.47	\$	3,965.77
06102414AA	\$5.107835.10	\$	171.98	\$	175.93
06513978AA	\$5.131446.00	\$	259.43	\$	293.11
06512156AA	\$5.130625.00	\$	72.80	\$	73.54
06512377AA	\$5.130640.00	\$	96.30	\$	97.98
06102400AA	\$5.107342.10	\$	159.65	\$	164.81
06511777AA	\$5.130404.00	\$	234.90	\$	313.10
06512450AA	\$5.130762.00	\$	610.00	\$	1,002.21
05057112AA	\$5.106878.00	\$	130.53	\$	134.64
06511896AA	\$5.130496.00	\$	94.30	\$	101.28
06513499AA	\$5.131182.00	\$	255.98	\$	265.41
06102622AA	\$5.131181.00	\$	56.85	\$	63.51
06104424AA	\$5.107138.10	\$	139.94	\$	179.38
06105051AA	\$5.107684.10	\$	94.85	\$	101.58
06511599AA	\$5.130606.00	\$	451.40	\$	472.86
06513205AA	\$5.131089.00	\$	1,207.20	\$	1,465.52
06510420AA	\$5.109228.00	\$	1,078.50	\$	2,506.15
06512825AA	\$5.130999.10	\$	5,321.03	\$	5,334.49
06508830AA	\$5.107891.00	\$	1,107.80	\$	1,110.34
06513571AA	\$5.131159.00	\$	400.00	\$	460.67
06104102AA	\$5.107193.10	\$	102.28	\$	138.68
06104302AA	\$5.108157.00	\$	1,997.64	\$	2,113.75
06509848AA	\$5.108753.00	\$	120.60	\$	155.80
06512393AA	\$5.130711.00	\$	96.75	\$	199.35
06513777AA	\$5.131348.00	\$	383.33	\$	417.65
06512871AA	\$5.130998.00	\$	326.27	\$	361.81
06508200AA	\$5.107240.00	\$	159.66	\$	161.23
06104426AA	\$5.107139.10	\$	143.41	\$	203.60
06508504AA	\$5.107665.00	\$	3,461.25	\$	36,110.86
06512718AA	\$5.130866.00	\$	77.72	\$	78.08
06104258AA	\$5.108122.00	\$	460.50	\$	467.70
06512435AA	\$5.130741.00	\$	240.00	\$	240.00
06511079AA	\$5.109064.00	\$	262.80	\$	337.80
06513552AA	\$5.131179.00	\$	139.31	\$	166.05
06512593AA	\$5.130842.00	\$	123.91	\$	149.17
06512104AA	\$5.130658.00	\$	193.50	\$	193.50
06508267AA	\$5.107249.10	\$	206.98	\$	292.60
06513627AA	\$5.131230.00	\$	365.73	\$	535.92
06510970AA	\$5.109353.00	\$	1,372.80	\$	2,456.50
06507575AA	\$5.106964.10	\$	403.55	\$	529.45
06104428AA	\$5.107140.10	\$	143.19	\$	205.89
06511845AA	\$5.130425.00	\$	86.70	\$	87.10
06510867AA	\$5.109352.00	\$	1,530.80	\$	1,882.12
06107364AA	\$5.130535.00	\$	93.20	\$	93.80
06513528AA	\$5.131204.00	\$	715.21	\$	1,072.04
06513532AA	\$5.131176.00	\$	112.06	\$	168.16
06513534AA	\$5.131177.00	\$	61.92	\$	75.78
06512641AA	\$5.130837.00	\$	120.70	\$	177.56
06508414AA	\$5.107533.10	\$	162.77	\$	248.77
06511813AA	\$5.130861.00	\$	539.63	\$	793.97
06512349AA	\$5.131109.00	\$	133.95	\$	145.10
06508424AA	\$5.107569.00	\$	175.00	\$	296.48
06104185AA	\$5.130893.00	\$	66.52	\$	67.58

06104454AA	\$5.107148.10	\$	259.63	\$	429.89
06508711AA	\$5.130464.10	\$	123.90	\$	171.14
06508087AA	\$5.107073.00	\$	138.67	\$	476.46
06509465AA	\$5.108388.00	\$	3,245.30	\$	4,504.04
06513708AA	\$5.131358.10	\$	1,515.54	\$	1,757.70
06513589AA	\$5.131187.00	\$	168.08	\$	269.70
06513778AA	\$5.131349.00	\$	449.57	\$	491.33
06512896AA	\$5.131036.00	\$	552.18	\$	1,319.44
06514068AA	\$5.131475.00	\$	2,800.01	\$	2,876.87
06511800AA	\$5.130418.00	\$	102.80	\$	213.67
68139485AA	\$5.108993.30	\$	760.00	\$	888.40
06513555AA	\$5.131171.00	\$	136.73	\$	297.79
06513518AA	\$5.131169.00	\$	149.50	\$	363.02
06510940AA	\$5.130495.00	\$	101.50	\$	169.87
06513533AA	\$5.131173.00	\$	129.99	\$	317.64
06513554AA	\$5.131172.00	\$	251.14	\$	680.66
06514092AA	\$5.131474.00	\$	2,423.98	\$	2,520.84
06512741AA	\$5.130924.00	\$	73.31	\$	179.80
06512546AA	\$5.130795.00	\$	500.00	\$	768.49
06513469AA	\$5.131121.00	\$	650.10	\$	788.89
06509462AA	\$5.108391.00	\$	201.63	\$	471.55
06508183AA	\$5.107136.00	\$	86.18	\$	261.67
06102621AA	\$5.131180.00	\$	90.71	\$	254.11
06508819AA	\$5.109174.20	\$	304.10	\$	879.62
06513485AA	\$5.131170.00	\$	96.25	\$	352.94
06512266AA	\$5.130728.00	\$	118.59	\$	389.93
06508154AA	\$5.107083.10	\$	150.56	\$	404.54
06036748AA	\$5.108762.00	\$	206.26	\$	618.11
06514091AA	\$5.131473.00	\$	1,803.98	\$	1,907.05
06508544AA	\$5.107867.10	\$	258.10	\$	569.86
06509055AA	\$5.130463.00	\$	208.00	\$	1,588.21
06512935AA	\$5.131028.00	\$	456.50	\$	878.27
06510403AA	\$5.109145.00	\$	2,094.50	\$	8,167.93
05086695AA	\$5.102396.00	\$	2,250.00	\$	2,314.47
06513799AA	\$5.131360.00	\$	1,002.88	\$	1,015.73
6504548	\$5.105186.00	\$	72.51	\$	700.11
06513780AA	\$5.131448.00	\$	2,376.62	\$	2,904.00
06509494AA	\$5.109173.00	\$	159.00	\$	762.34
06513707AA	\$5.131357.00	\$	701.18	\$	693.37
06513000AA	\$5.131038.00	\$	330.65	\$	1,039.56
06506343AA	\$5.106765.00	\$	2,950.00	\$	3,028.57
06509131AA	\$5.107968.00	\$	3,474.90	\$	3,557.35
06509487AA	\$5.130633.10	\$	170.00	\$	1,207.93
06505668AA	\$5.105921.00	\$	80.25	\$	464.84
06509765AA	\$5.108687.30	\$	210.00	\$	257.33
3507724	\$5.101532.00	\$	2,396.25	\$	2,500.00
06510899AA	\$5.109354.00	\$	2,403.70	\$	2,533.33
06508203AA	\$5.107202.10	\$	387.63	\$	4,971.79
06509903AA	\$5.109080.00	\$	213.08	\$	7,726.42
06513832AA	\$5.131445.00	\$	202.46	\$	287.63
06513708AA	\$5.131358.00	\$	1,453.66	\$	1,652.17
06511059AA	\$5.130413.00	\$	140.00	\$	1,020.99
6503490	\$5.104420.00	\$	750.00	\$	806.32
06509996AA	\$5.109071.00	\$	2,178.00	\$	57,175.53

06512729AA	\$5.130726.10	\$	553.70	\$	6,125.95
06512446AA	\$5.130761.00	\$	97.92	\$	1,815.10
06513551AA	\$5.131199.00	\$	252.94	\$	344.84
06036591AA	\$5.107105.00	\$	2,662.50	\$	2,666.67
06512452AA	\$5.130763.00	\$	550.00	\$	11,668.48
06104282AA	\$5.108500.00	\$	5,000.00	\$	95,292.55
06513312AA	\$5.131183.00	\$	130.00	\$	2,680.10
06513960AA	\$5.131455.00	\$	526.11	\$	531.25
06513884AA	\$5.131459.00	\$	846.42	\$	996.60
06507240AA	\$5.106487.00	\$	295.93	\$	38,117.02
68366551AA	\$5.130818.00	\$	430.81	\$	23,179.23
06510375AA	\$5.109121.00	\$	292.38	\$	512.96
6032878	\$5.104027.00	\$	51.36	\$	7,146.94
06513709AA	\$5.131359.00	\$	598.27	\$	626.67
06510669AA	\$5.130019.00	\$	614.50	\$	720.00
06509112AA	\$5.108028.10	\$	252.10	\$	273.33
06513970AA	\$5.131456.00	\$	397.21	\$	425.53
06513311AA	\$5.131105.00	\$	281.30	\$	655.56
6101983	\$5.105006.10	\$	125.14	\$	49,007.00

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November 20th, 2023

Ilvi Peshku
Stellantis
800 Chrysler Drive
Auburn Hills, MI 48326

www.kamax.com

KAMAX Inc
Mats Ceder
CEO – Americas

Re: 2024 Pricing or Notice of Exit and Rejection Releases

Dear Ilvi,

KAMAX values the relationship we've built and trust you've placed in us. KAMAX continuously strives to deliver the highest level of quality, innovation and support all while maintaining competitive pricing.

However, as you are undoubtedly aware, the automotive industry is undergoing significant changes and facing numerous challenges that have a direct impact on our costs. We also acknowledge that we have disappointed many of our customers in 2023 and are working hard to attract, train & retain new operators, add machine capacity and improve productivity.

In an effort to make these improvements and in light of the recent UAW agreements at GM, Ford & Stellantis we must make price adjustments for 2024. KAMAX does not take this decision lightly and understands the importance of cost management to your operation. KAMAX will continue to work closely with you to optimize cost and identify other areas for improvement.

Please see attachment A for pricing effective Jan 1, 2024.

Pricing for 2024 includes adjustments for labor (approx 3%), inflation (3.7%) plus part specific adjustments related to the latest information on part volume, tooling costs and run efficiency.

If you choose not to agree to the new pricing KAMAX must reluctantly exit production of the listed parts on 2/20/2024. KAMAX will work with Stellantis to develop an efficient transition and wind-down to minimize disruption, while working with you and your new supplier in the transfer of production. This letter will also act as KAMAX's advance notice of rejection of any releases, whether firm or forecast, for production or delivery after 2/20/2024.

We realize this is a difficult situation and look forward to working cooperatively with Stellantis through the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Mats Ceder", is positioned above the printed name.

Mats Ceder
CEO – Americas

Encl: Attachment A, List of Parts

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HEARING TRANSCRIPTS (MCR 7.212(J)(3)(c))

PROCEEDINGS

JUSTICE CLEMENT: Our next case is MSSC v. Airboss. This is also a 20-minute grant. Welcome counsel. You may reserve some of your time if we do not use it up. And please do your best to keep track of your time. And you have two minutes of a free fighter zone if you wish.

MR. GERVILLE-REACHE: Good morning, Chief Justice. May it please the Court. My name is Gaetan Gerville-Reache and I represent Appellant Airboss Flexible Products. I intend to reserve --

JUSTICE CLEMENT: Just one second. Yeah. Wait for the doors to close. Okay. Sorry about that. Please proceed.

MR. GERVILLE-REACHE: I intend to reserve at least five minutes of my time for rebuttal.

JUSTICE CLEMENT: Okay.

MR. GERVILLE-REACHE: Now the question in this appeal is whether a blanket purchase order satisfies the UCC's statute of frauds when it specifies no quantity, but says that the buyer will issue or send other documents later called releases for yet unknown quantities. And the answer to that is no for the simple reason that the UCC explicitly prohibits the enforcement of any quantity beyond the

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1 PROCEEDINGS

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6 of your time. And you have two minutes of a free
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8 MR. GERVILLE-REACHE: Good morning, Chief
9 Justice. May it please the Court. My name is Gaetan
10 Gerville-Reache and I represent Appellant Airboss
11 Flexible Products. I intend to reserve --

12 JUSTICE CLEMENT: Just one second. Yeah.
13 Wait for the doors to close. Okay. Sorry about that.
14 Please proceed.

15 MR. GERVILLE-REACHE: I intend to reserve at
16 least five minutes of my time for rebuttal.

17 JUSTICE CLEMENT: Okay.

18 MR. GERVILLE-REACHE: Now the question in
19 this appeal is whether a blanket purchase order
20 satisfies the UCC's statute of frauds when it
21 specifies no quantity, but says that the buyer will
22 issue or send other documents later called releases
23 for yet unknown quantities. And the answer to that is
24 no for the simple reason that the UCC explicitly
25 prohibits the enforcement of any quantity beyond the

1 quantity shown in the writing.

2 Now, the legislature, the code here uses a
3 definite Article D indicating that there has to be a
4 specific quantity, and it says that the writing must
5 show what that quantity is. So, as this Court did say
6 in Lorenz, what that means is the quantity must be
7 specifically stated in the writing. And the purpose
8 of this rule is to give the courts and the parties'
9 clarity and certainty as to when they've entered into
10 an enforceable contract and what the scope of that
11 contract is.

12 Satisfying that rule is not hard. If MSSC
13 had really wanted a requirements contract, they could
14 have easily said so in the blanket purchase order that
15 they issued. They could have said something like,
16 this purchase order is for 100 percent of MSSC's
17 requirements, or the buyer agrees to purchase all
18 parts that it needs for the program. Or even the part
19 is 100 percent source to seller for the life of the
20 program language that we gave them that they refuse to
21 put into the writing.

22 Forcing purchasers to say these things in
23 writing is not going to bring the industry to a
24 grinding halt. They've known how to do this for
25 decades. As reflected in the case law examples we've

1 given showing where they have done it. And if they
2 don't do it --

3 JUSTICE ZAHRA: When is the contract
4 actually formed in this case? When do we have a
5 contract?

6 MR. GERVILLE-REACHE: When they send a
7 release with a specific quantity and Airboss accepts
8 that release, that is when they have an enforceable
9 contract. And at that point, all the terms in the
10 blanket purchase order apply to that quantity of
11 goods.

12 JUSTICE ZAHRA: So do we have -- do we have
13 serial contracts with each release?

14 MR. GERVILLE-REACHE: Yes. You have serial
15 contracts with each release, and all they've done with
16 this blanket purchase order is negotiate in advance
17 some of the essential terms of the contract except for
18 the quantity. And they've left the quantity to the
19 releases.

20 So until they send a release with the
21 quantity, there is no contract for sale. And there's
22 been no offer that would be -- that has been accepted
23 by Airboss. And so the only quantities that are
24 enforceable under this writing are those that are
25 reflected in the releases which have -- which -- with

1 that writing and this one combined.

2 Now, the reason those releases are not in
3 the record here is because those aren't the quantities
4 that MSSC wants to enforce here. They want to enforce
5 a quantity that is not shown in any of the writings,
6 and that is their requirements. What doesn't satisfy
7 the statute of frauds are non-committal statements
8 like we have here statements like any amount from 0 to
9 100 percent requirements or for quantities to be
10 indicated in our future releases, or as in our case,
11 the buyer shall issue a vendor release and shipping
12 schedule. There's no objective measure in any of
13 those statements for an amount of goods. The buyer is
14 left to order whatever they want, whenever they want
15 it.

16 JUSTICE KAVANAGH: Do they have to issue a
17 release? Are they obligated to do that?

18 MR. GERVILLE-REACHE: So the language said
19 shall. Shall issue a release and vendor release and
20 shipping schedule.

21 JUSTICE CLEMENT: So at least one --

22 MR. GERVILLE-REACHE: But they were entitled
23 to cancel it whenever they wanted. They reserved that
24 right to cancel any releases they sent. So if they
25 wanted to fully perform their obligations without

1 ordering a single part, all they had to do was send a
2 vendor release and shipping schedule and then cancel
3 it.

4 JUSTICE KAVANAGH: Could they get --

5 MR. GERVILLE-REACHE: We're done.

6 JUSTICE KAVANAGH: Could they get it from
7 somebody else?

8 MR. GERVILLE-REACHE: They -- yes,
9 absolutely. Because it's not a requirements contract.
10 In a requirements contract, they can't order from
11 anyone else. That's why requirements are considered
12 to be a specific quantity.

13 JUSTICE KAVANAGH: So what is --

14 MR. GERVILLE-REACHE: You order one part.

15 JUSTICE KAVANAGH: What is -- what is the
16 point of it then? Like, I mean, if these contracts
17 aren't formed until it's requirement, they don't even
18 have to issue them. They're not even -- it doesn't
19 even, you know, obligate them to only work with this
20 one particular vendor. What's the point of it?

21 MR. GERVILLE-REACHE: Well, the point is to
22 come to some terms ahead of time and perhaps enter
23 into a relationship where they will -- every time a
24 release comes, Airboss knows what the terms and
25 conditions are that come with that release. And

1 they're not -- they're not renegotiating those. Now,
2 they can -- if they don't want to accept that quantity
3 and they don't want to accept those terms at any point
4 in time, they can do that. They can simply not
5 accept.

6 On the -- on the flip side, MSSC can send
7 out releases for firm releases for quantities, months
8 in advance and give Airboss notice. And Airboss, you
9 know, when they get that release, if they don't object
10 within ten days, that becomes -- bind -- that becomes
11 a -- that could become a binding contract on them.
12 Now, I think that there's a -- there's a provision
13 between merchants and the UCC and it says that when
14 you don't object you satisfy the signature
15 requirements.

16 So I think all that means basically is that
17 you've satisfied the statute of fraud. It doesn't
18 necessarily mean that it's been accepted. But well,
19 be it to merchants who don't object when they get a --
20 an order like that, particularly in these
21 circumstances where you have a blanket purchase order
22 or-- and if Airboss doesn't object but remain silent.
23 MSSC could say, "Hey, are you going to accept these
24 four months of orders where we've laid out a shipping
25 schedule or not? Because if you're not, we got to

1 move on to somebody else and have someone else supply
2 these."

3 JUSTICE WELCH: Counsel, is there ever a
4 time where using the term blanket could be considered
5 a quantity term? Or is it just always never a
6 quantity term?

7 MR. GERVILLE-REACHE: If they define it as
8 that, I mean, we had specific definitions here. Sure,
9 you can define -- you can call it a tomato contract
10 and define it. You -- tomato -- if I call this a
11 tomato contract, it means I'm ordering my
12 requirements. But that's not what they said. They,
13 in fact -- in fact, what they said was we're just --
14 that, all that means is we're issuing a vendor release
15 and shipping schedule and we can cancel that if we
16 want to. So basically we don't have any obligation.

17 JUSTICE WELCH: So the key to you is it's --
18 it didn't specify a quantity plus they could just exit
19 any time?

20 MR. GERVILLE-REACHE: Yes. It's not even an
21 exit. We don't have a contract yet.

22 JUSTICE WELCH: Okay.

23 MR. GERVILLE-REACHE: There's not -- there's
24 nothing to exit. I -- you know, it was a serious
25 mistake here to infer, and this is what the lower

1 courts basically did. They inferred that essentially
2 anytime a buyer is going to send releases, that
3 they're always going to buy their requirements. Well,
4 what if they want to enter into an engagement with
5 multiple vendors and they're using releases for all of
6 them? Have they entered into requirements contracts
7 with all of them now they breached with every single
8 vendor because they haven't ordered all their
9 requirements from each vendor, which would obviously
10 be impossible? Of course not.

11 You know, there's an enormous difference
12 between promising upfront that you are going to
13 purchase your requirements and you're going to inform
14 the seller what those are as they arise through the
15 releases and simply saying, we'll issue releases for
16 quantities when we know what they are, leaving it open
17 to order whatever you want. I think that the amicus
18 brief in this case laid it out with admirable clarity.
19 I would liken it to this difference, to the difference
20 between basically dating and being married. People
21 when they date --

22 JUSTICE ZAHRA: We don't want to go there.
23 The amicus similarly situated to you tells us, I
24 think, or encourages us to do away with Great Northern
25 Packaging, Cadillac rubber disavow, Johnson controls.

1 I mean, just an overhaul here of our case law. Do --
2 for you to prevail. Do we have to do that?

3 MR. GERVILLE-REACHE: No.

4 JUSTICE ZAHRA: How do we get there?

5 MR. GERVILLE-REACHE: Because -- so --

6 JUSTICE ZAHRA: How do -- how do we make
7 sense of all these other cases that the MECI don't
8 like?

9 MR. GERVILLE-REACHE: All right. What
10 happened in Great Northern is the Court thought that
11 there was a term -- that the term blanket in that
12 contract, because of the circumstances in which that
13 term had arisen in the contract, was ambiguous as to
14 what quantity of any of that stated. And therefore
15 thought that parole evidence should be allowed to
16 determine what the quantity was, whether it was
17 requirements contract or not. And so it let the jury
18 decide that question. We don't have anything like
19 that here. We have a contract, we have a blanket
20 purchase order that says all we're going to do -- I
21 mean, it defines blanket.

22 So you don't get to look outside of the
23 writing here and say, well, it means something
24 different than what they defined it or something more.
25 They decided they were going to tell us exactly what

1 it said -- what it means. And all it meant was we're
2 going to either vendor -- issue a vendor release and
3 shipping schedule. That's it. And that doesn't state
4 any quantity whatsoever. Now, I don't think Great
5 Northern is correct. I do think it is absolutely
6 wrong, because how can you say the writing shows the
7 quantity. If when you look at the writing, you don't
8 know what the quantity is.

9 That's not the writing -- the quantity shown
10 in the writing. It's not shown in the writing if you
11 have to look elsewhere to discern the client. So I
12 think Great Northern, frankly, should be overturned
13 because it's just too slippery of a slope to stand on.
14 If you -- if you adopt a rule where anytime we can --
15 if it's ambiguous, we can look at parole evidence,
16 then all you're doing is essentially nullifying the
17 second requirement, right?

18 The parties, anytime, they don't really want
19 the statute of frauds to govern, they can just put in
20 an ambiguous term and then they get to go into court
21 whenever they want. And whenever they have a dispute
22 that arises. And basically all you're applying is the
23 first term of the statute of fraud, which says there
24 has to be a right in sufficient to indicate that a
25 contract for sale has been made.

1 But there's two requirements here. It has
2 to indicate a contract for sale has been made, and
3 that of course has means there has to be some
4 indication you're buying some -- a quantity. But it
5 also says you have that quantity has to be shown in
6 the writing. So I don't think Great Northern -- I
7 think Great Northern basically nullifies the second
8 requirement in the statute of frauds.

9 And as for Cadillac rubber the Court --
10 that's not a requirements contract when all you've
11 agreed upon is that you'll buy a minimum of one part.
12 You have not committed. You've not committed to
13 buying your requirements and with no commitment,
14 there's no contract. Now they had a contract in that
15 case, different from ours for one part pursuant to
16 that purchase order, but they didn't have a
17 requirements contract because they didn't agree to buy
18 their requirements.

19 So I do think Cadillac rubber is incorrect
20 as well. And this doesn't mean throwing out all of
21 the case law because this Court laid down what the
22 rule was in Lorenz and the lower Court simply didn't
23 follow it. I think the Court -- all the Court has to
24 do is reaffirm Lorenz and say, those other cases are
25 inconsistent. What this Court said in that case. The

1 writing here simply does not show that there is a
2 quantity.

3 Instead, it shows MSSC did not want to
4 commit. They did not want to commit to Airboss, they
5 didn't want to be married. Okay. And if you're not
6 married, it doesn't matter if you had a long-term
7 relationship and you invested a lot into it, and it
8 lasted for so long, you don't get to hail someone into
9 court for a divorce proceeding and claim half the
10 assets and alimony if you weren't going to commit to
11 marriage.

12 It was only later, frankly, that MSSC
13 concluded this arrangement -- this flexible
14 arrangement they had wasn't to their advantage. And
15 so that's when they came in and said, well, you know,
16 we're going to-- we want them -- we want you to
17 enforce an arrangement that we didn't actually agree
18 to in writing that we -- they in fact declined to
19 agree to in writing. And the statute of fraud was
20 intended to prevent exactly these sort of shenanigans.

21 And by allowing it to happen, in this case,
22 the lower courts have cremated -- created tremendous
23 uncertainty. Tremendous uncertainty as to when
24 parties have entered into an enforceable requirements
25 contract. And for that reason, we ask that the Court

1 reverse. Unless there are any further questions, I'll
2 reserve the remainder of my time for rebuttal.

3 JUSTICE CLEMENT: Thank you.

4 MR. LATIFF: Good Morning Justices. Mike
5 Latiff on behalf of MSSC Inc., the (inaudible) in this
6 case. I'd like to kind of jump right into the
7 question which you've asked for us to address, which
8 is: *Does 2201 confirm a contract here? And when was
9 the contract formed to Justice Zahra, to your
10 question. It was formed in 2013. It was formed when
11 the parties agreed on a blanket purchase order.

12 There's no dispute, I don't think counsel
13 now disputes that this is a blanket purchase order and
14 what does blanket mean? All-encompassing purchase
15 order. Why do I say that the contract is formed?
16 What was the obligation on MSSC? They want to skip
17 over the notion of what blanket means and how it's
18 defined and just go to, well, it just means releases.
19 No, I don't think that's what it means.

20 What it means is if this is a blanket order
21 -- and this is what it says, "If this is a blanket
22 order" -- and we have no dispute that it is, "then
23 buyer shall issue releases or the specific parts
24 provisions, quantities, and delivery dates for
25 products."

1 When you marry that with the purchase order
2 detail that says, we don't know how much our customer,
3 in this case FCA, Stellantis Chrysler, is going to
4 order, then that's the basis. We will order. Every
5 order that we get from our customer will have to go to
6 you. It shall go to you. It's an imperative. We
7 have no choice. And we did. We did that for seven
8 years. We didn't buy from anywhere else. We shipped
9 them.

10 Now what they want to do is when the
11 circumstances change and they don't like the contract
12 anymore, is come in and say, well, we never really had
13 a contract. All this was a series of releases that we
14 never told you we weren't accepting or not accepting.
15 That's all it was. And there was never a contract
16 form.

17 Well, the only contracts form when we sent a
18 release and we shipped to you. Well, that's not --
19 that's not what happened here. That's not what
20 happened in Lorenz. And let's -- we can talk about
21 Lorenz in a minute, but essentially that case didn't
22 even deal with this type of -- at the -- of contract,
23 not an outputs reports.

24 JUSTICE WELCH: Counsel, but didn't the
25 behavior -- I agree one interpretation of the party's

1 conduct could be what you're saying, but couldn't it
2 also show a release by release contract over seven
3 years?

4 MR. LATIFF: I don't believe it can. And I
5 don't believe it can because the imperative that
6 exists and the requirements of the imperative that
7 exists in the word shell, we had no choice. We had to
8 ship to them. And we did it for the quantities that
9 were requested from at the prices that they agreed to
10 in the -- in the blanket purchase order.

11 JUSTICE WELCH: But you could have stopped
12 any time, correct?

13 MR. LATIFF: No, we couldn't have. If we
14 had stopped, let's use that example just as well.
15 Well, let's assume for my shoe was on the other foot,
16 and let's assume Airboss was making 200 percent profit
17 on every part that they made to us. And this was a --
18 the greatest part contract they had.

19 And we decided, "Hey, we want to make more
20 money. We're going to go find an alternate source and
21 we're going to go sell to them." They would be in
22 here arguing that that shale imperative means we have
23 a requirements contract and you have to order from us
24 because we want our 200 percent profit on every part.

25 The exact opposite would be true. What

1 they're essentially doing in this argument is shifting
2 the burden that exists under 2.306, 2 an outputs
3 contract where it says the seller assumes the risk,
4 right? The seller assumes risk. You might not buy
5 any. And if, you know, an epidemic happens in the --
6 and our customer shuts down their factory and has no
7 orders from us, then yeah, we may not be able to order
8 any product from you. And that becomes zero. That's
9 an assumed risk of seller.

10 What they're trying to do here is ask this
11 Court to ship that burden from sellers to buyers
12 become now -- because now everything is a release
13 contract and they can reject everything and say, you
14 know what? We want 500 percent above the part price
15 on this one. We'll ship it to you if you pay us that
16 much. Which is essentially what they were trying to
17 do.

18 I used the 500 percent, but I think theirs
19 was approximately 200 percent increase in this
20 particular case that they wanted us to agree to or
21 they weren't going to ship. So what in effect is
22 happening here is the industry -- the supplier base
23 industry is trying to ask this Court to shift the
24 burden of the assumption of risk from a buyer -- or
25 from a seller, excuse me, to the buyer.

1 And that I think would propose all kinds of
2 problems currently in the system, in the supply chain.
3 There's just in time, as you all know, there's a
4 production part approval process, the P-PAP. We --
5 we're not at liberty to go as brother council said, go
6 buy from somebody else in four months or two months or
7 six months because we have to have our customer.

8 Chrysler approve any alternative source
9 other than Airboss if we're going to use an
10 alternative source. And that time frame to do that is
11 anywhere from 12 to 18 months for a safety critical
12 part like these as these are stabilizer rods that go
13 into your car that control the suspension.

14 You can't just go to the next guy or the
15 next company or the next person and buy that product.
16 Chrysler has to review it. They have to approve it.
17 They have to say, okay, we're okay with this part.
18 We've tested it and it's okay. And that's what
19 happens in this industry. So how has the supply base
20 dealt with that and how have they dealt with these
21 uncertain -- imprecise, I should say imprecise amounts
22 of quantities?

23 Well, they've negotiated around it. They've
24 said if raw material prices increase, then we get the
25 pass through increase on price so that we're not at a

1 position of being leveraged. We -- and even in this
2 case, when they came to us with a price increase
3 request, we tried to pass it through to our OEM and
4 the OEM said, "No, we can't." And that -- and at that
5 point we have a contract.

6 Again, what they're trying to do is shift
7 the burden, but they're also trying to ask this Court
8 to remove the ability to have an imprecise quantity.

9 JUSTICE WELCH: So I -- to use brother
10 counsel's analogy he said the parties here were not
11 married. They were dating basically. You think they
12 were married? Were they --

13 MR. LATIFF: For ten --

14 JUSTICE WELCH: They were attached?

15 MR. LATIFF: For seven years.

16 JUSTICE WELCH: They couldn't

17 MR. LATIFF: And then some.

18 JUSTICE WELCH: Okay.

19 MR. LATIFF: Yes.

20 JUSTICE WELCH: What do we do about Lorenz?
21 Do you think that Lorenz has been abandoned by the
22 Court of Appeals?

23 MR. LATIFF: No, I think Lorenz first of
24 all, didn't -- it didn't deal with an output contract.
25 And second, the majority holding was, this wasn't

1 governed -- their contract, the distributor agreement
2 wasn't governed by the UCC. This was out -- they
3 determined that the whole contract is outside the
4 scope of the UCC. So they didn't really address. I
5 know as much as they want to put emphasis in the
6 appellant -- the appellants want to put emphasis on
7 Lorenz.

8 I don't think Lorenz is the guiding
9 principle here. Great Northern is, I think Judge
10 Zatkos -- Zatkoff's discussion of the varying laws
11 throughout his opinion in the JCI case is very
12 instructive. I think to dismiss it as him being
13 misled is a mistake. I think Justice Zatkoff's did a
14 very thorough analysis of both sides of this equation.
15 And he came down on -- he came down on the premise
16 that in order to promote what the UCC wants to do,
17 then the best reading of this is to adopt Great
18 Northern and to say, hey, you can have a quantity and
19 it can be imprecise.

20 And then we go back to the court if we need
21 to, to look at what is that quantity? What did you
22 mean by the quantity? What's the question of fact?
23 We don't have the need to go back in this court
24 because the only facts before the Court and Justice
25 and -- excuse me, Judge Alexander, were, you know, the

1 president of the company saying, we want 100 percent
2 of the requirements. We agree we're going to give you
3 100 percent of the requirements of there was a course
4 of performance over 78 years of what we had done.

5 So there was no evidence to suggest that the
6 parties had anything other than an outputs
7 requirements contract. There was not a single piece
8 of evidence submitted by -- in that case, the
9 defendant or the appellants to suggest otherwise. So
10 it would be a severe injustice in this case to say,
11 oh, no, we don't -- we didn't have that. We had -- we
12 had a release by release contract.

13 JUSTICE ZAHRA: To understand the meaning of
14 blanket, can parole evidence be admitted in the lower
15 courts?

16 MR. LATIFF: It can be if the -- as Justice
17 not Justice -- excuse me, as Judge Alexander
18 determined, he said, "I've determined by the term
19 blanket in the review of the definition that there is
20 an imprecise quantity confirmed here. Now, based on
21 that, and based on in Ray Frost, I can explore parole
22 evidence." And the parole evidence he summarized in
23 his opinion was all the things I just said saying,
24 there's no dispute here.

25 JUSTICE ZAHRA: Should I be confused or held

1 back by the notion that the releases have specific
2 quantities? And that seems to be somewhat
3 inconsistent with the requirements contract?

4 MR. LATIFF: No, I don't think you should be
5 because it doesn't -- a release does have a quantity
6 because a quantity can't be on -- can't be known until
7 the customer tells us how much they need. At that
8 point, we now know we can issue a release and we can
9 get that product before then, it's an unknown. And
10 that's what 2306 stands for. That's the purpose of
11 it.

12 And if you accept their principle 2306 in my
13 mind is eviscerated. It means nothing. You're giving
14 no meaning to that -- to that anymore. Because now
15 the fact that we have unknown, we can't have that
16 anymore. According to their interpretation. We have
17 to have a percentage, a numeric number. It can't be
18 imprecise. It has to be precise. And therefore you
19 do have to -- I would think to answer a question that
20 I was asked. I think Justice Zahra, you asked the
21 question, do we have to get rid of Great Northern? Do
22 we have to get rid of all these cases? You would.
23 You absolutely would.

24 And back to Lorenz for a minute, I don't
25 think the majority dealt with this issue. I think

1 they said in my reading, but we're not going to deal
2 with it because this falls outside the UCC. However,
3 Justice Brickley did a nice concurring opinion. I'm a
4 little candidly flummoxed on how it's concurring
5 because I think his ultimate conclusion is I find that
6 the UCC does apply, and I find that it is a
7 requirements contract. And I find that there was a
8 quantity, albeit imprecise, that was stated in this
9 agreement -- this distribution agreement. Remember
10 that distribution agreement was a letter that said,
11 "Welcome to our association. Well, you're a
12 distributor now for American Standard." That's all it
13 said.

14 JUSTICE BERNSTEIN: Counsel, I have a
15 question, and again, I always ask more like simple
16 questions, but I like to always understand the long
17 term ramifications of what this Court does. If we
18 were to adopt brother, counsel's position on this,
19 what would the effect be on the industry, if any?

20 MR. LATIFF: I -- the effect would be --
21 Justice Bernstein, what I attempted to convey, the
22 shifting of the burden of the assumption of risk from
23 what is now the seller to now the buyer.

24 JUSTICE BERNSTEIN: Mm-hmm.

25 MR. LATIFF: So in other words, the OEM, the

1 Tier 1 who's buying, because now you're in a leveraged
2 position. Unless you -- unless you make your contract
3 specific as to 100 percent requirement --

4 JUSTICE BERNSTEIN: I see. I see.

5 MR. LATIFF: -- their counseling. Now
6 you're going to say, well, I need this release. And
7 if they don't like the economics of it, they can say,
8 well, I'm not giving you that release unless you pay
9 me two times, three times, four times, ten times the
10 price for that part.

11 JUSTICE BERNSTEIN: I see.

12 MR. LATIFF: Right? And by the way, I know
13 you can't get it anywhere else because it'll take you
14 12 to 18 months to go get that safety critical card
15 approved by your client. So I've got you. Pay my
16 number. That's the problem. And like I said, these
17 suppliers and the MECI suppliers that submitted,
18 they're sophisticated users as is MSSE, as is Airboss.
19 They're sophisticated folks who deal in this all the
20 time.

21 And they found ways to deal with the
22 economics, even in an outputs requirement contract by
23 using commodity base for raw materials to shift up and
24 down as the prices increase or decrease as oil prices
25 increase or decreases, you know, their raw materials,

1 prices go up and it's a fair commitment to do that.
2 But they found ways around that.

3 JUSTICE WELCH: What about and Mickey makes
4 the point, I believe it was in Mickey, that Michigan
5 is essentially an outlier now on how we're
6 interpreting these blanket provisions. Do you -- do
7 you disagree with that?

8 MR. LATIFF: Can you say that? I didn't
9 hear the one part?

10 JUSTICE WELCH: That they're an outlier,
11 that Michigan law now is not consistent with how other
12 states are interpreting this.

13 MR. LATIFF: Well, I think first of all,
14 Michigan law has been consistent for better part of 35
15 years on this. And that the industry knows how to
16 deal with this and has responded to it. And I think
17 the suggestion that we're an outlier, that the -- that
18 the chaos will ensue if you, if you don't do what they
19 ask is complete misnomer at a red herring. I think
20 the status quo is working quite well.

21 Yes. Are there cases that upon occasion, a
22 certain terminology or a certain provision within a
23 contract becomes a dispute and you have to come to a
24 court? Yes, but as on average, these contracts are --
25 just as they're written in this case by MSSE, are

1 constants throughout the industry. And it's how the
2 industry operates and everybody understands what this
3 means.

4 And they clearly understand. I mean, again,
5 you look at the evidence there. Their president
6 demanded 100 percent of the requirements and we agreed
7 to it and we lived up to it and we provided them 100
8 percent of the requirements throughout. There's no
9 question

10 JUSTICE VIVIANO: I don't want to ask the
11 named question that could be asked in any contract
12 case about why you didn't use more specific language
13 in the contract to avoid this Court dispute. So I'll
14 try to come at it a little different way and ask you,
15 what are you relying on? Is it the language of the
16 contract or course of dealings to establish that this
17 was a requirements contract or some combination of the
18 two? Could you just be -- is it just the fact that it
19 says you shall issue the releases or is it -- is it
20 something else?

21 MR. LATIFF: First, I think it's -- that the
22 issue that it says shall is sufficient to satisfy that
23 this is a contract and it's for an imprecise quantity.
24 Second --

25 JUSTICE VIVIANO: Without a quantity?

1 MR. LATIFF: Well --

2 JUSTICE VIVIANO: They could issue a release
3 -- they could issue a release that says you shall
4 produce nothing. We don't need anything. And that
5 would satisfy that.

6 MR. LATIFF: Well, within the contents of
7 good faith, there's always -- to answer your question
8 more fully, there's always the contents of good faith
9 within a contract that has -- but that's implicit, but
10 expressly under 2306, it's explicit in that you have
11 to operate within good faith. And so they're not free
12 to just order as they say, 0 to .. You can't. That
13 that's not allowed under this contract, under the law.
14 Because we have to operate within good faith
15 requirement.

16 JUSTICE VIVIANO: Well, that kind of -- is a
17 little bit of a circular argument, right? That
18 assumes that it's a requirements contract. The
19 question is what -- how do we know that it's a
20 requirements contract and not a release by release
21 relationship?

22 MR. LATIFF: Again, because -- and my answer
23 to that, Justice Viviano is because the obligation and
24 the commitment is stated within there, it's defined as
25 we shall, number one. We shall issue these releases

1 and we marry that with the purchase order that says we
2 do not know the specific languages under the special
3 instructions. It's multiple places within the
4 purchase order, but the easiest is Page 7 of the
5 purchase order, the special instruction.

6 Value is an estimate based on a forecast
7 provided by the OEM, it cannot be guaranteed. So they
8 know full well going in when we -- when we make this
9 contract and we make this agreement that we're relying
10 on the OEM, they're relying on us. That's the way
11 this business works. But once we get a volume from
12 the OEM, we must -- we must --

13 JUSTICE VIVIANO: How much of your -- let me
14 ask more specifically, how much of your argument
15 depends on course of dealing? I mean, I assume what
16 happens here is that they -- when these programs are
17 embarked upon and you enter into a relationship with
18 your -- the -- you know, the next tier supplier, they
19 have to go make investments in tooling and do certain
20 things. They're not -- they're not just sort of
21 waiting around. They -- so they -- the -- and I think
22 you're -- you mentioned course of dealings. How much
23 of your argument is based on the -- what is it, you
24 said seven years this program has been in effect?

25 MR. LATIFF: Yes.

1 JUSTICE VIVIANO: How much of your argument
2 is based on that?

3 MR. LATIFF: I think there's -- I think I
4 have two alternative arguments to be clear. I think
5 the first is that a contract is established based on
6 the face of the documents without going to what the
7 parole evidence would say on that point.

8 But the second one is, I think there's
9 sufficient amount, even if you -- if you would
10 disagree with their wills and obligation, I think
11 there's enough in this contract to specify imprecise
12 quantity as Judge Alexander found and as Court of
13 Appeals found, and as Great Northerns found to say,
14 okay, now we can look at the additional parole
15 evidence and see what was the deal. And the -- and it
16 was clearly a deal. I mean, I don't think anybody
17 disputes what the parole evidence says in this case as
18 to what the deal was. I mean, it's very --

19 JUSTICE VIVIANO: What's your response to
20 counsel's point or allegation that they came to you
21 and asked you to put in the precise language that
22 would fit in this -- you know, this relationship under
23 2306 and your client rejected that language?

24 MR. LATIFF: I disagree. And if you read
25 the evidence, that's not what it says. And it's not

1 what it -- there was an e-mail that says, "We want --
2 we want awarded the bushings and bonding." That's
3 what their president said. We wrote back and saying,
4 "You'll get 100 percent of those requirements." And
5 the response back was, "Sounds good to me." The e-
6 mail's in the evidence, that's what it says. And we
7 issued a purchase order the next day that said, hey,
8 you're getting these parts right.

9 And so that was the confirmation of it. I
10 mean, it -- there -- there's no dispute and they have,
11 there's no evidence to suggest we ever went somewhere
12 else and sell and we can't. And the notion that we
13 could make it ourselves, that was speculated in there.
14 That's -- it's just speculation. There's no basis,
15 there's no evidence to suggest we can. We have not
16 sought to get part -- production part approval from
17 Chrysler to make it ourselves. It doesn't exist.

18 JUSTICE KAVANAGH: What about the part that
19 in defining blanket orders, it says, yes, the -- you
20 shall issue a release --

21 MR. LATIFF: Mm-hmm.

22 JUSTICE KAVANAGH: -- but with specific
23 quantities and you shall have the right to cancel,
24 adjust, or reschedule the quantities. I mean, at your
25 -- at your discretion, at your disposal. Why -- what

1 quantity, if you say yes, we'll issue a release that
2 says the quantities, we also can change it and or
3 adjust it or cancel it at our discretion. So what
4 quantity are you committing yourselves to?

5 MR. LATIFF: Well, we're committing
6 ourselves, unless it's a firm, there's some
7 exceptional language in there --

8 JUSTICE KAVANAGH: Yeah. I mean, but you --
9 unless it's a firm obligation, which you get to
10 decide, I think also -- or you get to name it as a
11 firm obligation, but what quantity -- like what is I
12 get it's defined in the -- in the -- you know, we're
13 looking at the language of the contract. It says, you
14 shall issue the release that specifies the quantity,
15 but we can also adjust, cancel --

16 MR. LATIFF: Right.

17 JUSTICE KAVANAGH: -- whatever those
18 quantities are.

19 MR. LATIFF: Whatever the quantities are --
20 and the reason that's -- that adjustment's in there is
21 because if our customer adjusts, we adjust, right? I
22 mean that's the basis and reason for it. You have to
23 be -- you know, if volumes change, if they want to
24 build a park bank, if they want to go up --

25 JUSTICE KAVANAGH: It's the right to cancel

1 the quantities too.

2 MR. LATIFF: Right.

3 JUSTICE KAVANAGH: So like you could order
4 nothing.

5 MR. LATIFF: If Chrysler was to send us and
6 they say, "We're canceling our orders to you, MSSC,"
7 then we have the right to say, hey, we're canceling.
8 Unless it's a firm obligation, of course, but you're
9 accepting that I get that. But that's the point and
10 that's the reason it's in there. And there's still
11 the good faith requirement inherent both in 2306 and
12 implicit in all contracts. So there's -- it's not
13 unfettered, it isn't zero to infinity as appellant
14 want to suggests. We don't have that ability.

15 I see my time's up here. But I'm happy to
16 answer any other questions if you'd like. I just want
17 to add in real quickly. We do have an independent
18 basis beyond all this, that this case should be
19 affirmed at the lower court, and that is the letter
20 agreement. I won't belabor that, but they -- we gave
21 consideration of \$300,000+ that we didn't have to give
22 and that we're not committed to in exchange for their
23 agreement not to come to us and ask for an increase in
24 price.

25 And not two months after the ink was barely

1 dry, they came back to us and asked for an increase in
2 price. And Judge Alexander found an independent basis
3 on which to rely, to determine that we were entitled
4 to summary judgment. So regardless of what you do in
5 the principal issue for the court, I still think the
6 case should be affirmed on the independent basis that
7 we had a separate contract that we agreed to that they
8 violated. Thank you.

9 MR. GERVILLE-REACHE: I hate to say this,
10 but there were so many extra record statements in that
11 and inaccuracies that it's really going to be hard for
12 me to get through them in five minutes. First of all,
13 the statement that Justice in Lorenz, who supposedly
14 concurred found that there was a specific term in the
15 writing is absolutely wrong.

16 The majority rejected the concurrence
17 because he -- the concurring opinion was inferring
18 that there were -- that this should have been a
19 requirements contract, that that's what the parties
20 wanted, which is exactly what the Court of Appeals did
21 in this case. And which is why this Court should, in
22 reaffirming Lorenz, would have to reverse the Court of
23 Appeals.

24 Secondly, the question was made about, you
25 know, course of dealing and whether they're relying on

1 that. Obviously they said they have two different
2 arguments, but you can't make a contract through
3 course of dealing. The course of dealing is an
4 interpretive tool for interpreting a contract that
5 already exists. It doesn't make a contract. If I buy
6 all my meat from Meyer, I don't suddenly fall into a
7 requirements contract with Meyer or vice versa.

8 We've just -- I've just decided that that's
9 what I want to do, but I've not committed and neither
10 have they that I'm going to always get my meat. So
11 when they -- I show up and they don't have the rump
12 roast for me, I don't get to sue them because they
13 breached the terms of a requirements contract based on
14 some course of dealing that I had with Meyer.

15 Now, as far as the bushings and bindings are
16 concerned, that is -- that's not the language that we
17 were dealing with. What we have here is we have a --
18 what they're trying to do basically is tie the
19 requirements to the releases without saying so in the
20 writing. And if this Court adopts a position that
21 every time a party uses releases, they have entered
22 into requirements contract, what you're creating is a
23 situation where every time a party wants to use this
24 construct for its arrangement and have a blanket
25 purchase order and releases, it's going to have to

1 say, this is not a requirements contract. And then
2 the next -- when that expires in the issue, another
3 blanket purchase order, they're going to have to
4 again, make sure that phrases in there, this is not a
5 requirements contract.

6 And it's going to be a game of got you.
7 Where in the tenth iteration when somehow this falls
8 off the page and they no longer have the phrase, this
9 is not a requirement, oh, you intended a requirements
10 contract. That's not how contract law works. People
11 say what they want. We don't -- we don't -- we don't
12 force them into a default rule, whether it's the
13 automotive industry or anyone else that, well, it's
14 really good for you to just enter into requirements
15 contracts in this context. So we're just going to
16 presume that every contract you enter is a
17 requirements contract unless you say otherwise.
18 That's basically the rule that we are winding up with
19 here.

20 It is perfectly acceptable and parties
21 should have the option to use a blanket purchase order
22 and say what they want in terms of quantities through
23 releases without being forced to enter into a
24 contract. That's not what they wanted. A
25 requirements contract inadvertently, or have to say,

1 this is not --

2 JUSTICE BERNSTEIN: Counsel, could you --

3 MR. GERVILLE-REACHE: -- a requirements
4 contract at the time.

5 JUSTICE BERNSTEIN: Could you kindly respond
6 to brother, counsel's argument that if the Court were
7 to adopt your position, it's going to shift the burden
8 and it's going to basically transform the way that the
9 industry kind of handles these issues and handles
10 these types of relationships.

11 MR. GERVILLE-REACHE: Do you know what the
12 answer, Justice Bernstein is, that they don't want
13 that burden? Put it in the contract, write it down.
14 Commit in writing. It's that simple. It is not going
15 to bring the industry to its knees. They can say what
16 they want in the writing if they don't say it. The
17 presumption is they don't want it. They don't want
18 the commitment and that's fine.

19 JUSTICE CLEMENT: What's your -- what's your
20 response to brother, counsel's last point about the
21 independent basis that he'd like us to affirm on? And
22 does -- is there any effect to Airboss signed
23 agreement to not seek further price increases?

24 MR. GERVILLE-REACHE: The letter agreement
25 is basically them saying, yes, we will comply with the

1 obligations we already have. So what happened in that
2 situation was they already had accepted releases, they
3 had delivered the parts, and then they realized that
4 they hadn't gotten the increased pricing that they had
5 contracted for -- the pass through pricing that they
6 had contracted for. And so they said, Hey, we need to
7 retroactively get it --

8 JUSTICE CLEMENT: Who -- I'm sorry. Who's
9 they?

10 MR. GERVILLE-REACHE: Airboss said to MSSC,
11 we retroactively need to get the price adjusted on
12 these parts that we already delivered to you. They
13 already had a contract for those parts. And so -- and
14 --

15 JUSTICE CLEMENT: But --

16 MR. GERVILLE-REACHE: And MSSC complained
17 that, well, but, you know, we now can't ask for an
18 increase on our end because it's too late because
19 we've already -- we've already gone through that
20 transaction. But fine, we'll do it this time. You
21 know, we want you to tell us in advance -- in advance
22 next time when this pass-through pricing needs to be
23 adjusted. So it was -- it's perfectly logical letter
24 agreement, but all it does is say you're going to --
25 you're going to abide by the prices that we've agreed

1 to and those agreements happen when they send a
2 release and we agree to deliver those parts and they
3 can say, this is not a good arrangement for us, but
4 that's the arrangement they contracted for.

5 JUSTICE CLEMENT: Okay. Thank you.

6 MR. GERVILLE-REACHE: My time is up.

7 JUSTICE CLEMENT: Thank you. The case will
8 be submitted.

9 (Proceeding concluded.)
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I further certify that I am neither attorney
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to the action; further, that I am not a relative or
employee of any attorney employed by the parties
hereto, nor financially or otherwise interested in the
outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my
hand this 22nd day of January, 2026.

Cate Vernay Johnson

Cate Vernay Johnson

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FCA US, LLC,

Plaintiff,

vs

Case No. 24-205863-CB

KAMAX, INC., and KAMAX MEXICO
S DE RL DE CV,

Defendants.

HEARING

BEFORE THE HONORABLE VICTORIA A. VALENTINE

Pontiac, Michigan - Friday, March 15, 2024

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1 Pontiac, Michigan
2 Friday, March 15, 2024
3 - - -
4 (At 10:02 a.m., proceedings begin)
5 THE CLERK: Your Honor, now calling case number
6 2024-205863-CB, FCA versus KAMAX.
7 THE COURT: Appearances.
8 MS. GAMBINO: Good morning, Your Honor.
9 Michelle Gambino and David Barger for FCA US, LLC.
10 THE COURT: Mr. Barger, sir, put your own
11 appearance on, please.
12 MR. BARGER: I'm sorry, Your Honor?
13 THE COURT: Put your own appearance on.
14 MR. BARGER: Yes, Your Honor. Good morning,
15 David Barger on behalf of Plaintiff, FCA.
16 THE COURT: Thank you.
17 MR. KILLIPS: Good morning, Your Honor. Jason
18 Killips on behalf of KAMAX, Inc.
19 MR. STRUBLE: Good morning, Your Honor. Chris
20 Struble for KAMAX, Inc.
21 THE COURT: Thank you. Sir?
22 MR. MAHAFFY: Oh, good morning, Your Honor.
23 Mark Mahaffy, KAMAX.
24 THE COURT: Thank you.
25 MR. KILLIPS: Mr. Mahaffy is one of our

1 witnesses. He's not an attorney, Your Honor.

2 THE COURT: Thank you. Mr. Sharkey, sir, good
3 to see you.

4 Okay. Any other lawyers that need to appearance
5 on? Mr. King, sir.

6 MR. KING: Stephen King on behalf of FCA, Your
7 Honor.

8 MS. DUHAIME: Amanda Duhaime on behalf of FCA.

9 THE COURT: I can't hear you.

10 MS. DUHAIME: Amanda Duhaime on behalf of FCA.

11 THE COURT: Thank you. Anybody else? Mr.
12 Sharkey, put your own appearance on please as well.

13 MR. SHARKEY: Yes, ma'am. Dan Sharkey here for
14 the Defendant KAMAX, Inc., ma'am.

15 THE COURT: Did you guys talk settlement at all?

16 MS. GAMBINO: Yes, Your Honor. The parties this
17 week have gone back and forth attempting to see if they
18 could reach a resolution, but unfortunately, they haven't
19 been successful.

20 THE COURT: Okay.

21 MR. KILLIPS: Your Honor, I wouldn't quite say
22 that's true. We've always been open to negotiations.
23 Their position has been no.

24 MS. GAMBINO: Okay. Well, I didn't think we
25 were going to have this disagreement already, but I can

1 assure you my client has been and if necessary will say
2 that she's been sitting there meeting with your client,
3 even yesterday evening, attempting to resolve --

4 THE COURT: So basically the lawyers aren't
5 having conversations, but the clients are?

6 MS. GAMBINO: Yes, Your Honor.

7 MR. KILLIPS: I've been in touch with my
8 clients, Your Honor. They had those meetings, but FCA has
9 not offered to pay a dime more than the old contract
10 prices.

11 MS. GAMBINO: Well, we did -- well, Your Honor I
12 don't think it's appropriate for you to tell the Court
13 what the settlement discussions are, because those are
14 obviously privileged communications, but in light of that,
15 my client did make certain concessions, which is it
16 already paid your client approximately \$9 million prior to
17 this, even though it wasn't obligated to do it, and the
18 settlement --

19 THE COURT: All right. So now we're not being
20 productive.

21 MS. GAMBINO: Yeah, exactly.

22 THE COURT: Okay. It's your burden of proof, go
23 ahead, please.

24 MR. KILLIPS: Your Honor, with respect, in order
25 to show cause, I think that we have the burden to show

1 cause, then we should go first.

2 MS. GAMBINO: Your Honor, that's just not the
3 way it's done. It's -- it is our burden, the TRO I think
4 expired as of today, and so I'd like to -- we're asking
5 the Court for a preliminary injunction, it's our relief,
6 we're the Plaintiff.

7 MR. KILLIPS: Your Honor, their motion says that
8 they're asking for an order to show cause. This is the
9 motion you granted.

10 THE COURT: Okay. Very well, sir. I'm going to
11 let you proceed. I'm going to give them the presumption
12 that they've met the burden and that with regard to the
13 show cause, sir, it's now for you to --

14 MR. KILLIPS: Well, Your Honor, I'm not
15 suggesting they necessarily met the burden; I'm just
16 saying we've been ordered to show cause and we're here to
17 do that.

18 THE COURT: Go ahead, sir.

19 MR. KILLIPS: Thank you, Your Honor. I'm going
20 to use my blind guy teleprompter here, if you don't mind.

21 Your Honor, writing a enforce -- or an
22 enforceable requirements contract is not difficult. If
23 FCA had wanted a 100 percent requirements contract, its
24 purchase orders could have said this order is for 100
25 percent of our requirements con -- or requirements.

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THE COURT: Right.

MR. KILLIPS: If they didn't want --

THE COURT: So I'm looking for testimony.

MR. KILLIPS: Oh, you'd like to put on our witnesses before we argue, Your Honor?

THE COURT: Well, I know what your argument is.

MR. KILLIPS: Fair enough. We'll be happy to do that. Mr. Struble is going to present our first witness. We call Mark Mahaffy. He is -- or Mahaffy, excuse me.

THE COURT: Mr. Mahaffy, sir, if you can come up to the witness stand, sir, I'm going to have you pause in front of the box, raise your right hand to be sworn, please.

THE CLERK: Under penalty of perjury, so you solemnly swear or affirm that the testimony you're about to give before this Court is the truth, the whole truth, and nothing but the truth?

MARK MAHAFFY: I do.

(At 10:06 a.m., witness sworn)

THE COURT: Sir, you may be seated.

MR. STRUBLE: May I proceed, Your Honor?

THE COURT: Yes, absolutely.

MARK MAHAFFY

called as a witness, testified as follows:

DIRECT EXAMINATION

1 BY MR. STRUBLE:

2 Q Good morning, Mr. Mahaffy.

3 A Good morning.

4 Q Will you please introduce yourself to the Court?

5 A Hello, everyone. My name is Mark Mahaffy.

6 Q And where do you work, Mr. Mahaffy?

7 A I work at KAMAX, Inc.

8 Q What is your title at KAMAX?

9 A Vice president of sales.

10 Q And how long have you worked at KAMAX?

11 A I've been at KAMAX eight years.

12 Q Where is KAMAX located?

13 A KAMAX has our sales offices in Rochester Hills, so we can
14 basically see, you know -- and then our manufacturing
15 facility is in Lapeer. Lapeer, Michigan.

16 Q What are your responsibilities as vice president of sales
17 for KAMAX?

18 A We have a couple of main functions. On the commercial
19 side, we negotiate new business and pricing with
20 customers, and then we also support on the engineering
21 side design and product development.

22 Q What industry does KAMAX operate in, primarily?

23 A Primarily automotive.

24 Q And how long have you worked in the automotive industry?

25 A I've been in automotive since 2001. Twenty-three years

1 then.

2 Q Where did you get your start in the industry?

3 A I started my career at Daimler Chrysler at the time, so,
4 you know, they hold a special spot in my heart personally,
5 so yeah, Daimler Chrysler.

6 Q Is Daimler Chrysler now FCA?

7 A Daimler Chrysler is now FCA.

8 Q Since your start at FCA, have you now transitioned to
9 working for suppliers to OEMs?

10 A Yes. In 2007, I went to work for a company called Cold
11 Heading Company. That was my first job in a supplier and
12 also in fasteners.

13 Q Is KAMAX a supplier to FCA?

14 A KAMAX is a supplier to FCA.

15 Q And what does KAMAX manufacture?

16 A KAMAX manufactures what we would call externally
17 threatened fasteners, bolts, primarily in the suspension,
18 chassis, engine area, engineered fasteners, safety
19 critical fasteners.

20 Q You generally described your role a minute ago, but can
21 you describe your role specifically related to FCA?

22 A Specifically related to FCA, I manage the team that works
23 with them on a daily basis. We -- we negotiate new quotes
24 with them, we work with their engineering teams on
25 products.

1 Q And where does KAMAX produce the parts that it supplies to
2 FCA?

3 A KAMAX produces those parts in Lapeer, Michigan, so I think
4 KAMAX is actually the largest employer in Lapeer, besides
5 the school system, so 45 minutes north of here.

6 Q Mr. Mahaffy, are you familiar with the purchase orders
7 between KAMAX and FCA?

8 A Yes.

9 Q Mr. Mahaffy, I've just handed you one of the purchase
10 order documents that FCA attached as -- as part of Exhibit
11 2 to its complaint. Do you recognize this document?

12 A I noticed it from the complaint, but prior to the last
13 couple of days, I would have said no.

14 Q When was the first time you saw this document?

15 A In the -- in the complaint paperwork.

16 Q But I thought that you said that you were familiar with
17 the purchase orders between KAMAX and FCA?

18 A This is not the type of purchase order we receive in a
19 normal -- normal business.

20 Q What are the purchase orders that FCA sends to KAMAX?

21 A We normally receive our purchase orders through EDI,
22 they're text files, and then either print them or save
23 them, but they come over as a -- as a large text file.

24 MR. STRUBLE: Your Honor, before we move on to
25 our next exhibit, I'd like to move to admit Defendants'

1 hearing Exhibit 1 into evidence.

2 THE COURT: He just indicated that he doesn't
3 have the foundation for it. He hasn't seen them before,
4 this is not what he typically sees.

5 MR. STRUBLE: That's fine, Your Honor.

6 THE COURT: Thank you. What exhibit number is
7 this?

8 MR. STRUBLE: This is Exhibit 2, Your Honor.

9 THE COURT: Proposed 2?

10 MR. STRUBLE: Proposed 2.

11 Actually, Your Honor, I think that would make
12 this proposed 1?

13 THE COURT: No, for the Court of Appeals record,
14 you need this to be proposed 1, this will be proposed 2.

15 MR. STRUBLE: Fair enough, Your Honor.

16 BY MR. STRUBLE:

17 Q Mr. Mahaffy, are you familiar with this document?

18 A Yeah, this looks familiar.

19 Q What is it?

20 A This is a printout of the text file that we would normally
21 get for a purchase order.

22 Q Is this an example of one of the purchase orders that
23 KAMAX did receive from FCA?

24 A Yes.

25 Q How does KAMAX receive these documents?

1 A We receive these through EDI.

2 Q Just flipping through the document for a second, this is
3 pretty difficult to read; do you agree?

4 MR. BARGER: Objection --

5 THE WITNESS: The format is --

6 MR. BARGER: Sorry. Objection to argumentative
7 and leading, it's hard to read.

8 THE COURT: Your objection is that it's hard to
9 read?

10 MR. BARGER: No, he's suggesting to the witness
11 that it's hard to read, so -- I'll withdraw the objection.
12 I think it's leading, but --

13 THE COURT: Go ahead.

14 BY MR. STRUBLE:

15 Q I didn't hear your answer.

16 A Yeah, they're -- they're hard to read and -- and when we
17 receive them it's usually in a big, long text file with,
18 you know, 150 POs all -- all in a giant text file.

19 Q Did you ever ask FCA for a clean looking pdf version of
20 purchase orders?

21 A Yes, through the -- my eight years, several times we've
22 gone through projects to organize how we store POs and for
23 our records, and yeah, several times we've asked for
24 cleaner copies of purchase orders.

25 Q And what was FCA's response to that request?

1 A That the text files are all we need and that's all that
2 they can provide.

3 Q So they -- they -- FCA said that you did not need the
4 version of the purchase orders that they attached to the
5 complaint?

6 A Correct.

7 Q To your knowledge, do all the purchase orders that FCA
8 sent to KAMAX look like Defendants' proposed Exhibit 2?

9 A Yes.

10 MR. STRUBLE: Your Honor, I move to admit
11 Defendants' proposed Exhibit 2 into evidence.

12 THE COURT: Any objection?

13 MR. BARGER: No, Your Honor.

14 THE COURT: So admitted.

15 (At 10:14 a.m., DX-2 was received)

16 BY MR. STRUBLE:

17 Q Mr. Mahaffy, when FCA wants to buy parts from KAMAX, how
18 does it communicate that?

19 A Once we have a purchase order or a -- a purchase order
20 established, then we will get releases through EDI, so the
21 electronic connection between the two companies, and then
22 we'll get releases that say, you know, a date, and how
23 many parts they want to buy, and it'll list that out
24 typically over the next 12 months.

25 Q Has that always been true since you joined KAMAX?

1 A Yes.

2 Q Turning back for a moment to Defendant -- Defendants'
3 proposed Exhibit 1.

4 A Okay.

5 Q Do you still have that?

6 A Yep.

7 Q Do you see the language in the purchase order that says
8 this order is for approximately 65 percent to 100 percent
9 of our requirements?

10 A I do.

11 Q Was this language always in the EDI purchase orders that
12 you receive from FCA?

13 A No.

14 Q What do you mean?

15 A If I remember correctly, this was added a couple of years
16 ago, certainly after COVID, maybe 2021 or 2022, but just
17 in the last couple of years.

18 Q Did FCA notify you when it altered the EDI transmissions?

19 A No, not that I remember.

20 Q Didn't send an email proposing the modification?

21 A No.

22 Q Did it call you -- did FCA call KAMAX and propose the
23 modification?

24 A No.

25 Q Send a text?

1 A No.

2 MR. BARGER: Objection, argumentative, Your
3 Honor. It's been asked and answered. He's just going to
4 say it the same way four different times.

5 THE COURT: Overruled. He hasn't asked the same
6 thing twice. Go ahead, sir.

7 BY MR. STRUBLE:

8 Q Did you say no to the last question --

9 A Yes.

10 Q -- Mr. Mahaffy?

11 Now, Mr. Mahaffy, I know you're not a lawyer,
12 but I want to ask you about your general view of the
13 purchase orders before this dispute.

14 A Okay.

15 Q You testified that KAMAX has always received releases from
16 FCA, correct?

17 A Correct.

18 Q Did you ever give any thought as to whether KAMAX had a
19 legal obligation to fill every purchase -- or every
20 release that FCA sent KAMAX?

21 A No. You -- typically in the sales team we're worried
22 about pricing, payment terms, working with engineers on
23 new parts and projects. Generally, no.

24 Q You're focused on selling parts?

25 A Correct.

1 Q Is KAMAX in the business of selling parts?

2 A Yes, absolutely.

3 Q Does KAMAX prefer to sell just a few of each part or as
4 many as it can?

5 A Normally, we'd like to sell as many as we can.

6 Q Why is that?

7 A That's how we make money.

8 Q I'd like to come back to Defendants' proposed Exhibit 1
9 just for a second.

10 A Okay.

11 Q There are -- well, let me -- how many parts are at issue
12 in this case?

13 A We sell about 150 -- somewhere between 150 and 175 parts
14 to Stellantis -- or I'm sorry -- FCA on an annual basis.
15 Part numbers.

16 Q And how long have you -- how long has KAMAX been supplying
17 those parts?

18 A For a long time. I know in some cases -- you know,
19 personally I know some parts are at least 20 years old or
20 older, so yeah, many decades. Most of the parts we supply
21 now were -- were probably sourced before COVID, so many,
22 many years.

23 Q Now I want to go back to Defendants' proposed Exhibit 1.

24 In the top left box, there is a statement that
25 says through life of the program; do you see that?

1 A Yes.

2 Q And you mentioned a minute ago that some of these parts
3 are almost -- or about 20 years old, I think you said?

4 A Yes.

5 Q Are more of them from before your time when you joined
6 KAMAX?

7 A Yeah, certainly we have a number of parts --

8 THE COURT: So, give me a second here.

9 With regard to your proposed Exhibit Number 1,
10 it says FCA on the top. Is this a business record of FCA
11 or the business record of KAMAX?

12 MR. STRUBLE: Your Honor, I -- we -- it's not
13 the business record of KAMAX.

14 THE COURT: Okay.

15 MR. STRUBLE: And it's un --

16 THE COURT: And he's indicated that he isn't
17 familiar with them other than from the complaint.

18 MR. STRUBLE: Right.

19 THE COURT: So why are you even continuing to
20 ask him questions on a document he hasn't -- he's not
21 familiar with?

22 MR. STRUBLE: Because FCA is relying on the
23 document, I'm simply asking him about language on the
24 document, not his familiarity with it.

25 THE COURT: And the language being?

1 MR. STRUBLE: The -- in the top left box it says
2 through life of program, and I'm -- I'm going to ask him
3 about the applicable vehicle program for some of these
4 parts.

5 THE COURT: And that, I'm sorry, you're going
6 to?

7 MR. STRUBLE: I'm going to ask him questions
8 about the programs that apply to the parts that --

9 THE COURT: Okay.

10 MR. STRUBLE: -- KAMAX --

11 THE COURT: And the document that I have, this
12 1A, where does it list the parts on here?

13 MR. STRUBLE: It does not list the parts, Your
14 Honor, but I have an exhibit that lists the parts.

15 THE COURT: How is this document used?

16 MR. STRUBLE: That is unclear to KAMAX, Your
17 Honor. As Mr. Mahaffy testified, we received different
18 versions of purchase orders from FCA, so it's unclear to
19 KAMAX how these documents are used at FCA.

20 THE COURT: Okay.

21 BY MR. STRUBLE:

22 Q Mr. Mahaffy, let's focus on Defendants' proposed Exhibit
23 2.

24 A Okay.

25 Q Defendants' Exhibit 2.

1 On page 5, on the fifth page of that purchase
2 order --

3 A Okay.

4 Q -- on the top paragraph it says contract is valid through
5 the end of the duration of the vehicle production program
6 or programs; do you see that?

7 A I do.

8 Q You mentioned that some of these parts had been supplied
9 for about 20 years, correct?

10 A Yes.

11 Q And that you -- some of them are -- have been supplied for
12 longer than you've been at KAMAX, correct?

13 A Correct.

14 Q Would the original vehicle program still be running --

15 A No.

16 Q -- from that time?

17 A No.

18 Q It would not?

19 A No.

20 Q Do FCA's purchase orders identify the applicable vehicle
21 program?

22 A They do not.

23 Q Are you aware --

24 A Not that I know of.

25 Q Are you aware of what vehicle program --

1 A Sometimes we're aware of the vehicle program if we've
2 worked with the engineer on that particular part or we've
3 had a quality issue, but for all of our parts, no, we're
4 not aware.

5 Q Does FCA usually give KAMAX a sense of about how many
6 parts it might buy from KAMAX every year?

7 A Yes.

8 Q And for any given part, Mr. Mahaffy, do you expect FCA to
9 buy any particular volume of parts from KAMAX?

10 A I wouldn't say we expect. We hope. We usually quote an
11 estimate annual usage of a part.

12 Q Do you believe that FCA can decide to buy parts -- the
13 parts that KAMAX sells from another supplier at any time?

14 A Yes.

15 Q In fact, have you experienced that?

16 A Yes.

17 Q How have you experienced that?

18 A In my career -- you know, throughout my career, I've seen
19 FCA resource our parts to other suppliers. Not often.
20 And -- and we've also been the ben -- beneficiary on the
21 other side, where FCA has sourced other supplier's parts
22 to KAMAX.

23 Q Now KAMAX has raised its parts for the parts at issue,
24 right?

25 A Raised?

1 Q I'm sorry, raised the prices for the parts at issue,
2 correct?

3 A Correct.

4 Q Okay.

5 Mr. Mahaffy, I've just handed you Defendants'
6 proposed Exhibit 3.

7 A Okay.

8 Q Do you recognize this document?

9 A I do.

10 Q What is this document?

11 A This is a letter we sent in November, and an attachment
12 showing pricing for January, and the letter basically
13 states that due to manufacturing inefficiencies and
14 manufacturing cost and volume changes, and also the labor
15 and inflation, that there's -- we reluctantly need to ask
16 for new pricing, and that if -- if that pricing is not
17 acceptable, then we would ask for Stellantis to find a new
18 supplier and we would reject releases starting February
19 20th.

20 Q Okay. My questions are going to focus on the attachment.
21 Could you -- could you flip to the attachment?

22 A Yep.

23 Q What does this attachment summarize?

24 A This attachment is a list of -- the first column is the
25 Stellantis part number, the second column is our internal

1 part number, the third column was the current price at the
2 time, the Q4 price from 2023, and then the fourth column
3 was the 2024 January 1st price.

4 Q And have you reviewed the prices and confirmed their
5 accuracy?

6 A I have.

7 Q Did you prepare this attachment with your team?

8 A Yes.

9 MR. STRUBLE: Your Honor, we move to admit
10 Defendants' proposed Exhibit 3 into evidence.

11 MR. BARGER: No objection, Your Honor.

12 THE COURT: So admitted.

13 (At 10:24 a.m., DX-3 was received)

14 THE COURT: Is page 2, part number 06508504AA;
15 do you see that about a little more than halfway down?

16 MR. STRUBLE: I'm sorry, which part number, Your
17 Honor?

18 THE COURT: 06508504AA? It was \$3,461.25.

19 THE WITNESS: I see it.

20 MR. STRUBLE: Yes, I see that now, Your Honor.

21 THE COURT: And then it jumps to \$36,110?

22 THE WITNESS: Correct.

23 THE COURT: That's the price increase?

24 THE WITNESS: Yeah, those are prices per 1,000.

25 THE COURT: So it went from 3,000 to 36,000?

1 THE WITNESS: It went from \$3 to \$36. 3,400 per
2 1,000 to 36,000 per 1,000.

3 THE COURT: Okay.

4 BY MR. STRUBLE:

5 Q Mr. Mahaffy, what were KAMAX's total sales to FCA in '23 -
6 - 2023?

7 A 2023, about 35 million.

8 Q On balance across all the parts that the attachment
9 summarizes, what is the percentage increase that KAMAX is
10 seeking?

11 A Somewhere in the 15 percent range.

12 Q And why has KAMAX raised its prices?

13 A That's a good question, and one we take seriously.

14 The -- the main driver of the price increase is
15 the volume changes on a number of parts. So we talked
16 about some of the old parts and if you look at that part,
17 that went from 3,400 to 36,000 as an example, the volume
18 maybe 20 years or 10 years ago was 5 or 10 million pieces
19 a year, and now, you know, and I don't know that part
20 specifically, I'd have to go back and look at the data,
21 but the volume of that part now might be 5,000 or 10,000
22 pieces, so we've seen a dramatic shift in the volume on a
23 lot of parts. FCA has undergone a lot of program changes.
24 We have a lot of legacy parts. And so if you're taking a
25 part from 5 million pieces a year to 5,000 pieces a year,

1 that's -- that's a lot less volume to spread cost over,
2 and that's why you see sometimes the big jump on a
3 particular part in price. Overall, the annual spend on
4 that part is probably not that significant of a jump when
5 you multiply it by the volume of the part, but on a
6 percentage basis, it looks large.

7 And then the other part of it is, you know,
8 we've had historic inflation cost, right? I think 20
9 percent inflation if you -- you know, cumulative inflation
10 over the last couple of years. We have skilled -- very
11 skilled operators that run these specialty parts in
12 Lapeer, and so tremendous labor costs increase, material
13 cost increase, chemical cost increase, freight increases,
14 but again, the main driver was the volume changes on a lot
15 of these parts.

16 Q Okay.

17 What portion of KAMAX's business do the
18 pressures that you just described impact?

19 A All of it.

20 Q Mr. Mahaffy, how many passenger vehicle OEMs does KAMAX
21 supply?

22 A We supplied every OEM, except for Toyota and Hyundai Kia
23 in the U.S. market, North American market.

24 Q In a numeric value, how many --

25 A It's roughly 10.

1 Q Roughly 10.

2 A Yeah.

3 Q Did KAMAX seek price increases from all of those other
4 customers?

5 A We did, with the exception of Tesla.

6 Q Why was Tesla the exception?

7 MR. BARGER: Objection, Your Honor, relevance.

8 MR. STRUBLE: Your Honor, the -- this goes
9 directly to the issue of why KAMAX needs the price
10 increase, and their argument is that it's -- it's not
11 needed.

12 MR. BARGER: We haven't argued it's not -- I'm
13 sorry, Your Honor, I didn't mean to cut him off.

14 MR. STRUBLE: Go ahead.

15 MR. BARGER: We haven't argued it's not needed
16 at all. Simply this is an issue of what's required under
17 the contract and what their obligation is. Whether
18 they've chosen to seek price increases from us and other
19 manufacturers, the other manufacturers simply aren't
20 relevant to this case.

21 MR. STRUBLE: I'll move on, Your Honor.

22 THE COURT: Okay. So you're withdrawing your
23 question?

24 MR. STRUBLE: Yes.

25 THE COURT: Go ahead.

1 BY MR. STRUBLE:

2 Q Mr. Mahaffy, so when did KAMAX approach FCA about
3 increasing the part -- the prices for the parts that it
4 supplies?

5 A Increasing the price, this -- this letter was sent in
6 November; the discussion on some of the low volume parts
7 started in February, February of last year, February 2023.

8 Q Okay.

9 So what happened after the communication in
10 February of '23?

11 A Initially, we were working with them for a couple of
12 months on trying to find other solutions on the low volume
13 parts, see if they could find some other suppliers, do a
14 last time buy. We continued to struggle to make the low
15 volume parts with the complexity in the plant. In June,
16 we had sent a letter formally asking -- in June '23, we
17 had sent a letter asking that they resource those parts,
18 and we had asked to -- that that happen in 90 days again,
19 or we would reject releases. At that time, we did not ask
20 for a price increase. We got to September, those parts
21 still hadn't been resourced to another vendor, we hadn't
22 found an acceptable solution for both of us to find a
23 better way to make those parts, and then in November, we
24 -- we sent the letter that we already discussed.

25 Q Okay.

1 And in those communication, in what -- on what
2 day did KAMAX say that it was going to stop selling FCA
3 parts?

4 A February 20th.

5 Q So how much notice did KAMAX provide FCA?

6 A Ninety days.

7 Q Did you try to engage -- did you try to engage with FCA
8 after the November 20th communication?

9 A Yeah, absolutely. We -- with every customer, certainly
10 with FCA, we want to try to find a mutually acceptable
11 solution. FCA has been a great customer of ours for a
12 long time, it's a customer we want to keep going forward,
13 and so yeah, we had weekly meetings with the buyer and
14 regular follow-up verbally, through email, asking to
15 negotiate or find a solution, and the position was always
16 that there was -- the policy was no price increases for
17 2024.

18 Q That was always FCA's position?

19 A Yes.

20 Q Did FCA then file this lawsuit?

21 A Yes.

22 Q Have -- has -- have KAMAX and FCA held any executive-level
23 meetings?

24 A Yeah, but they -- the day before the suit was filed, we
25 had a meeting with Marlo, Stephanie, Victor, who's their

1 purchasing manager, and then on the KAMAX side, it was
2 myself, Brian, and Mats.

3 Q And what was the nature of that discussion?

4 MR. BARGER: Your Honor, I apologize. There
5 have been conversations over the period since they stopped
6 ship where we have indicated to counsel, and I thought
7 they agreed --

8 THE COURT: Sir, what's your objection?

9 MR. BARGER: Pardon?

10 THE COURT: Sir, what's your objection?

11 MR. BARGER: I think they're going to talk about
12 settlement discussions, which the parties agreed were
13 settlement discussions.

14 THE COURT: MRE 408 will prevent you from
15 discussing settlement, so please do not go there with your
16 questions.

17 MR. STRUBLE: Sure.

18 MR. KILLIPS: Your Honor, may we respond to the
19 objection quickly though?

20 MRE --

21 THE COURT: The objection is just not to have
22 any settlement discussions entered. I think that's fair.

23 MR. KILLIPS: Well, my point is simply that MRE
24 408 is narrower than that. MRE 408 says we can't admit
25 any statements they have made to prove that they are

1 liable for some claim at issue.

2 THE COURT: Okay. And what is that --

3 MR. KILLIPS: Nothing like that has happened.

4 THE COURT: -- your offer of proof that you want
5 to provide?

6 MR. KILLIPS: We're -- we simply want to
7 demonstrate that not -- in fact, there have been no
8 settlement discussions. The parties have sat in rooms
9 together --

10 THE COURT: Why is it -- but why is it relevant?
11 We're here because there's not an agreement, and with
12 regard to there not being agreement, the Court has to
13 specifically look at what the issues are, who might
14 prevail, and the issues with regard to the preliminary
15 injunction.

16 When we were here previously, I couldn't get a
17 gauge on what the parts were, when they expired, what the
18 agreements were, so I don't know what's going on with
19 regard to not wanting to ship anymore or wanting the price
20 increase, wanting to -- to exit the -- the business
21 opportunity and the stop shipping. That's why we're here,
22 so whether or not there were discussions that landed you
23 here because you didn't make a resolution is not germane
24 to what I have to decide.

25 MR. KILLIPS: And if we're focusing on that part

1 it, that is just fine, Your Honor, we'll move on to a
2 different topic. I simply thought you'd appreciate the
3 color. That's all.

4 THE COURT: No. I mean I can't -- it can't
5 weigh into my determination today.

6 MR. KILLIPS: Fair enough.

7 BY MR. STRUBLE:

8 Q Mr. Mahaffy, to keep -- to keep all the business of a
9 given part, is it fair to say that KAMAX's goal is to make
10 good parts?

11 A Yes.

12 Q Why is that?

13 A Our goal to make good parts? Customer satisfaction. We
14 -- you know, we don't want to have quality issues. We
15 don't want FCA to have quality issues. We always strive
16 to make a good part.

17 Q Do you require increased prices to continue doing that?

18 A We do.

19 Q Why is that?

20 A The \$4 1/2 million in dispute here for -- for KAMAX, a
21 small family-owned company, is a lot of money for us.
22 We've really struggled with skilled labor in Lapeer, which
23 we've shared with FCA, and for us, it would be a huge hole
24 in -- in our budget to be able to pay operators, to be
25 able to procure steel. It really affects the viability.

1 What we're trying to do here is make sure we're a long-
2 term, stable, viable partner for FCA going forward. I
3 think we've supplied, you know, from the previous company
4 that KAMAX was for almost 100 years to Chrysler, or
5 Daimler Chrysler, FCA, Stellantis, and that we want to be
6 part of that for the next 100 years.

7 Q Mr. Mahaffy, in your experience, how would you expect
8 KAMAX's new pricing to compare against the current market?

9 A So when -- when we price the parts, we try to really keep
10 in mind market, so again I talked about volume. Some of
11 the parts that are parts that -- that have original
12 volumes that are close to what we quoted, we had almost no
13 price increase. For the parts that had lower volume, we
14 had a significantly higher price increase, so short
15 answer, we would expect the pricing to be market
16 competitive, or they would find another supplier, and we
17 want to keep them as a customer.

18 Q In one of its filings, FCA makes a big deal about a part
19 or two that go up somewhere around 5,000 percent.

20 A Yeah.

21 Q Does -- do you know what part that they're referencing?

22 A I don't know the specific part, but it wouldn't surprise
23 me if there was a large increase like that.

24 Q And would those parts fall in the same bucket you were
25 describing about aligning with the market?

1 A Yes.

2 Q Why --

3 A And --

4 Q Why is that?

5 A I'm sorry, Chris.

6 The -- it's the volume situation again. So a
7 lot of our parts -- everything is volume-driven, so we've
8 got parts that were 5 or 10 million pieces a year, and now
9 sometimes they're down to just a couple hundred pieces a
10 year.

11 Tooling and fasteners are perishable, so often
12 when we make a new batch, we have to re-buy tooling, and
13 if you're spending 50 or \$100,000 on a -- on a tooling
14 set, you've got a lot less parts to spread that cost over,
15 so you do see significant increases when you see
16 significant drops in volume.

17 Q Did I hear you say that some parts the annual volume was
18 in the millions and now it's in the hundreds?

19 A Yes.

20 Q Did KAMAX set any of its prices to force FCA to move the
21 business to a new supplier?

22 A No, absolutely not. We -- you know, I've communicated
23 with -- with Stephanie and our manager and buyer, we want
24 to keep Chrysler Stellantis as a long-term customer.

25 Q And would you expect that to happen if the new prices were

1 out of line with the market?

2 A No.

3 Q Mr. Mahaffy, as a supplier to OEMs, in your experience
4 doing that, have you experienced situations where OEMs
5 have suddenly reduced releases to zero or stopped ordering
6 parts altogether for a variety of reasons, for example a
7 supply chain disruption?

8 A Yes.

9 Q Have you also experienced that with FCA?

10 A Yes.

11 Q Does this sort of thing happen with all OEMs?

12 A Yes.

13 MR. BARGER: Objection to relevance on the other
14 OEMs.

15 THE COURT: Response?

16 MR. STRUBLE: I'll move on, Your Honor.

17 BY MR. STRUBLE:

18 Q The -- has -- has that fact ever been a consideration for
19 KAMAX and whether or not to do business with a customer?

20 A No, not in automotive.

21 Q Why is that?

22 A Typical for the industry, you have inventory issues where
23 they might need to shut a plant down, you have supply
24 chain issues; there's -- there's up and downs in
25 automotive. That's expected.

1 Q Mr. Mahaffy, I've just handed you Defendants' proposed
2 Exhibit 4. Are you familiar with this document?

3 A I am.

4 Q What is this document?

5 MR. BARGER: Your Honor, objection to hearsay.
6 Unless he's an expert witness, you know, this is a -- some
7 kind of industry publication, again talking about other
8 manufacturers, it's not particularly relevant -- he's
9 familiar with it, the fact that he's probably seen it
10 still insufficient foundation to -- so object to
11 foundation and relevance.

12 THE COURT: Sir, your offer of proof, please?

13 MR. STRUBLE: Your Honor, I can counter the
14 hearsay objection and lay a foundation, if you'll allow
15 me.

16 THE COURT: Okay.

17 MR. STRUBLE: So on the hearsay objection, MRE
18 803(17) allows for the admission as an exception to
19 hearsay market reports and similar commercial
20 publications. This is a commercial publication, market
21 report conducted by Plante Moran, an accounting firm about
22 the goodwill that -- or the relationships between
23 suppliers and OEMs, and how the various OEMs rank in -- in
24 terms of the relationship with suppliers, which we believe
25 is directly relevant to the irreparable harm argument

1 here.

2 THE COURT: Okay.

3 Response to the 803(13), sir?

4 MR. BARGER: There's still no foundation for
5 this witness. Simply because he --

6 THE COURT: Are you satisfied with 803(13)?

7 MR. BARGER: I'm sorry?

8 THE COURT: We're on 803(13) first. I'm going
9 to take your objection in the order you gave it.

10 MR. BARGER: I'm sorry, the 801(13), is that the
11 hearsay objection.

12 MR. STRUBLE: I may have misspoken, Your Honor;
13 803(17) is the --

14 THE COURT: 803(17).

15 MR. BARGER: Even if there's an exception to the
16 hearsay rule for market publications, this witness isn't
17 -- isn't the right witness to authenticate it as an
18 exception to the hearsay rule under that -- that
19 provision.

20 And I -- I'm sorry, Your Honor.

21 THE COURT: So is this a generally relied on
22 information?

23 MR. STRUBLE: I'm sorry, Your Honor?

24 THE COURT: Is this generally relied on
25 information?

1 MR. STRUBLE: What do you mean by that?

2 THE COURT: Look at the rule.

3 MR. STRUBLE: In the business?

4 THE COURT: Yeah.

5 MR. STRUBLE: I can lay the foundation for that,
6 Your Honor.

7 THE COURT: Go ahead, please.

8 BY MR. STRUBLE:

9 Q Mr. Mahaffy, you said you recognize this document?

10 A I do. I participated in this survey through the years as
11 well.

12 Q So not only are you familiar with the survey, you've
13 participated in the survey?

14 A I have.

15 Q Do you reference this report in -- in conducting business?

16 A I wouldn't say we reference it, but we review it and share
17 it amongst the management team.

18 Q And it's useful?

19 A Yes.

20 Q The report?

21 MR. STRUBLE: Your Honor, we move to admit
22 Defendants' Exhibit 4.

23 THE COURT: Well, we're only on the first
24 portion of the objection, which is the 803(17).

25 MR. STRUBLE: Sure.

1 THE COURT: Anything else, sir?

2 MR. BARGER: Your Honor, the witness's testimony
3 didn't do anything to -- to establish an exception to the
4 hearsay rule. He's not the author. When he says he's
5 read it and he's familiar with it, that's generally not
6 sufficient. I know we haven't gotten to the relevance
7 objection --

8 THE COURT: Well, it also -- he testified that
9 it is an accepted publication with regard to the auto
10 industry, and that the information is collected via
11 participation from the tiers, and that he has actually
12 even participated in the information provided.

13 MR. BARGER: Yes, Your Honor, he has said that,
14 but now that -- I don't know if we can get to the other --
15 to the additional points, but even if that's true, that
16 might be an appropriate exception to the hearsay rule if
17 we had an expert who was here to testify on their behalf.

18 MR. STRUBLE: Your Honor, nothing in the hearsay
19 rule contemplates expert testimony.

20 THE COURT: I agree.

21 So with regard to the 803(17), sir, I'm going to
22 overrule your objection on the hearsay portion.

23 Go ahead with your second objection, sir, was --

24 MR. BARGER: Second objection was relevance,
25 Your Honor.

1 MR. STRUBLE: It's directly relevant, Your
2 Honor. Aft --

3 THE COURT: I'm going to give you leeway, sir.

4 MR. STRUBLE: Thank you.

5 Is -- so, Your Honor, is -- the exhibit was
6 admitted?

7 THE COURT: It's not admitted. I'm giving you
8 leeway --

9 MR. STRUBLE: Okay.

10 THE COURT: -- with regard to laying the
11 foundation as to why you believe that it's appropriate --

12 MR. STRUBLE: Sure.

13 THE COURT: -- and how it establishes what
14 you're looking for as far as public -- the harm.

15 MR. STRUBLE: Sure.

16 THE COURT: So go ahead, please.

17 MR. STRUBLE: Thank you, Your Honor.

18 BY MR. STRUBLE:

19 Q Mr. Mahaffy, you said you've responded to the survey that
20 this report references?

21 A Yes.

22 Q Do you see the chart on the first page?

23 A I do.

24 Q What does that chart summarize?

25 A The chart summarizes working relations index, it

1 summarizes from the supplier's perspective, tier 1
 2 supplier's perspective what it's like working with the
 3 different automotive OEMs. The higher score being more
 4 favorable, lower score being less favorable.

5 Q Is that a different way of saying that it summarizes the
 6 goodwill that OEMs have with their suppliers?

7 A Yes, that'd be a good way to say it.

8 MR. BARGER: Objection to the continued leading,
 9 Your Honor. I understand the Court's overruled me in the
 10 past, but --

11 THE COURT: MRE 611(D) allows you to ask leading
 12 questions with regard to foundation. I'm going to
 13 overrule your objection, sir.

14 MR. STRUBLE: Thank you, Your Honor.

15 THE COURT: Go ahead, please.

16 BY MR. STRUBLE:

17 Q Mr. Mahaffy, according to this art -- this publication,
 18 where does FCA stand amongst other OEMs?

19 MR. BARGER: Your Honor, I'll again renew my
 20 objection. He's not established that he's qualified to
 21 interpret the data. Secondly, there's no foundation for
 22 what data FCA or Stellantis/Chrysler has provided. He can
 23 testify about what he's provided to the people that
 24 conduct the survey from his personal knowledge, but for
 25 him to opine on what it reflects as to Stellantis, again I

1 renew my objection on foundation.

2 THE COURT: Okay. And with regard to the
3 questioning that you're asking, I'm not sure how this is
4 relevant --

5 MR. STRUBLE: Sure.

6 THE COURT: -- to what the Court has to weigh
7 with regard to the factors for the preliminary injunction,
8 and how other people interact with the different
9 automotives --

10 MR. STRUBLE: All right.

11 THE COURT: -- so I'm -- I'm going to ask that
12 you give me an offer of proof beyond what you've already
13 given me, so that I can determine whether or not it should
14 come in at all.

15 MR. STRUBLE: Sure.

16 Your Honor, the -- this report is relevant to
17 the irreparable harm prong of a preliminary injunction.

18 THE COURT: How?

19 MR. STRUBLE: FCA claims that it will suffer
20 irreparable harm via loss of goodwill with its other
21 suppliers. We're using this document to show that FCA --
22 that FCA already has the lowest goodwill of all OEMs in
23 the country, and it's impossible for the FCA to rank lower
24 amongst its fellow OEMS, amongst suppliers, so its
25 irreparable harm argument fails.

1 THE COURT: I'll allow it.

2 MR. STRUBLE: Thank you.

3 THE COURT: Go ahead.

4 BY MR. STRUBLE:

5 Q Mr. Mahaffy, let's -- let's set the report aside for a
6 second.

7 A Okay.

8 Q Does the report track your experience, in your opinion, of
9 FCA's relationship with suppliers?

10 A You know, I hate to say this, as a former Chrysler
11 employee, but from the purchasing approach to suppliers, I
12 would say it does.

13 Q And why is that?

14 A Our experience over the last couple of years is that the
15 other OEMs work in a more cooperative manner on the
16 challenges that we've had manufacturing parts, in
17 particular since COVID.

18 MR. STRUBLE: Your Honor, we now move to admit
19 this report as Defendants' Exhibit 4.

20 THE COURT: I'm going to enter it for the
21 limited purpose of the -- countering the argument of the
22 FCA losing goodwill with its other suppliers.

23 (At 10:47 a.m., DX-4 was received)

24 THE COURT: Go ahead.

25 MR. STRUBLE: Thank you, Your Honor.

1 BY MR. STRUBLE:

2 Q Mr. Mahaffy, despite all of that, does KAMAX still seek to
3 sell parts to FCA?

4 A Yes. Like I mentioned earlier, we want them to be a
5 customer for a long time going forward, we believe in
6 their products, we believe in their future, they fit our
7 global footprint as well as a -- as a German owned
8 company, and Stellantis' global footprint now, absolutely
9 we want to continue to do business with Stellantis.

10 Q Does that include both existing and new business?

11 A Yes.

12 Q Mr. Mahaffy, how many -- I think you answered this
13 question earlier. Did you say that KAMAX supplies about
14 10 passenger car OEMs?

15 A Correct.

16 Q Can fastener suppliers be choosy about which OEMs they do
17 business with?

18 A No, it's pretty tough to get into an OEM, and a relatively
19 small number of automakers, especially as you look forward
20 to potential consolidation in the industry, so no, I mean
21 once you're in, it's something that you're proud of and
22 you want to keep -- keep a good relationship with your
23 customer.

24 Q As a sales professional, in your experience, do you
25 believe that any shutdown at FCA would cause its goodwill

1 relationships with its other suppliers to be altered?

2 A No. I mean there's -- like we talked about earlier,
3 there's -- there's plant shutdowns for numerous reasons
4 throughout any given year.

5 Q However this hearing unfolds, do you believe that FCA's
6 operations will shut down indefinitely, as it claims?

7 A No.

8 MR. BARGER: Objection, foundation, Your Honor.
9 Just -- if he wants to lay a foundation for how he gets
10 there, fine. He can't just get to the conclusion. Sorry,
11 Your Honor.

12 THE COURT: Response?

13 MR. STRUBLE: He's testifying about his
14 experience working with FCA as a vice president of sales
15 to a tier 1 supplier.

16 THE COURT: But you didn't lay a foundation.

17 MR. STRUBLE: I -- I asked him all of those
18 questions.

19 THE COURT: I'm going to allow you to lay some
20 foundation as to whether or not if it's -- it will be
21 closed indefinitely. You didn't ask anything with regard
22 to that. Shut down the lines indefinitely.

23 MR. STRUBLE: Yeah.

24 BY MR. STRUBLE:

25 Q Mr. Mahaffy, is KAMAX willing to continue supplying parts

1 if FCA pays under protest?

2 A Yes.

3 Q How would it affect KAMAX if it were ordered to keep
4 selling parts at the old prices?

5 A It would be a dramatic impact to our operations. We're a
6 relatively small family-owned business. This -- \$4 1/2
7 million is a lot of money for KAMAX in Lapeer and for
8 Lapeer families and for our operation up there. It -- if
9 we weren't able to get this -- I mean you're talking
10 immediately probably layoffs for people, our ability to
11 retain skilled workers, train skilled workers, and
12 ultimately be a viable long-term supplier to FCA.

13 Q Thank you, Mr. Mahaffy.

14 MR. STRUBLE: No further questions, Your Honor.

15 THE COURT: Thank you.

16 MR. BARGER: Your Honor, I assume you'd prefer I
17 question from the podium?

18 THE COURT: Wherever you're comfortable, sir.

19 MR. BARGER: I have a lot of documents, so maybe
20 I'll stay here, if that's okay?

21 THE COURT: That's fine.

22 MR. BARGER: And if -- it'll still pick me up --
23 it'll still pick me up here --

24 THE COURT: Your microphone's in front of you
25 right there, so you want to make sure that you're --

1 MR. BARGER: I won't cover it up.

2 THE COURT: Yep.

3 MR. BARGER: Thank you, Judge.

4 Mr. Mahaffy, good morning. I'm David Barger,
5 one of the attorneys for Chrysler FCA Stellantis, those
6 names generally we use interchangeably, correct?

7 THE WITNESS: Yes.

8 MR. BARGER: Okay.

9 CROSS-EXAMINATION

10 BY MR. BARGER:

11 Q Mr. Mahaffy, I take it you're not the decision-maker here
12 on whether to back away from your insisted price increase
13 and threaten to shut the plants down, correct? This is
14 not your decision?

15 A I think it's a team decision.

16 Q If you had your druthers, you wouldn't threaten to shut us
17 down in exchange for not paying the \$4 million you say you
18 asked for, correct?

19 A I think -- I think I don't know what --

20 THE COURT: How are these appropriate questions?

21 MR. BARGER: I'll move on, Your Honor.

22 BY MR. BARGER:

23 Q When you say it's a small -- a relatively small family-
24 owned business and the \$4 million means a lot, I think you
25 testified, and it's in your affidavit, annual sales to FCA

1 in 2023 were about 35 million?

2 A Correct.

3 Q What are the annual gross sales for KAMAX across its
4 business, what are total sales?

5 A For KAMAX, Inc., about \$200 million.

6 Q Okay.

7 And with regard to -- you say -- you've said a
8 number of times you want to keep a good relationship with
9 KAMAX, it's correct, is it not, that from 2022 into the
10 fall of 2023, that Chrysler worked with KAMAX a number of
11 times and gave KAMAX a number of price increases, did it
12 not?

13 A We received a price increase in 2023.

14 Q Well, and you received one in 2022, correct?

15 A We did not receive a price increase in 2022.

16 Q 2.7 million, correct?

17 A We received a lump sum payment to cover steel costs in
18 2022.

19 Q All right. So the 2022 2.7 million, when you say price
20 increase, for you it means it didn't roll over into the
21 next year, it was a one-time payment?

22 A Correct.

23 Q So in 2023, Chrysler gave KAMAX two additional payments in
24 2023 that were price increases or piece prices, correct?

25 A In --

1 THE COURT: Well, are they price increases or
2 are they cost of steel increases?

3 MR. BARGER: I -- I'll ask the witness, Your
4 Honor.

5 They're -- they are -- my understanding is --
6 well, I don't want to testify for the Court, but I think
7 they're -- 2022, the witness said one-time payment; 2023,
8 I believe the evidence will show these are payments that
9 were paid in 2023 and roll over and are added to the
10 payments that KAMAX is going to get in 2024.

11 THE COURT: For? Are these material increase
12 costs?

13 MR. BARGER: Not for material increases, but for
14 prices in addition to materials, because again -- I'm
15 sorry to testify -- we're going to get into the fact that
16 they have an indexing for raw material, so their raw
17 material costs are always going to be covered.

18 THE COURT: Okay. So the lump payment that you
19 were just asking about, you believe was just a -- an
20 additional price increase. His testimony was that it was
21 \$2.7 million for steel.

22 MR. BARGER: And I'll -- if I could ask the
23 witness the question, I'll --

24 THE COURT: Go ahead.

25 MR. BARGER: -- if -- if the Court's

1 recollection is correct, I'll move on --

2 THE COURT: Don't trust my recollection. I
3 don't have a good memory.

4 BY MR. BARGER:

5 Q The payment in 2022 --

6 A Yes.

7 Q -- 2.7 million?

8 A Yes.

9 Q And what was that for?

10 A Steel.

11 Q Okay. And when you say steel, what do you mean, like a
12 raw material payment?

13 A The raw material, steel we use to manufacture our parts.

14 Q Okay. And you heard my commentary to the Court. Does
15 Chrysler have a -- an indexing agreement with KAMAX if the
16 price of raw materials go up?

17 A Yes.

18 Q And what does that mean?

19 A So the price of steel in the last couple years has been
20 highly volatile, so we have an index agreement. It was a
21 sharing program; as -- as the price of steel goes up, the
22 price goes up, as the price of steel comes down, the price
23 comes down.

24 Q And so am I right that if -- that there is an indexing
25 agreement with FCA and KAMAX?

1 A Yes.

2 Q So if the price of raw materials goes up, basically KAMAX
3 isn't going to be out of pocket?

4 A Correct.

5 Q Now in 2023, what payments -- what additional increased
6 payments, if any, did FCA --

7 THE COURT: Well, hold on.

8 So with regard to 2022, your argument is that
9 they received a price increase. They did not.

10 MR. BARGER: If -- if I said price increase, I
11 misspoke, then I was incorrect; the payment in 2022 is for
12 raw materials.

13 THE COURT: Right.

14 MR. BARGER: So it was a one-time payment.

15 THE COURT: Right. Okay, go ahead with 2023.

16 MR. BARGER: Yes, Your Honor.

17 BY MR. BARGER:

18 Q For 2023, were there any payments made by FCA to KAMAX as
19 a result of KAMAX asking for price increases?

20 A Yes, there was increases given to all suppliers, as far as
21 I'm aware or what was told.

22 Q Yeah, my question wasn't all suppliers.

23 A All fastener suppliers.

24 Q Did they give them to KAMAX?

25 A Yes.

1 Q How much?

2 A That's a good question. I'd have to go back and remember.
3 We had a true-up on the steel index, and we had some --
4 some increase -- I think the total increase was about 6
5 1/2, 7 1/2 percent.

6 Q In fact, weren't there two payments by FCA to KAMAX, one
7 for 2.2 million, and then another for 2.5 million for
8 price increases?

9 A On an annual basis, that sounds right.

10 Q And when you say on an annual basis, tell the Judge what
11 that means; that means that money that you were paid in
12 2023, you're also going to now get in 2024 rolling
13 forward, correct?

14 A If steel stayed at the same level, yes.

15 Q Well, the 2.5 million in price increase was --

16 THE COURT: Do you have an agreement on this?

17 MR. BARGER: I'm sorry, Your Honor?

18 THE COURT: Is there an agreement, written
19 agreement?

20 MR. BARGER: I believe there is. I -- I --

21 THE COURT: Well, let me see it.

22 MR. BARGER: I don't have it handy, but there
23 was a subsequent agreement that I will introduce that I do
24 have, but -- let me -- may I ask the witness a question to
25 establish the point that the Court's raised.

1 THE COURT: Sure. Sure.

2 BY MR. BARGER:

3 Q Did the price increases that we just talked about, are
4 those -- do those end up being reflected in the purchase
5 orders?

6 A Yes.

7 Q And the purchase orders, by the way, and I know I'm going
8 to change topics just a little bit here -- the purchase
9 order in the format that you said you'd never seen, the
10 same information that's in that purchase order, which is
11 proposed Defense Exhibit 1, is actually in Defense Exhibit
12 2, the EDI information, correct?

13 A I'd need to review it in detail.

14 Q So --

15 THE COURT: So let me just make sure I
16 understand your question.

17 Your question is, is all the information
18 contained in 2 the same thing that's in number 1?

19 MR. BARGER: That's my question.

20 THE COURT: Okay. Go ahead.

21 BY MR. BARGER:

22 Q And your answer --

23 THE COURT: Do you know? Have you -- have you
24 looked at it before?

25 THE WITNESS: I've only seen these the last

1 couple of days now, and I haven't read every word, to be
 2 honest, so I can -- would really need to sit down and read
 3 both of them.

4 BY MR. BARGER:

5 Q And you haven't bothered to do that?

6 A I have not.

7 Q Do you understand -- do you have an understanding that
 8 Exhibit 2, the EDI, the electronic information that comes
 9 through, that's the electronic information for the
 10 purchase order, correct?

11 A Correct.

12 Q And that's information that KAMAX uses and relies upon in
 13 deciding how many -- I'll use widgets -- how many widgets
 14 for a particular part number are going to be sold to or
 15 purchased by FCA, correct?

16 A No.

17 Q Okay. And the reason the answer is now is because once --

18 THE COURT: Well, hold on.

19 MR. BARGER: Sorry.

20 THE COURT: Is there a question? You're going
 21 to tell him why the reason the answer is no is?

22 MR. BARGER: I'll rephrase.

23 THE COURT: Thank you.

24 BY MR. BARGER:

25 Q You need -- you need additional information beyond the

1 purchase order to decide how many widgets FCA is actually
2 ordering for a part, correct?

3 A Yes.

4 Q And what's that additional information?

5 A Releases.

6 Q And I think you testified earlier that -- to the effect
7 that you get a -- I don't know if you called it a release
8 or a forecast, but you get information about 12 months out
9 about the anticipated numbers that FCA will order for a
10 part number?

11 A Yes.

12 Q And those are known as forecasts?

13 A Releases and forecasts, yeah.

14 Q Okay. And when you at KAMAX determine a particular number
15 or particular quantity of a particular part that's
16 reflected in the PO is going to be purchased by FCA, you
17 look at a release to determine the exact number?

18 A The purchase orders don't have any quantity.

19 Q Correct.

20 A We get releases and we ship to those releases.

21 Q And how often do you get the releases for a particular
22 part for example? You talked about 12 months, but you
23 didn't explain -- that's a forecast. What about when you
24 decide I actually have to produce and either ship or make
25 available to FCA to pick up; how often do you get those

1 releases?

2 A The releases refresh every night, I believe.

3 Q Okay. And in addition -- and when you say they refresh,
4 there's an electronic database that KAMAX can access to
5 see the information that FCA is transmitting, correct?

6 A Correct.

7 Q And what's that -- I think it's called GPSIS system?

8 A I don't know the -- I've heard that name. I don't know
9 the -- to be honest, I don't know the system.

10 Q Okay.

11 A We import it into our system and that's how we see the
12 releases.

13 Q And so what information -- well, have you ever accessed
14 the information in FCA's system, so that you can see the
15 EDI transmissions for the POs and the releases, for
16 example? Have you ever looked at that?

17 A I have not personally gone in the FCA system to look at
18 their releases. That's done by our shipping and logistics
19 department.

20 Q But your understanding is your shipping people have access
21 to that information on a continuing basis?

22 A We see released in our system.

23 Q And Exhibit Number 2, the EDI format, have you -- do you
24 know whether KAMAX has a template and can convert that
25 information into a format like that's in proposed Exhibit

1 1?

2 A I'm not aware of anything --

3 Q You're not aware whether KAMAX has a template that they
4 can put their EDI information into a different form?

5 A We use the text file. We print it out just like this.

6 Q Okay.

7 And since you said you -- you have not compared
8 Defense proposed Exhibit 1 to Defense Exhibit 2, which is
9 the EDI information, you just aren't in a position to --
10 to say that the information in Exhibit 2 isn't the same as
11 or exactly the same as Exhibit 1?

12 A Correct.

13 Q All right. Do you know whether in Exhibit 2 there's
14 language in there about what's at issue here, meaning the
15 approximately 65 to 100 percent requirements; do you know
16 whether that's in your Exhibit 2?

17 A I've seen that language in there, in the review.

18 Q Okay.

19 A Over the last couple days.

20 Q But before the last couple of days, you hadn't bothered to
21 look at it and compare it?

22 A Typically, we -- for an existing customer, a long-term
23 customer, we are focused with the purchasing team on
24 negotiating prices, payment terms, shipping terms, no,
25 it's not something we review. As far as terms and

1 conditions discussions like this, we would normally get
2 our lawyers involved.

3 Q Let's go back a little bit chronologically to the summer
4 of 2023.

5 MR. BARGER: Your Honor, if I could just have a
6 second. We have some items that are marked as exhibits
7 that we plan to use. I just -- I'm trying to figure out
8 if I have a copy handed that I can provide to this witness
9 for cross-examination. They're basically communications
10 he was involved in, so --

11 THE COURT: Okay.

12 MR. BARGER: May I have a second to get a copy
13 for him to review -- to -- to --

14 THE COURT: Absolutely.

15 MR. BARGER: -- have handy?

16 Your Honor, we have exhibit books. If I can
17 pass one up to the witness and to the Court and to
18 counsel?

19 THE COURT: Okay.

20 MR. BARGER: Thank you.

21 Your Honor, may I approach?

22 THE COURT: Yes, sir.

23 THE WITNESS: That's a lot of paper.

24 MR. BARGER: You bet.

25 MS. GAMBINO: Your Honor, would the Court care

1 for --

2 THE COURT: Yeah.

3 MS. GAMBINO: Thank you.

4 MR. BARGER: Judge, I think I'm going to start
5 with tab --

6 THE COURT: I'm sorry?

7 MR. BARGER: I think I'm going to start with tab
8 4 in your book.

9 BY MR. BARGER:

10 Q So if we look at tab 4 --

11 A Yep.

12 Q -- Mr. Mahaffy, this purports to be an email from you to a
13 number of people at Stellantis. Do you recognize this
14 email?

15 A I don't remember it, but it looks like an email from me,
16 yes.

17 Q And that's your correct email address, correct?

18 A Correct.

19 Q So you had no reason to dispute that that's not an
20 accurate email from you to people at Stellantis on June
21 20, 2023?

22 A No, I do not.

23 MR. BARGER: Your Honor, I'll offer Plaintiff's
24 proposed Exhibit 1.

25 MR. STRUBLE: No objection, Your Honor.

1 THE COURT: So admitted. So you need letters.

2 MR. BARGER: Letters. Plaintiff's proposed
3 Exhibit A.

4 THE COURT: Thank you.

5 (At 11:04 a.m., PX-A was received)

6 MR. BARGER: Thank you, Judge.

7 BY MR. BARGER:

8 Q So Mr. Mahaffy, if you go down into the body of your
9 email, you say to -- is it Arbin?

10 A Arbin.

11 Q Arbin. And --

12 A I think.

13 Q -- you -- essentially what are you telling Arbin?

14 A This email is dated June 20th, and it says there's a
15 related letter and part list, and if I remember correctly,
16 this was -- as I had mentioned earlier, we started in
17 February a discussion on some parts we were having trouble
18 manufacturing. We had lost a number of operators, and we
19 had been trying to work with --

20 THE COURT: Well, that's not what the letter
21 says.

22 THE WITNESS: Yeah, I'm sorry. We were trying
23 to work with Stellantis to exit some parts.

24 MR. BARGER: All right.

25 BY MR. BARGER:

1 Q And the parts you want to exit are the attached like I
2 think it's about 40 parts or so, are they attached to that
3 exhibit?

4 A What I have looks like the price adjustment after the
5 letter.

6 Q And the parts that you want to exit --

7 THE COURT: You're saying 40? I have several
8 pages --

9 THE WITNESS: Yeah, this look -- this looks like
10 a --

11 MR. STRUBLE: Your Honor, I'm not sure that this
12 is the attachment to the June 20th letter.

13 THE WITNESS: Yeah, this is the wrong attachment
14 for that email.

15 MR. BARGER: Okay.

16 MR. STRUBLE: This is the attachment to the
17 November 20th letter.

18 THE WITNESS: Correct.

19 BY MR. BARGER:

20 Q With regard to the email on June 20th, Plaintiff's Exhibit
21 A, the parts that you wanted to exit, those were -- were
22 those the low volume parts that KAMAX decided were not as
23 profitable for them as the other parts?

24 THE COURT: Mr. Berger, sir?

25 MR. BARGER: Yes, Your Honor?

1 THE COURT: With regard to what I have as
2 Exhibit 4, I have a -- an email and then a letter and then
3 an attachment that --

4 MR. BARGER: Yes, Your Honor.

5 THE COURT: -- perhaps is not the right
6 attachment?

7 MR. BARGER: And Your Honor, I should -- let me
8 -- let me reoffer the exhibit.

9 So for Exhibit A, I'm proposed just the first
10 page of tab 4, so that I'll take them sequentially, so
11 that there's not a -- a -- hopefully, that addresses
12 counsel's question about whether the parts list that's
13 attached in tab 4, we won't make that in Exhibit A. I'll
14 just make the email Exhibit A, and then I'm going to deal
15 with the letter --

16 THE COURT: But under the rule of completion,
17 sir, I need what's attached to Exhibit A.

18 MR. BARGER: All right. Let me -- well, if I
19 may ask the witness a question. It doesn't indicate
20 there's any attachment, Your Honor, on the email. It just
21 says --

22 THE COURT: It does right there, attachments,
23 terminations XLSX, it's an Excel spreadsheet.

24 THE WITNESS: The email says please read the
25 attached letter and part list.

1 MR. BARGER: Okay. If I can --

2 THE COURT: Would you like a couple minutes to
3 get everything in order?

4 MR. BARGER: No, that -- if I can lay an
5 additional foundation.

6 MR. STRUBLE: Your Honor, it is the wrong
7 attachment. What foundation is he going to lay?

8 MR. BARGER: I don't know that it's the wrong
9 attachment. The witness hasn't -- I'm sorry, I didn't
10 mean to argue with counsel. I'm sorry, Your Honor.

11 THE COURT: That's okay.

12 MR. BARGER: If I can ask a couple of questions.

13 THE COURT: Go ahead.

14 MR. BARGER: If -- if the attachment that goes
15 with the letter needs to be replaced, I'll replace it, but
16 let me at least ask, so the -- if I may ask the witness.

17 THE COURT: Absolutely. Go ahead.

18 BY MR. BARGER:

19 Q So Mr. Mahaffy, in the email of June 20th, and you just
20 referenced it says please see the attached letter, if you
21 go to the second page of tab 4, it's a letter dated June
22 20, 2023; is that the letter that's referenced in your
23 email?

24 A Yes.

25 Q And the letter that's referenced in your email is a letter

1 signed by you; is that correct?

2 A Yes.

3 Q Okay. And your testimony is that the parts list that's
4 part of tab 4, which consists of it looks like four pages,
5 you're saying that's not the attachment that goes with the
6 letter?

7 A Correct. It's the wrong attachment.

8 Q All right, thank you.

9 MR. BARGER: Your Honor, I'll -- I'll -- on
10 break, I'll get the right attachment and we'll substitute.

11 THE COURT: Okay.

12 BY MR. BARGER:

13 Q So going back to my questions on the email, the parts you
14 wanted to exit were the -- were the sort of low
15 profitability parts, correct?

16 A They were the complex parts to manufacture causing the
17 disruption in -- in our operation.

18 Q All right. So the answer to my question is what, yes or
19 no, they were the low profitability parts or not?

20 A They -- it wasn't necessarily a profit discussion, they
21 were -- it was a lot of low volume parts that were causing
22 operational disruptions for us. So indirectly, you could
23 say it was affecting profitability, but that wasn't the
24 motivator just on those parts.

25 Q And so earlier you talked about there was a time when FCA

1 ordered millions of parts and now they were down to a lot
2 fewer than those, and the lower volumes caused you to make
3 less money, correct?

4 A Yes.

5 Q Okay. So the ones that you wanted to exit from making for
6 Stellantis that's reflected in your email, you were asking
7 Stellantis to resource those, correct?

8 A Yes.

9 Q What does resourcing mean?

10 A It means to find a new supplier. I mean legally, I don't
11 -- I don't know what it means, but for me --

12 Q I'm just asking your understanding.

13 A -- I would say find -- find a new supplier.

14 Q I'm not asking a legal term.

15 A Right.

16 Q Your understanding of resourcing is we don't want to make
17 these parts anymore. We want to make these other ones, we
18 don't want to make these, see if you can find somebody
19 else, correct?

20 A Correct.

21 Q And you know from your experience in the industry,
22 including all the years you worked for FCA, it takes a
23 significant amount of time for an OEM, for the automobile
24 manufacturer to move from one supplier to another,
25 correct?

1 A What does --

2 MR. KILLIPS: Objection, foundation. I don't
3 think the witness knows how -- how long things take from
4 the FCA side.

5 MR. BARGER: He may. He worked -- sorry, didn't
6 mean to argue.

7 THE COURT: Go ahead, sir.

8 MR. BARGER: If he doesn't know, he doesn't
9 know. My question was based on your experience with FCA,
10 and your experience in the industry, you know -- because
11 he --

12 THE COURT: Just ask the question.

13 MR. BARGER: I'm sorry?

14 THE COURT: Just ask the question.

15 MR. BARGER: Yes, Your Honor.

16 BY MR. BARGER:

17 Q In your experience of -- at FCA, and then with KAMAX, it
18 takes -- it takes a number of months for an OEM to move
19 from one supplier to another; in other words, to resource
20 parts to a different supplier, correct?

21 A Just depends on the part and the situation.

22 Q Do you know from your experience, because I know you said
23 earlier that many of the parts that you manufacture for
24 FCA are safety parts, correct?

25 A Yes.

1 Q What's your understanding of what a safety part is in
2 connection with the parts that are manufactured for FCA?

3 A When I say safety part, it -- they would be used in -- I'm
4 using the term loosely, they would be used in suspension,
5 chassis, engine applications, you know, important parts to
6 keep your vehicle functioning.

7 Q And you know from your experience in the industry, both
8 when you were at FCA and now KAMAX, that -- that these
9 safety parts have to be approved and tested, correct?

10 A There's -- again it depends on the part and the
11 application. There's often testing involved, yeah.

12 Q Okay.

13 A Yes.

14 Q And do you know whether the testing includes putting the
15 part in the vehicle and testing the vehicle to make sure
16 it's safe? Do you know that from your experience?

17 A Other OEMs have different methods of validating fasteners
18 that don't necessarily require testing in a vehicle to
19 validate a new fastener.

20 Q All right. But in FCA's exp -- in the case of FCA, from
21 which you worked, you know, do you not, that it takes
22 approximately 6 to 18 months to move from -- from KAMAX to
23 find a new supplier to use -- to source the parts that you
24 want them to source, to have them evaluated, engineered,
25 tested for safety, et cetera; you know it takes a

1 significant number of months, do you not?

2 A I don't know that it must. I know that it could.

3 Q Okay. And isn't it correct -- we'll get more -- we'll get
4 into this more in a bit, but in -- on November 4th, didn't
5 KAMAX sign a letter called an accommodation agreement with
6 FCA?

7 A I don't remember the exact date, but we did sign an
8 accommodation letter with FCA.

9 Q And you remember on direct examination, you were asked
10 about one of your exhibits about a November 20th
11 communication that KAMAX made to FCA, correct?

12 A Correct.

13 Q And you -- you were asked about it on direct, and
14 basically that letter from KAMAX said on November 20th, if
15 you don't give me my price increase, I'm going to no
16 longer manufacture these parts for you, correct?

17 A Can you ask the question again?

18 Q In essence -- in essence --

19 A I'm sorry, could you --

20 Q -- you threatened to stop shipping to FCA if you didn't
21 get your price increase, correct?

22 A Can you ask the question again?

23 Q Your November 20th letter, you in essence threatened FCA
24 and said if you don't give us this additional price
25 increase, this approximately \$4 million you say, if you

1 don't give it to us, we're stopping shipping February
2 20th, correct?

3 A We requested a price increase, our expectation was that we
4 would have some kind of mutual negotiation to come up with
5 a mutually acceptable solution, and in the event that FCA
6 decided not to do that, it was also their choice to find a
7 new supplier, and we would reject releases started on
8 February --

9 Q You knew --

10 A -- 20th.

11 Q Sorry, didn't mean to interrupt.

12 You knew -- you knew that FCA could not resource
13 -- we're talking about resourcing now, you're talking
14 about not delivering any of the 180 parts, correct, not
15 just the ones you didn't want to make, you were not going
16 to deliver any parts that you had been producing and
17 providing to FCA, correct?

18 A I'm sorry, can you ask the question again?

19 Q The threat on November 20th was if you don't give me my
20 price increase, I'm no longer doing business with you,
21 correct?

22 A That is not how I would clarify that -- or classify that.

23 Q Okay. The result of the November 20th letter is if you
24 don't give me my price increase, I'm not going to do
25 business with you, correct?

1 A The letter stated we would reject releases on February
2 20th.

3 Q And that means I'm not going to do business with you,
4 correct?

5 A It means that we're going to reject the releases on
6 February 20th.

7 Q It means you're not going to deliver product to them,
8 correct?

9 A It means that we're going to reject the releases on
10 February 20th.

11 Q What does rejecting the release mean? What does that mean
12 for KAMAX? And I don't know why you keep looking at
13 counsel. Look at me and answer my question, please.

14 MR. KILLIPS: Your Honor, he's asked the same
15 question and gotten an answer about three or four times in
16 a row. He doesn't need to be yelling at my witness.

17 MR. BARGER: If I'm yelling, I do apologize.
18 Didn't mean to yell. Perhaps I raised my voice. I'm
19 sorry, I get a little animated. I'm sorry.

20 THE COURT: Sir, I understand what it means not
21 to accept the releases. Go on with your next question.

22 MR. BARGER: Yes, Your Honor.

23 BY MR. BARGER:

24 Q And you knew that on this November 20th letter giving a
25 February 20 deadline, you knew from your experience that

1 it just was not feasible, it wasn't going to happen that
2 FCA could go find another supplier for the 180 parts that
3 KAMAX had been supplying, correct?

4 A We started that discussion in February, and I did not know
5 that that wasn't feasible.

6 Q So in your experience, you -- you are -- are you aware of
7 any circumstance where -- where KAMAX has stopped
8 delivering to an OEM and that OEM then found a replacement
9 supplier within, what are we talking, November 20th?
10 That's 90 days, correct?

11 A We have never made it to the point where we had to stop
12 shipping to an OEM. We always found mutually acceptable
13 negotiated agreement before it came to that.

14 Q Okay.

15 Well, and you had negotiations in 2022 and 2023
16 that we've already gone through, where FCA provided you --
17 where there was the one-time payment for the raw material,
18 we're now -- we're talking a total of 6, 7, \$8 million
19 that they had worked with you and given you additional
20 moneys, correct?

21 A We received the compensation we discussed earlier.

22 Q Okay. And so you -- again, you weren't asked on direct
23 examination about the accommodation letter that I talked
24 about, the one that's dated November 4th.

25 So by my math, so on November 4th -- you recall,

1 do you not, that on November 4th, KAMAX signed the
2 accommodation agreement?

3 A I don't remember the date, but we signed an accommodation
4 agreement.

5 Q Okay.

6 And you -- but you do recall the November 20th
7 date of the letter that -- that was written approximately
8 two weeks later saying if you don't give me more money by
9 --

10 THE COURT: Do you have the letter?:

11 MR. BARGER: Yes, Your Honor.

12 THE COURT: That's going to be the best
13 evidence.

14 MR. BARGER: If we can go to tab 5, Your Honor.

15 THE COURT: Tab 5 is the September 14th.

16 MR. BARGER: Yes, Your Honor. Do you --

17 THE COURT: I thought you were talking about a
18 November date?

19 MR. BARGER: When we look at the signature page,
20 Your Honor, you'll see the date it's signed.

21 THE COURT: Well, the signature date is from --

22 MR. BARGER: I said November 4th. It's November
23 6th.

24 THE COURT: When was the letter sent?

25 MR. BARGER: Sent September 14th, Your Honor.

1 THE COURT: Okay, go ahead.

2 BY MR. BARGER:

3 Q Do you recognize Exhibit 5?

4 A I do.

5 Q And who is Brian Badowski?

6 A Brian is our sales director.

7 Q He's an employee of KAMAX?

8 A He's an employee of KAMAX. Works for me.

9 MR. BARGER: Your Honor, I move in Plaintiff's
10 Exhibit B.

11 THE COURT: Any objection?

12 MR. STRUBLE: No objection, Your Honor.

13 THE COURT: So admitted.

14 (At 11:18 a.m., PX-B was received)

15 BY MR. BARGER:

16 Q You've seen this letter before, correct?

17 A Yes.

18 Q Okay. And in the September 14th letter from Stellantis,
19 in the very first paragraph, third line down, Stellantis
20 says your most recent communications dated -- dated -- I'm
21 sorry, recent communication dated June 20, 2023, indicates
22 that KAMAX will discontinue shipments to FCA US, unless
23 FCA US agrees to the certain changes demanded by KAMAX;
24 did I read that correctly?

25 A You did.

1 Q And, as you understand it, the reference in the Stellantis
2 letter is to your email of June 20th and then your -- your
3 attached letter of June 20, correct?

4 A I would understand that to reference Exhibit 4 --

5 Q And just to set the stage, if you go back to tab 4, and go
6 to the second page of tab 4, that's the letter, correct?

7 A Correct.

8 MR. BARGER: And the -- I'll offer this
9 conditionally to at the break getting the Excel that goes
10 with that particular letter, so I can talk about the
11 letter. And we'll proffer, Your Honor --

12 THE COURT: All right. So I have an hour left
13 with regard to this proceeding. I don't feel like we're
14 moving into the areas that I need to make determinations
15 on. With regard to the agreements, I need more
16 information on the agreements.

17 Is this the only PO?

18 MR. BARGER: Your Honor, no. We -- we have --
19 our witnesses will introduce -- so generally there's a PO
20 for each part, so we have approximately 140 POs that we
21 will put in. We have the terms and conditions. We will
22 put those into evidence --

23 THE COURT: When do the POs expire?

24 MR. BARGER: Life of the program.

25 THE COURT: Okay. Do they have quantities?

1 MR. BARGER: If the -- if you use proposed
2 Exhibit 1, it will show you -- it'll list a quantity of
3 one, but it doesn't specifically say quantity. You have
4 to go to the releases that come, and you also have to go
5 to the language that says 65 to 100 percent of
6 requirements. The quantity term, and Ms. Gambino --
7 school me on case law --

8 THE COURT: How does that square with the MSSC
9 versus Airboss case?

10 MR. BARGER: With the Court's permission if Ms.
11 Gambino can address the Court on that question?

12 THE COURT: Sure.

13 MS. GAMBINO: Your Honor, it falls directly --
14 it hasn't nothing to do with Airboss. Airboss stands for
15 the proposition that blanket -- blanket orders are not
16 sufficient quantity statements.

17 What we have here is a precise purchase order,
18 whether in Exhibit -- proposed Exhibit 1 versus pro -- the
19 proposed Exhibit 2 saying the same thing. This order is
20 for FCA's 65 -- approximately 65 to 100 percent of FCA's
21 requirements. That's the quantity term --

22 THE COURT: So if it's a 65 percent requirement,
23 then why can't you resource?

24 MS. GAMBINO: Your Honor, we are attempting to
25 resource. We are attempting to resource. Right now, they

1 are the sole supplier --

2 THE COURT: But your indication was it took
3 months -- well, you say sole supplier, but -- but your
4 agreement's a 65 percent.

5 MS. GAMBINO: No, Your Honor. The agreement
6 says -- basically the agreement is to allow flexibility
7 for the exact situation where a supplier can't meet 100
8 percent. That they're obligated to meet is -- is our
9 requirements, and so those requirements are given to them,
10 so if I release and I'm using them for 100 percent of my
11 requirements, which I'm allowed to under my purchase
12 order, they need to meet that. However, as Airboss says,
13 Cadillac Rubber also says I don't need to have a
14 requirements contract, it doesn't need to be exclusive.
15 It does not need to be exclusive.

16 So in this case, if I want to resource and use
17 them for 100 percent of my requirements, I can.

18 And Your Honor --

19 THE COURT: I understand you can. Do they have
20 to?

21 MS. GAMBINO: I'm sorry, do they have to meet?

22 THE COURT: Do they have to?

23 MS. GAMBINO: Absolutely. If that is what we
24 release to them, yes. The supplier -- the mutuality here
25 is easy. The supplier knows for a fact, it's not going in

1 there saying I may just get no parts ordered; they know
2 that no matter what, we are on the hook to give them 65
3 percent of our requirements. They know it. That is a
4 mutual agreement. And usually, just like -- just like Mr.
5 Mahaffy's saying, they want the more quantity. Most
6 suppliers want to be 100 percent, because that drives
7 volume, that drives money. That drives money. And that's
8 what we have here --

9 THE COURT: But your issue is that you've
10 indicated and what you've been trying to establish is that
11 you will suffer irreparable harm if they do not continue
12 to supply or if they reject your releases --

13 MS. GAMBINO: Yes, ma'am.

14 THE COURT: -- with regard to the indication is
15 that it would take several months to resource these.

16 MS. GAMBINO: Yes, ma'am.

17 THE COURT: This is a September 14th letter, it
18 is now almost -- it's March 15th.

19 MS. GAMBINO: Yes, Your Honor. Well, so the
20 testimony for the Court, and this is easy, is well, if we
21 didn't have their agreement to these terms as the Court
22 can see in Exhibit B until November. So in November that
23 we all agree hey, you will go out, Stellantis, and start
24 looking for a replacement. We're talking 140 parts.
25 We're talking 140 parts. This is not something -- and

1 they will agree and he testified you can't get it in -- in
2 Advance Auto Parts, you can't get these at Home Depot, and
3 so yes, our -- our witnesses we will proffer for the
4 Court, are looking, are trying to get someone lined up,
5 but that they are being -- we have some people we're
6 trying to vet right now. That process takes time. Six
7 months is the very bare minimum and that's for things like
8 brackets. That's a perfect example. And I only learned
9 this because they, you know, schooled me about which parts
10 are easy to get and which aren't. Brackets you can get
11 easily. Parts that hold seats, like these weird, giant
12 screws that keep the backseat where my kids sit in my
13 Jeep, that -- that is what they make. They're specially
14 engineered parts. I have to then meet a new supplier, the
15 supplier needs to give me the parts, the supplier needs to
16 make sure the parts are a certain amount of steel, the
17 supplier needs to make sure they can meet the
18 requirements, my engineers need to test their parts, I
19 need to make sure they work in my vehicle --

20 THE COURT: I -- I understand.

21 MS. GAMBINO: -- that process, Your Honor,
22 respectfully, the testimony we'll proffer to you, at the
23 easiest it's 6 months, for the easy parts that we can get
24 easily.

25 For the hard parts, it's 12 to 18 months. That

1 said, Your Honor, we don't have an obligation to find a
2 replacement. We agreed to do that, because we worked with
3 them for 30 years.

4 I'm happy to ask -- answer any more questions
5 about -- I'm excited, frankly, to talk about the Airboss
6 case if the Court has any more questions.

7 THE COURT: Do you want to respond?

8 MR. KILLIPS: Sure, Your Honor.

9 As you can imagine, I'm always excited to talk
10 about Airboss too. We lead such exciting lives as supply
11 chain lawyers.

12 So, Your Honor, first, to be clear, the entire
13 purpose here, the entire purpose of what KAMAX is doing in
14 raising its prices, as Mr. Mahaffy has testified, is not
15 for FCA to resource its business. That's certainly an
16 option it has. Actually if you read section 22A of its
17 terms and conditions, it has that option at any time and
18 for any reason, so it can always go do that, but that's
19 not the goal here, the goal is to sell parts. KAMAX is
20 simply raising its prices, because costs have gone up, as
21 Mr. Haffy test -- I'm sorry, Mr. Mahaffy testified, and
22 that is not a story that's unique to KAMAX, as I'm sure
23 the Court's very well aware.

24 Airboss stands for far more, and I call it
25 Airboss, because I think MSSC is just -- it becomes a

1 mouthful, so I hope the Court understands that. Airboss
2 stands for far more than what Ms. Gambino suggests. It
3 summarizes and clarifies and organizes decades of Michigan
4 contract law in this area, and it clarifies it to have a
5 requirements contract that is enforceable you must have a
6 precise set share as your quantity term. That's what
7 Airboss says, and that's the whole issue here.

8 Now, this is the first I'm hearing FCA taking
9 the position that all of the sudden its contracts are 65
10 percent requirements contracts. That I think would be
11 breaking news to a lot of people in the industry. But if
12 that's the case, the only way we can get there is by
13 ignoring the words that FCA wrote in its contracts, which
14 are approximately and to 100 percent.

15 Now if on the other hand these are 100 percent
16 requirements contracts, then you'd have to ignore the
17 words approximately 65 percent too. Neither one of those
18 things squares.

19 What Ms. Gambino --

20 THE COURT: So -- so just cut to the chase here.
21 Are you relying on Airboss?

22 MR. KILLIPS: Absolutely, Your Honor.

23 THE COURT: Okay. That's all I need to know.

24 MS. GAMBINO: Your Honor, one last point. I
25 want to really just say one last thing.

1 It's very important that the opposition made by
2 KAMAX says that the 65 to 100 percent requirements
3 language fails as a matter of law because Airboss stands
4 for the proposition that the quantity term must be
5 precise. That is exactly what they say several times in
6 their opposition, and Your Honor, that is simply not
7 correct.

8 Mr. Killips told the federal court in the
9 Higuchi case this statement, quote, even the Supreme
10 Court's decision in Airboss makes note of this, that an
11 unclear, a vague, an uncertain, or an unspecified --

12 THE COURT: So with regard to his indication in
13 another case with another client, how would that be
14 binding on this Court with regard to this client?

15 MS. GAMBINO: Your Honor, because in that case,
16 he was saying -- in Higuchi, which the court agreed after
17 Airboss that using the terms in a purchase order --

18 THE COURT: Which court? Which court?

19 MS. GAMBINO: I'm sorry, Your Honor, it is the
20 United States District Court for Eastern District of
21 Michigan --

22 THE COURT: So federal.

23 MS. GAMBINO: Yes.

24 THE COURT: (Indiscernible)

25 MS. GAMBINO: Judge Borman.

1 THE COURT: Judge Borman. And with regard to
2 that, he is an agent of his client who would be bound by
3 his statements in that case.

4 MS. GAMBINO: I -- I -- and I --

5 THE COURT: For that client. What -- what are
6 you --

7 MS. GAMBINO: I under -- I -- I'm -- that's
8 okay.

9 THE COURT: You guys are just being unfair to
10 each other --

11 MS. GAMBINO: I'm not trying to. In -- my quote
12 was the term our requirements. That's what was at issue
13 in that case. Our requirements, that language, that's the
14 -- that's the --

15 THE COURT: So now I'm going to have to see
16 those agreements, I need to have all of those transcripts
17 --

18 MS. GAMBINO: Yes, Your Honor.

19 THE COURT: -- I'm going to need to have --
20 breach the attorney/client relationship to determine what
21 their presentation was for. It's not relevant.

22 MS. GAMBINO: No, Your Honor, my only point is
23 --

24 THE COURT: That's what I'm trying to say.
25 Don't bring in other cases where he said something to

1 another judge about things that are not in front of me.

2 MS. GAMBINO: Your Honor, respectfully, the
3 purchase order is in front of you which says our
4 requirements. With -- that is the same exact language --

5 THE COURT: So you want me to make the analysis
6 with regard to a clip from a transcript that was in an
7 Eastern District Court with regard to another agreement
8 and a different client, you want me to parallel that
9 without having any knowledge about the other case?

10 MS. GAMBINO: No, I -- I want the Court, if the
11 Court is so inclined, to consider the persuasive authority
12 out of the Eastern District, which says a quantity term
13 under the UCC is stated with simply the term our
14 requirements. You will meet our requirements --

15 THE COURT: Well, then cite to the Court case,
16 not to the testimony or the information from the lawyer to
17 the judge. Cite to the opinion.

18 MS. GAMBINO: Yes -- yes, Your Honor. I was --
19 I'm sorry, I was attempting to do so in the quote using
20 our requirements.

21 My whole point is that very language that
22 Higuchi relied upon and found is sufficient after Airboss
23 is in the actual purchase order number 1, and purchase
24 order 2. Just the term our requirement --

25 THE COURT: Just give me the case. I -- I don't

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MS. GAMBINO: I will, Your Honor.

THE COURT: Just give me the case.

MS. GAMBINO: Yes -- yes, I will. Yes, I will.

And sep -- and separately -- so, in our belief, we have the term our requirements, which satisfies Higuchi after Airboss, that's sufficient. We have -- we cited the Dayco case that used the same language --

THE COURT: So -- and what was the agreement in the Airboss case, what did that purchase agreement say?

MS. GAMBINO: It says a blanket order. This is a blanket order. And what was missing in that, it didn't say a blanket order for your requirements. For your requirements. That -- that was the problem in Airboss.

THE COURT: That's -- that's what the -- and that's what the Supreme Court said?

MS. GAMBINO: Supreme Court said a blanket order it too indefinite. Too indefinite. And it was not tied back to a blanket order for our requirements.

THE COURT: Is that what the Supreme Court said?

MS. GAMBINO: Yes, it did, Your Honor. It said -- it said here, a blanket order is too indefinite. In our case, we don't have a blanket order, we have 65 -- we have integers, 65 to 100 percent of our requirements.

So taking Higuchi, our requirements satisfies

1 it. Taking -- taking the other cases, which Airboss says
2 a portion of, setting forth a portion, 65 to 100 is a
3 portion, and so under Airboss and under Higuchi, we state
4 a quantity term as a matter of law, and that's why we
5 believe, Your Honor, there is a likelihood on the merits
6 that we will prevail, and that's part of the reason why
7 we're in here asking the Court respectfully for an
8 injunction.

9 And I just want to point out, Your Honor, today,
10 Air -- KAMAX has stopped shipping, so we have no parts as
11 of today, because even though we're here today to decide
12 whether or not they have the right to do that, they've
13 unilaterally decided they're not going to.

14 So I'm happy to prof -- I'm happy to proffer --
15 I have declarations from eyewitnesses, Your Honor. I can
16 -- I can proffer them up, and if the -- you're happy to
17 read them if that -- if that helps, and we can -- we don't
18 have to call our witnesses, Your Honor, if -- if that
19 helps the Court with timing, but both will say they're
20 looking for a replacement, they don't have one, they need
21 the parts, they have about 20,000 people that are going to
22 be out of a job as of Monday --

23 THE COURT: So --

24 MS. GAMBINO: -- and we have --

25 THE COURT: -- so why not pay under protest?

1 Why would I give you an injunction instead of having you
2 pay under protest?

3 MS. GAMBINO: We can't pay under protest,
4 because we don't -- we can't just write \$8.9 million
5 checks, Your Honor. That's what they're asking, \$8.9
6 million, and so that money needs to come from somewhere.
7 So it comes from one of two places, and -- and I have -- I
8 have the FCA's head of procurement, senior vice president
9 Marlo in the courtroom, who will say, Your Honor, it comes
10 from two places, and she knows more than anybody, it comes
11 from either the labor or it comes from the parts. Well,
12 we already know parts -- the price on the parts is fixed,
13 so it has to come from the labor. In order to make up
14 that money, you're going to have to have somebody
15 basically say all right, \$8.9 million, let me take it out
16 of my production budget, that means I gotta lay off a
17 whole bunch of union workers. It is not something that we
18 can just willy-nilly write a check for, Your Honor.

19 Mr. Killips -- even though he -- he says he's
20 surprised --

21 THE COURT: What do you guys expect with regard
22 resourcing it; what do you expect the prices to be?

23 MS. GAMBINO: Your Honor, I think that's -- I
24 think we're only resourcing per what KAMAX wants, although
25 they're stopping shipping of everything, 40 parts, and

1 that's part of what we're doing right now is trying to
2 meet with other contractors --

3 THE COURT: So with regard to the -- you're only
4 planning on resourcing 40 parts; is that correct?

5 MS. GAMBINO: Your Honor, if they stop ship,
6 we're going to have to do -- we're going to have to -- I
7 mean and they did stop ship --

8 THE COURT: So -- so hold on. Just --

9 MS. GAMBINO: Yes -- yes, Your Honor.

10 THE COURT: -- answer my question.

11 Are you planning on only resourcing 40 parts?

12 MS. GAMBINO: No, Your Honor. We want them to
13 honor their contract. I believe they asked us to look to
14 find a replacement for 40 parts; is that -- yeah, okay.
15 Forty parts. So that is what we're out there doing, Your
16 Honor.

17 THE COURT: And so --

18 MS. GAMBINO: That said --

19 THE COURT: -- so if you resource 40 parts --
20 that's what the intention is right now, correct?

21 MS. GAMBINO: Yes.

22 THE COURT: Okay. And then the rest of the
23 parts, which would be, I don't know, 110?

24 MS. GAMBINO: 110. Yeah, they're -- they
25 actually supply 180.

1 THE COURT: Okay. So I don't know where the
2 other parts are, but so with regard to -- I thought there
3 was a 150 parts, so with regard to the 110, are you
4 agreeing to the price increase on those?

5 MS. GAMBINO: No. No price increase at all,
6 Your Honor. We're not -- I mean the 8.9 is -- is a
7 unilateral price increase, and no, we're not agreeing to
8 that, and the -- and the Cooper Standards case that we
9 cited, which, you know --

10 THE COURT: But right now you've just indicated
11 that you're resourcing -- you're looking to resource 40 --

12 MS. GAMBINO: Yes.

13 THE COURT: -- knowing that they supply you 180.
14 I thought it was 150 --

15 MS. GAMBINO: Your Honor, they're not supplying
16 us -- they haven't -- they've stopped ship on everything.

17 THE COURT: Well, that was today.

18 MS. GAMBINO: No, that was -- that was just a
19 couple weeks ago for -- for eight days.

20 THE COURT: I gave you a TRO, right?

21 MS. GAMBINO: Right. Thank you. And so -- but
22 respectfully, we're looking to find -- if we can find a
23 replacement for all of KAMAX, maybe it will come under
24 that, I don't know, but we can't write a \$8.9 million
25 check, and I will tell you in part why, because write --

1 as soon as you write that check, right, and you basically
2 have to cut the laborers to do, then all the suppliers are
3 going to say ooh, I have that 65 to 100 percent language
4 too, can I have a check too? And guess what, they've
5 lined up, they're already sending letters that Mr.
6 Killips' firm represents saying the same thing. So where
7 does the check writing end?

8 And -- and respectfully, Your Honor, the cases
9 that we cite long ago say the Michigan courts do not allow
10 ransom payments, when you -- a person is trying to price
11 gouge. You don't -- you don't have ransom payments,
12 especially when the parts at issue are specialty component
13 parts, which -- which this witness just admitted these are
14 specialty component parts, and so there, there is no --
15 there is no ability to get cover, like the Court is
16 talking about, when you have specialty component parts.

17 And so until and unless and -- and we -- and we
18 gave Mr. Mahaffy, we said we are doing exactly what we
19 said in that accommodation agreement, we helped you with
20 the payment terms, you have cash quickly in hand, we
21 raised what you -- we raised what you wanted, and then the
22 last piece of it was we will try to find a replacement for
23 those parts, but because they are component parts, the law
24 in Michigan says this is not -- paying under protest is
25 not appropriate, not only because they're component parts

1 and you can't get cover, because it -- separately, because
2 it -- Chrysler is not a bank, it cannot just write blank
3 checks for suppliers any time they want to increase their
4 prices and -- and do a stop shop threat. It is commercial
5 extortion, Your Honor.

6 THE COURT: What -- what other -- are you done
7 with this witness?

8 MR. BARGER: No, but I'll be really quick.

9 THE COURT: Okay, so -- because you guys have --
10 like I said, you have about 45 minutes to left to put on
11 whatever witnesses you guys have.

12 MR. BARGER: Yes, Your Honor.

13 MR. KILLIPS: Your Honor, may I briefly respond
14 to some of the legal argument there? It will be brief, I
15 can promise you that.

16 THE COURT: Go ahead.

17 MR. KILLIPS: Thank you, Judge.

18 So just briefly on the Higuchi case, Your Honor,
19 and I don't want to dive deeply into that for all of the
20 reasons you very wisely said, but the Higuchi case did --
21 the contract at issue, and this you would see in the
22 federal opinion, did use the words our requirements. The
23 contract is for Autoliv ASP's requirements, that's exactly
24 what it said.

25 If FCA's contract said this contract is for our

1 requirements, then I would agree with FCA's position that
2 that would be an enforceable requirements contract, but
3 that is not what it said. It adds the words approximately
4 65 percent to 100 percent before the words our
5 requirements, and that changes everything.

6 Ms. Gambino also said there is a case out there
7 that says that a portion of our requirements is enough to
8 create a requirements contract. I think she's referring
9 to the Ultra Manufacturing case also out of the Eastern
10 District. We just learned yesterday that case is going to
11 be published. That's from Judge Steed. That's the
12 opposite of what that case held. That case held that a
13 portion -- some portion or all of our requirements is
14 actually what the contract language was. It held that's
15 not a set share, therefore that's not a requirements
16 contract under Airboss, and that's also the decision by
17 Judge Steed that held that Cadillac Rubber and Airboss are
18 in direct conflict, irreconcilable conflict with one
19 another, and therefore -- granted, he's a federal judge,
20 but he said he had to follow the Michigan Supreme Court's
21 superior and more recent ruling in Airboss, so I do think
22 that would be hopefully persuasive precedent to Your
23 Honor.

24 Finally, I know Ms. Gambino keeps saying it's
25 \$8.9 million. We think it's \$4.4 million. But here's the

1 point. On either one of those numbers, that would be if
2 the prices had to be paid for a year. Pay under protest
3 and move for summary judgment. Try to win the case on the
4 contract law, and then we're dealing with money damages,
5 and we'll know in short order, not after a year, what the
6 contracts say and what they mean. We'll be having a very
7 similar argument to what we're having here, but that's the
8 proper approach here, pay under protest, let's have a
9 summary judgment hearing on what these contracts mean, and
10 no one's going to be paying \$4.4 or \$8.9 million under
11 protest. Either we'll be able to charge the prices we
12 want to charge or FCA is going to be able to enforce the
13 old prices.

14 That's all, Your Honor --

15 THE COURT: Thank you.

16 MR. KILLIPS: -- unless, of course, you have
17 questions.

18 THE COURT: No.

19 MR. KILLIPS: Thank you.

20 MS. GAMBINO: Your Honor, just -- I just want to
21 clear the record --

22 MR. KILLIPS: Oh --

23 MS. GAMBINO: I just wanted to clear the record.
24 Yeah?

25 MR. KILLIPS: One quick thing. We are still

1 shipping. There has been no stop ship. I -- I know the
2 TRO actually expired I think on Wednesday night, but we
3 haven't stopped shipping.

4 THE COURT: Okay.

5 MS. GAMBINO: We're -- okay.

6 MR. KILLIPS: And Mr. Ceder here is our CEO and
7 president and he's been leaning forward whispering loudly
8 in my ear since that came up, so we just wanted that to be
9 very clear, Your Honor.

10 MS. GAMBINO: I think there's going to be
11 disagreement about that. I don't know if it's relevant
12 for the Court. I think it definitely is for purposes of
13 irreparable harm, I could tell you that -- that our
14 witness is going to say KAMAX said today they are not
15 shipping, the trucks were stopped, so that is -- that is
16 what we have, and maybe we take a break, Your Honor, visit
17 with the clients and respectively get their ducks in a row
18 on that.

19 Just for clarification, Jason and respectfully
20 Your Honor, what I was referring to was not Ultra. What I
21 was referring to is the language in the Airboss case where
22 the conclusion of the court's opinion is no document
23 reflected a -- a number or a portion of the parts that
24 MSSC committed to purchase from Airboss. So a portion.
25 So, Your Honor, that was my point, 65 to 100 percent is a

1 portion of our requirements, and that's why Airboss is
2 satisfied. And --

3 MR. KILLIPS: Just a quick response then, Your
4 Honor. I think if you read Airboss as a whole, it makes
5 very clear that when it says a portion, that does not
6 eliminate the requirement of a precise set share.

7 So sure, 65 percent, 70 percent, one-third,
8 these are all portions, and if these contracts said any of
9 those things, it would satisfy Airboss. They don't.

10 THE COURT: I'm sorry, they don't say any of
11 what?

12 MR. KILLIPS: They don't say anything as precise
13 as 65 percent, or one-third, or 100 percent. They state
14 an approximate range, and that changes everything, because
15 as Ms. Gambino said when she was standing up here a moment
16 ago, she said look, these contracts mean if we're ordering
17 100 percent, then you have to do 100 percent; if we choose
18 to order 65 percent, then it's 65 percent. Thirty years
19 ago in Advanced Plastics, so this is not new law, but
20 Airboss blessed all of this and adopted this reasoning,
21 the court said once you get to the point where how much
22 you buy and sell is at the whim or the discretion of the
23 buyer, you don't have a requirements contract, you have a
24 release-by-release contract.

25 This wasn't a new concept in Airboss; this has

1 been around 30 years. FCA is a sophisticated company.
2 They've got plenty of sophisticated lawyers, they knew
3 this. If they wanted to write an enforceable requirements
4 contract, they would have chosen to do so. They made a
5 different choice. I'm sure they had very good strategic
6 reasons for doing it, but it's their choice, and this
7 Court ought to hold them to it.

8 Thank you.

9 MS. GAMBINO: Strikes me as odd that 65 percent
10 would be okay, but a range of 65 to 100 somehow isn't when
11 Airboss says you need a portion, and when requirement
12 contracts under Airboss and Cadillac Rubber and the other
13 cases all say that requirements contract doesn't need to
14 be exclusive.

15 And respectfully, Your Honor, what he's really
16 complaining about is I'm okay with the 65, but I'm not
17 okay with the range, and the Court is bound still by
18 Cadillac Rubber, it hasn't been overturned, although I
19 know Jason you want it to be, but it's not, it's still
20 good law from the Court of Appeals that says a range
21 suffices. What are those cases, we cited them in our
22 brief, Your Honor, in our reply, it was 1 to 100 parts,
23 and that was sufficient to state a quantity term.

24 And then the last point, and before David could
25 take the witness and -- and get Mr. Mahaffy off the stand,

1 sorry, is approximately doesn't change the calculus.
 2 Approximately doesn't change the calculus. Why do I say
 3 that? Because I looked and found UCC cases that are in
 4 our reply brief that say exactly that. The term
 5 approximately is really meant to denote the range, 65 to
 6 --

7 THE COURT: Did -- did the Court allow you to
 8 file a reply brief?

9 MS. GAMBINO: Yes, Your Honor. You allowed me
 10 to do that in our hearing and limited me to five pages.

11 THE COURT: Thank you.

12 MS. GAMBINO: Okay.

13 THE COURT: My staff wanted to strike.

14 MS. GAMBINO: Yes.

15 MR. BARGER: Your Honor, I'll try to move it
 16 along.

17 THE COURT: Go ahead.

18 BY MR. BARGER:

19 Q If I can turn back to Exhibit -- Plaintiff's Exhibit 2B as
 20 in boy, that is the -- the letter that's dated -- it's tab
 21 5 -- that's the letter dated September 14th, but signed
 22 November 6th by one of the KAMAX representatives, correct?
 23 So tab 5, second page shows Brian Badowski signed on --

24 A Yes.

25 Q -- November 6th, correct?

1 A Correct.

2 Q Right. And you're familiar with this letter, correct?

3 A I am.

4 Q Did they -- was this letter signed over your objection or
5 with your approval?

6 A After -- you saw the letter was issued to us in September,
7 this negotiation or discussion actually started in August;
8 at that time, we -- yeah, we chose to sign the letter.

9 Q My question was --

10 A Yes.

11 Q -- did it -- was it signed with your approval or -- or
12 disapproval?

13 A Yes, approval.

14 Q Okay. Go to the bottom of the first page. I'd like you
15 to read out loud to the Court that last bullet point, and
16 it'll move -- it'll roll over to the second page; what did
17 KAMAX agree to do on November 6th? Just read it out loud.
18 KAMAX hereby agrees --

19 A KAMAX hereby agrees that it shall not rep -- repud -- I'm
20 sorry --

21 Q Repudiate.

22 A Repudiate all or any of or any obligation under an
23 installment of or an entire order, take any action --
24 action evidencing its intention or threaten not to fully
25 and timely perform all of its obligations under an

1 installment or an entire order.

2 Do you want me to continue?

3 Q You can stop there.

4 And on November 20th, KAMAX did exactly what it
5 promised on November 6th it wouldn't do, correct? It
6 threatened those very things it said it wouldn't do?

7 A The -- at that time, the full intent of this letter had
8 not been agreed.

9 Q Okay, I'm sorry, maybe you didn't understand my question.

10 On November 6th -- you just read that KAMAX was
11 not going to threaten to stop ship, and on November 20th,
12 it said I'm going to stop ship by November -- by February
13 20 if you don't agree to my prices, correct?

14 MR. KILLIPS: Your Honor, he's asking the
15 witness now basically a legal conclusion. He's not a
16 lawyer. Whether KAMAX's conduct aligns with this
17 agreement or not, it's a legal question. The -- the
18 agreement, the words you had him read says in alliance
19 with the orders. We're all fighting about what the orders
20 mean. This witness certainly is not a lawyer who's
21 capable of answering legal questions about the scope or
22 enforceability of these orders. You've got plenty of
23 lawyers here arguing that point, but he's asking him a
24 legal question.

25 THE COURT: Response?

1 MR. BARGER: I think I'm just asking him a
2 factual -- I'll ask -- I'll rephrase it.

3 BY MR. BARGER:

4 Q In your understanding, you did exact --

5 THE COURT: So are you indicating that this is a
6 separate agreement that they're bound by, that they cannot
7 stop shipping; is that what you're --

8 MR. BARGER: Yes, Your Honor. Yes.

9 At worst, it's evidence, and there's a follow-up
10 question here. Nowhere in this letter does KAMAX contend
11 that the arrangement it has with FCA is not a requirements
12 contract, does it?

13 THE COURT: So with regard to the signature,
14 that's not -- he's not the signature -- he's not the
15 signatory on the agreement.

16 MR. BARGER: That's correct, Your Honor, but he
17 testified he was aware of it and basically said he agreed
18 to it. He just said, after some hesitation, did I agree
19 or did I not agree, yes, I agreed to it. He testified he
20 was aware of it, he testified about the negotiations that
21 occurred between the date of the letter and the signing,
22 so I think he can testify about the agreement, even though
23 he didn't sign it.

24 THE COURT: So in the -- is the effective date
25 with regard to the agreement not to cancel 6 months? What

1 is it?

2 MR. BARGER: Well, the way the letter -- the way
3 that the letter agreement is worded, and there are
4 different components, Your Honor; in other words, there
5 were going to be some payment term modifications, we'll
6 pay you sooner, and we won't -- we won't implement debits
7 that we suffered against you, but the 6-month period was
8 to be effective September 30th, even though they signed it
9 on November 6th. So it's a little bit odd in that
10 respect.

11 THE COURT: Why don't you break that down for me
12 one more time.

13 So when does it expire?

14 MR. BARGER: Six -- at -- at worst, 6 months
15 from September 14th, and at best, 6 months from November
16 6th.

17 THE COURT: What's the date --

18 MR. BARGER: There were certain payment terms --

19 THE COURT: So what's the date?

20 MR. BARGER: Six months from November 6th when
21 they signed the letter.

22 THE COURT: So what's the date?

23 MR. BARGER: I'm sorry?

24 THE COURT: What's the date?

25 MR. BARGER: What's the date of --

1 THE COURT: Six months from -- from the date --

2 MR. BARGER: Oh, 6 months from November 6th is
3 -- I have to use my fingers -- May 6th.

4 MS. GAMBINO: May 5th with a leap year.

5 THE COURT: So you're -- so if the Court finds
6 that this is a -- an agreement that they're bound by, then
7 you would agree that the expiration date with regard to
8 them honoring the continued shipments would expire on May
9 5th?

10 MR. BARGER: Yes, Your Honor, but I don't mean
11 to suggest this supplants the terms and conditions in the
12 purchase orders and the releases, but because of the
13 accommodations that were made by FCA, it -- it received
14 additional assurances that are binding by KAMAX that they
15 can't threaten to stop ship and not stop ship for at least
16 this additional 6-month period.

17 THE COURT: So then it would -- but do you agree
18 that this agreement that you just said they're bound by
19 expires on May 5th?

20 MR. BARGER: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. KILLIPS: Your Honor, may I provide our
23 answer to that question real quick for you?

24 If you look on the first page, the first bolded
25 bullet there, payment terms --

1 THE COURT: Yes, sir.

2 MR. KILLIPS: It defines accommodation agreement
3 in the first and second line together, and that clock
4 starts running on September 30th.

5 So the -- our answer to your question is March
6 30th, Your Honor. Well, but -- thank you, Mr. Sharkey,
7 you're right, it's a leap year. March 29th. I guess it
8 depends on whether you're going months or 180 -- roughly
9 the end of the month, Your Honor.

10 THE COURT: Okay. So both sides agree that
11 there be a continue to ship no matter what under the
12 agreement dated September 14th, '23, with the payment
13 terms and effective date of September 30th, '23, for 6
14 months, that being March 29th.

15 MR. KILLIPS: Not quite, Your Honor. I don't
16 think that anything in this accommodation agreement adds
17 anything to the obligations under the purchase orders or
18 the terms and condition.

19 THE COURT: I'm only talking about the stop
20 ship.

21 MR. KILLIPS: Yeah, I -- well, but I understand,
22 so if the purchase orders and the -- and the terms and
23 conditions together do not create an enforceable
24 requirements contract, this doesn't save it, so it doesn't
25 add a new obligation to us to continue deliveries. We

1 still don't have an oblig -- this basically says we won't
2 do anything that we are required to do -- I'm sorry, we
3 won't fail to do something that we are required to do by
4 the purchase orders and the terms and conditions. But it
5 doesn't say that we're going to do things that the
6 purchase orders and terms do not require us to do, and our
7 position with respect to the stop ship is that we have no
8 more obligation to deliver parts, and this does nothing to
9 alter that.

10 THE COURT: It seems disingenuous.

11 MR. KILLIPS: I'm just telling you what the
12 words -- what I think the words mean, Your Honor. If you
13 look at every obligation in the paragraph that they point
14 to, starting at the bottom of page 1 --

15 THE COURT: Well, let's look at the entire --

16 MR. KILLIPS: Well, sure, but that's -- I'm just
17 trying to help you where FCA's obligation --

18 THE COURT: Well, I'm just trying to determine
19 whether or not there's going to continue to be shipments
20 under this agreement until at least March 29th, 2024.

21 MR. KILLIPS: And we don't think it reads that
22 way, but if the Court interprets it that way and says that
23 whatever the terms and conditions and everything else may
24 say, this is a binding agreement for it under two weeks,
25 we'll of course follow the Court's order, but our

1 obligations are -- all appear in that paragraph beginning
2 at the bottom of page 1 --

3 THE COURT: Then why sign it?

4 MR. KILLIPS: -- and all those oblig -- for the
5 other obligation or the other things that FCA was
6 promising to do here. This was some of the help that
7 KAMAX needed. But FCA wrote this, not us. If they wanted
8 to ex -- if -- throughout all of this, Judge, the contract
9 language is the language that FCA chose. If they wanted
10 some greater promise or to extract some greater promise
11 from KAMAX, they could have proposed that and tried to
12 negotiate it. They didn't.

13 THE COURT: Okay.

14 MR. KILLIPS: Thank you, Your Honor.

15 MR. BARGER: Your Honor, just briefly in
16 response.

17 THE COURT: You guys -- you guys only have so
18 much time.

19 MR. BARGER: Yes, Your Honor.

20 THE COURT: So if you guys -- if you guys want
21 to move on to some of the other issues that the Court has
22 to decide, you can do that --

23 MR. BARGER: I don't think we -- I don't think
24 the witness answered the question that I asked. The
25 objection was called for legal conclusion, and I wanted --

1 wanted to rephrase it to isn't it -- so that's where we
2 were, I think.

3 THE COURT: Okay. And so with regard to your
4 intention of the letter, you may ask that question.

5 BY MR. BARGER:

6 Q And isn't it correct, Mr. Mahaffy, that it's your
7 understanding in -- of this letter that -- of September --
8 the letter of -- I'm sorry, the accommodation agreement,
9 that isn't it correct it's your understanding that what
10 KAMAX did on November 20th was to do exactly what it
11 promised to do -- to not do on November 6th when it signed
12 the letter, correct?

13 MR. KILLIPS: Same objection, Your Honor. Just
14 because he's adding the words your understanding at the
15 front of it doesn't mean he's not asking a legal
16 conclusion.

17 THE COURT: The Court's going to overrule the
18 objection with regard to the letter, which is the Exhibit
19 B.

20 MR. BARGER: B.

21 THE COURT: The Court is satisfied that with
22 regard to the intent, that the Brian Badowski signed it,
23 the witness, Mr. Mahaffy, has indicated that he did read
24 it, understand it, and made a joint decision; wasn't that
25 your testimony, sir?

1 THE WITNESS: Right.

2 THE COURT: Okay. So what was your
3 understanding of the joint decision?

4 THE WITNESS: So the -- this letter, the very
5 first accommodation is payment terms. We actually did not
6 receive that accommodation until the day after FCA filed
7 this action, so it never performed under that. In fact,
8 we were communicated to by the buyer that it was going to
9 be a pain to process the payment terms and that it
10 probably wouldn't get done during this accommodation
11 period. So from that standpoint, the accommodation was
12 not executed.

13 And as far as your -- my understanding whether
14 this is enforceable on the contract, again, that's -- to
15 me that's a lawyer question, right; we referred that over
16 to our lawyers, and they suggested the course of action we
17 took.

18 THE COURT: So with regard to your testimony,
19 whether or not you signed it and agreed to it, your
20 testimony is that Stellantis or FCA did not abide by what
21 they've indicated in the September 14th, '23 letter?

22 THE WITNESS: Correct.

23 BY MR. BARGER:

24 Q And similarly, even accepting your statement, KAMAX didn't
25 abide by its promise not to threaten to stop ship,

1 correct?

2 MR. KILLIPS: Same objection, Your Honor.

3 THE COURT: I understand the legal objection.

4 With regard to the signature date of 11/06, I
5 don't know when the terms should have gone into effect,
6 and his testimony is they didn't perform, so they didn't
7 -- so the Defendant didn't perform.

8 MR. BARGER: I understand, Your Honor.

9 THE COURT: So it's a first breach issue.

10 MR. BARGER: We'll have contrary testimony.
11 I'll just move on.

12 THE COURT: I'm sorry?

13 MR. BARGER: We have contrary testimony.

14 THE COURT: Oh, okay.

15 MR. BARGER: I'll move on.

16 THE COURT: Okay.

17 BY MR. BARGER:

18 Q You're saying -- but I will ask one question -- you're
19 saying that the -- the -- meaning speeding up the payment
20 terms to net 15 never happened for a single payment; is
21 that your testimony?

22 A My testimony and my understanding is we did not receive
23 purchase orders with that updated payment term until the
24 end of February.

25 Q Okay.

1 A That's correct.

2 Q I don't think that was my question --

3 THE COURT: February 2024?

4 THE WITNESS: Yes, February 2024.

5 THE COURT: Okay. Well, the purchase order
6 might have the payment terms on it, but were you actually
7 paid net 15?

8 THE WITNESS: I don't believe so.

9 THE COURT: So you're --

10 THE WITNESS: No.

11 THE COURT: -- not sure?

12 THE WITNESS: I'm not sure. I'd have to -- I'd
13 have to check with our accounting team or financing, but I
14 would imagine that I would have been notified that we were
15 paid ahead of time. I never was.

16 I -- the -- my understanding of the way that our
17 purchase orders work is they're not going to pay ahead of
18 what's in their system.

19 MR. BARGER: Okay.

20 THE WITNESS: Maybe they'll --

21 MR. BARGER: If I move --

22 THE WITNESS: -- present other evidence.

23 MR. BARGER: I'm not sure I offered this into
24 evidence, but I think I did, but at tab 4, which was the
25 second page of tab 4, which is the letter dated June 20

1 signed by Mr. Mahaffy where there is some disagreement
2 about whether the spreadsheet attached to that letter is
3 the right one, I want to make sure I offered as
4 Plaintiff's Exhibit C conditionally that June 20 letter,
5 and then we'll -- as I say, we'll double check on what the
6 right attachment should be.

7 THE COURT: I'm not going to enter it until we
8 have the right attachment, because the other side is going
9 to have the ability to have an objection with regard to
10 whether or not it's the right exhibit.

11 MR. BARGER: Understood, Your Honor. My
12 understanding from my client is what we have with this
13 exhibit is what we were given by -- by KAMAX, but I'll
14 take some time to double check that --

15 THE COURT: Okay.

16 MR. BARGER: -- to make sure.

17 BY MR. BARGER:

18 Q So let me move on, Mr. Mahaffy, to ask you another
19 question.

20 Do you recall in your letter of June 20, 2023,
21 you never made any contention, did you, that the
22 relationship between KAMAX and FCA was not a requirements
23 contract, correct?

24 A I'd need to read the letter.

25 Q You don't remember the letter you wrote and whether it

1 makes any reference to there not being a contract at all?

2 A I -- we wrote these letters to every customer, as I

3 testified earlier. I -- I would need to read that --

4 Q I'm not sure why you keep looking at counsel, sir. Can

5 you look at me when you answer the question? You keep

6 looking at counsel for direction.

7 A This -- just respectfully, this is my first time

8 testifying, right? You guys are a big customer, an

9 important customer, a customer we want in the future, and

10 I -- I don't want to screw this up, right? So --

11 THE COURT: So is your counsel giving you --

12 THE WITNESS: -- go ahead.

13 THE COURT: -- answers?

14 THE WITNESS: No.

15 THE COURT: Okay.

16 BY MR. BARGER:

17 Q So my question is a simple one.

18 A Yes.

19 Q And if your answer is you don't remember, you don't

20 remember.

21 Do you remember your June 20 letter makes no

22 claim that you don't have a contract with FCA?

23 A I would need --

24 Q Correct?

25 A -- to read the letter, sir.

1 Q The accommodation --

2 A I need to read the letter.

3 Q -- agreement that you signed, there's nothing in there
4 from KAMAX contending that you don't have an accommodation
5 -- that you don't have a requirements contract with FCA,
6 correct?

7 A Can you repeat the question? I'm -- this is -- I'm not a
8 lawyer, right? You're asking me questions that I'm not an
9 expert on.

10 Q All right.

11 MR. KILLIPS: Your Honor, we can speed this
12 along. The agreement is in the record, it speaks for
13 itself, the Court's perfectly care -- or capable of
14 reviewing and seeing what it does and doesn't say.

15 BY MR. BARGER:

16 Q If we can go to tab 6. The first page is a -- an email
17 from you, correct?

18 A Yes.

19 Q It's dated December 19th, correct?

20 A Correct.

21 Q And this is an email from you to FCA, correct?

22 A To Victor, that's our purchasing manager and buyer.

23 Q Okay. Those are FCA employees?

24 A Correct.

25 Q All right.

1 MR. BARGER: Plaintiff offers Plaintiff's
2 Exhibit D.

3 MR. KILLIPS: I think that's right, Your Honor.
4 No objection.

5 THE COURT: I have 5 as B. This is 6. You
6 wanted this as D?

7 MR. BARGER: Yes. You told me I had to give
8 letters for the Plaintiff's exhibits, so that would be
9 Exhibit D.

10 THE COURT: I -- where is C?

11 MR. BARGER: C is the one you didn't accept yet,
12 because we have to double check.

13 THE COURT: Got it.

14 MR. BARGER: Should I just offer this one as C
15 rather than --

16 THE COURT: No, no. This is good. D. Sorry.

17 MR. BARGER: Okay.

18 (At 12:02 p.m., PX-D was received)

19 BY MR. BARGER:

20 Q If I can turn to tab 7. Do you see that as marked -- as
21 -- purports to be a letter dated November 29th from
22 Stellantis?

23 A Yes.

24 Q And it's to Mats Ceder?

25 A Correct.

1 Q And who is Mats Ceder?

2 A Mats is our CEO.

3 Q And have you seen this letter before?

4 A I have seen this letter.

5 Q All right. So KAMAX received the letter?

6 A Yes.

7 Q All right.

8 MR. BARGER: Plaintiff offers Plaintiff's
9 Exhibit E as in Edward.

10 MR. KILLIPS: No objection, Your Honor.

11 THE COURT: So admitted.

12 (At 12:02 p.m., PX-E was received)

13 MR. BARGER: And we're -- no further questions,
14 Your Honor.

15 THE COURT: Thank you.

16 Anything else with this client -- or for this
17 witness, sir?

18 MR. STRUBLE: Just two quick questions, Your
19 Honor.

20 THE COURT: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. STRUBLE:

23 Q Mr. Mahaffy, you were asked about some relief that FCA
24 provided KAMAX in 2022 and 2023; do you recall that?

25 A Yes.

1 Q Did FCA provide all of the relief that KAMAX required?

2 A No.

3 Q Only some?

4 A Only some. If I remember correctly, in 2022, it was 50
5 percent, and a similar -- I don't remember the exact
6 share, but there was also a share in 2023.

7 MR. STRUBLE: That's all I have, Your Honor.

8 THE COURT: Thank you. Okay, sir, you can step
9 down.

10 THE WITNESS: Okay. What should I do with the
11 exhibits?

12 THE COURT: You can just set them over there.

13 (At 12:03 p.m., witness excused)

14 MR. KILLIPS: Your Honor, we'd like to call
15 Stephanie Scott from FCA.

16 THE COURT: Okay.

17 Good afternoon, Ms. Scott.

18 STEPHANIE SCOTT: Good afternoon.

19 THE COURT: Please state your name for the
20 record, please.

21 STEPHANIE SCOTT: Stephanie Scott.

22 THE COURT: And raise your right hand to be
23 sworn.

24 THE CLERK: Under penalty of perjury, do you
25 solemnly swear or affirm that the testimony you're about

1 to give before this Court is the truth, the whole truth,
2 and nothing but the truth?

3 STEPHANIE SCOTT: Yes.

4 (At 12:03 p.m., witness sworn)

5 THE COURT: Thank you. Be seated, please.

6 MR. KILLIPS: The Judge is right, as usual,
7 we've passed the noon hour. Good afternoon.

8 THE WITNESS: Good afternoon.

9 STEPHANIE SCOTT

10 called as a witness, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KILLIPS:

13 Q I want to ask you just briefly about the key language that
14 we're all arguing about in FCA's POs, that this order is
15 for approximately 65 percent to 100 percent of our
16 requirements.

17 MR. KILLIPS: I'm not going to mark this yet. I
18 may not even mark this at all, but I want to ask.

19 May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 MR. KILLIPS: There you go, ma'am. Your Honor.

22 THE COURT: Thank you, sir.

23 MR. KILLIPS: All right.

24 BY MR. KILLIPS:

25 Q Ms. Scott, by any chance, have you seen this letter

1 before?

2 A I'm sorry, I just need a moment to take a look at it.

3 Q No worries. It does not address KAMAX.

4 A No, I don't believe I have.

5 Q Okay.

6 So I just want to -- it is written by, you know,
7 Mr. McGinty who is one of your lawyers; you know Mr.
8 McGinty?

9 A Yes, I do.

10 Q Okay.

11 THE COURT: So wait a minute. She just said
12 she's doesn't -- she's not seen it before.

13 MR. KILLIPS: Yep.

14 THE COURT: So how are you using it?

15 MR. KILLIPS: I'm going to ask her about one
16 thing that he says as how he interprets the same contract
17 language at issue here. I just want to know whether she
18 agrees with it. I'm not asking to admit this or anything
19 else. I just want it to be very clear what it is I'm
20 asking whether she agrees with.

21 THE COURT: Okay.

22 So with regard to this case, we're not even at
23 the point where the Court has determined -- I haven't
24 determined whether or not the contract is ambiguous or
25 not, and with regard to the preliminary injunction, the

1 issue with the preliminary injunction, one portion is that
2 I have to determine if they're -- you're more likely to
3 prevail or they're more likely to prevail. Over under the
4 Vinnie Johnson case, you could -- they could lose, you
5 could lose, it doesn't matter. It's only determining
6 whether or not they're likely to succeed on the merits or
7 not. It doesn't even have to be that my answer is yes.

8 There are other factors with regard to
9 preliminary injunction with regard to the harm, the harm
10 to the community that have to be considered. No one's
11 addressing those.

12 MR. KILLIPS: Well, if you'd like to hear
13 argument on those, I will be happy to address those, but I
14 do think likelihood of success is one of the two most
15 important of those factors.

16 THE COURT: It's actually not. Look at the
17 Vinnie Johnson case.

18 MR. KILLIPS: Well, I know Vinnie Johnson said
19 number one is irreparable harm, and I get that. Would you
20 -- would you like us to argue the irreparable harm issue,
21 Judge?

22 THE COURT: I mean these are only factors that
23 are to be considered, not that the Court has to rule one
24 way or the other, so I can determine that with regard to
25 success on the merits, it's not there. That's what the

1 Vinnie Johnson case said.

2 MR. KILLIPS: Of course you can.

3 THE COURT: It's unlikely that they'll succeed
4 on the merits; however, they're still entitled to the
5 preliminary injunction because the circuit court said that
6 they were, and it wasn't going to be overturned by the
7 higher court.

8 MR. KILLIPS: Of course this Court could make
9 that determination. I understand that these are --

10 THE COURT: Listen, I want to make --

11 MR. KILLIPS: -- factors to consider --

12 THE COURT: -- the right decision, but you guys
13 have to give me more than just the legal argument that
14 we're not even at yet, I haven't even determined if I
15 think it's ambiguous or not, I wanted to know what your
16 theories were with regard to the Airboss case, so that I
17 can indicate with regard to the opinion how that case pays
18 into it, because that is a Supreme Court case.

19 With regard to the other factors, you guys need
20 to get to them.

21 MR. KILLIPS: If you would like me to move to
22 argument on irreparable harm, Your Honor, we have put in
23 the facts on that factor that we need, and we'd be happy
24 to address the irreparable harm with you right now.

25 THE COURT: You've indicated that you believe

1 that it's irreparable harm. I still -- with regard to all
2 of the -- I don't know if there's 150 to 180 parts, I'm
3 not even sure how many are there?

4 MR. KILLIPS: 180, Your Honor.

5 THE COURT: Okay. So --

6 MR. KILLIPS: Give or take a few --

7 THE COURT: -- with regard to the 180 --

8 MR. KILLIPS: -- but about that, yep.

9 THE COURT: So with regard to the 180 parts that
10 are out there, is it all one purchase order?

11 MR. KILLIPS: No, it's -- it's many purchase
12 orders. Not our purchase orders --

13 THE COURT: Is all the language --

14 MR. KILLIPS: -- that's FCA's --

15 THE COURT: -- the same with regard to the
16 purchase orders?

17 MR. KILLIPS: The key language we're arguing
18 about is the same on all of them, yes.

19 THE COURT: The key languages, are the
20 determination dates the same, is it all life of the
21 program, is it all -- everybody -- okay, so I need a
22 stipulation with regard to that.

23 MS. GAMBINO: Yes, Your Honor.

24 THE COURT: 180 parts, correct?

25 MS. GAMBINO: Yes, Your Honor.

1 THE COURT: Okay. You're both stipulating 180
2 parts?

3 MR. KILLIPS: Yeah, it's -- give or take. We
4 all know what the parts are. They're --

5 THE COURT: Okay.

6 MR. KILLIPS: -- identified in exhibits.

7 THE COURT: It's all the exact same purchase
8 order that I -- I believe that the Defendants are
9 indicating is implemented in the system and that the FCA
10 one they've never seen before.

11 MR. KILLIPS: That's right. Defense Exhibit 2,
12 for all substantive purposes, Your Honor, I would agree
13 all those POs use the same language.

14 THE COURT: Okay. And --

15 MR. KILLIPS: That we're arguing about today.

16 THE COURT: And with regard to the FCA purchase
17 order, which was your Exhibit 1 -- I think you called it
18 1A, but --

19 MS. GAMBINO: Yes.

20 MR. BARGER: Yes.

21 THE COURT: -- I did not allow in, because your
22 witness indicated that they've never seen it before, your
23 position is you've never seen this before, this is not
24 what controls; is that correct?

25 MR. KILLIPS: It is not the contract. It was

1 never offered to my client to accept.

2 THE COURT: Okay.

3 And then with regard to the agreements that you
4 guys have just indicated under the B, C, D, E, everybody
5 agrees with regard to those agreements that those were
6 sent back and forth between the parties?

7 MR. KILLIPS: Well, I think there's only one
8 agreement. The rest are just letters --

9 THE COURT: Letters.

10 MR. KILLIPS: -- but the agreement -- the -- it
11 was Exhibit D to the verified complaint, the accommodation
12 agreement, we agree that it is what it is. I don't think
13 it actually impacts this case very much, for the reasons
14 we have argued and respond -- or addressed in our
15 response, but it is what it is, it is an agreement that my
16 client signed.

17 THE COURT: Okay.

18 MS. GAMBINO: Your Honor, respectfully, I was
19 just going to ask just to streamline what the Court's
20 doing, are you guys okay with the terms and conditions
21 that were attached --

22 MR. KILLIPS: Yeah, fine.

23 MS. GAMBINO: -- to the complaint? So that
24 would be part of I think it's Exhibit 1, Your Honor, so it
25 seems there is no argument -- since the Court's trying to

1 find the contract to determine what the bounds are, that
2 would be Exhibit 1. I don't think there's an objection to
3 that.

4 THE COURT: Okay.

5 MS. GAMBINO: So that could maybe be E.

6 MR. BARGER: That would be F.

7 MS. GAMBINO: I'm sorry, F. Thank you.

8 THE COURT: All right. So you're stipulating to
9 the tab 1, which is Exhibit F?

10 MR. KILLIPS: Yes, Your Honor. We have no
11 objection to the admission of FCA's terms and conditions.

12 THE COURT: These are the terms and conditions
13 that were issued when, because these agreements you're
14 telling me go back decades. So when were these terms and
15 conditions --

16 MR. BARGER: There's a number of terms and
17 conditions that get updated. I think the earliest is 2010
18 to 2022. Ms. Scott can address it if we need to --

19 THE COURT: Well, this is version 2022, I think,
20 is that what it says?

21 MR. BARGER: The top one is probably 2022, so we
22 have the -- the operative terms and conditions, but we --
23 we also attached as an exhibit the additional one from the
24 earlier years, so there wouldn't be any suggestion that we
25 were, you know, hiding the ball --

1 THE COURT: Okay. I just need to know which --
2 if -- if you're stipulating that the terms and conditions
3 that they provided are the ones that control.

4 MR. KILLIPS: For the purposes of this motion,
5 Your Honor, yes, we will stipulate to that.

6 THE COURT: Okay. Okay.

7 So you guys can give me information on the other
8 factors then.

9 MR. KILLIPS: Okay. Then I will be happy to
10 move to the argument on -- you know, if -- if you just
11 want to hear argument on that, Your Honor, I don't have
12 any more questions on that point for Ms. Scott.

13 MR. BARGER: I do.

14 MR. KILLIPS: But if you would like to hear
15 evidence and that sort of thing, then we can continue with
16 Ms. Scott.

17 THE COURT: I'm going to leave it to you,
18 because I don't know what evidence you're trying to get
19 in. Your first question with regard to a letter that she
20 hasn't seen before from somebody from her company that
21 interprets something, I just don't see how it's helping me
22 here.

23 MR. KILLIPS: Well, I --

24 THE COURT: Because I'm not at the point where
25 I'm determining whether or not the agreement is ambiguous

1 or unambiguous. I'm only at the point where I'm weighing
2 the factor of is it more likely or not that they can
3 succeed on the merits.

4 MR. KILLIPS: And how the contract --

5 THE COURT: And I could say no and it still
6 wouldn't matter.

7 MR. KILLIPS: So -- and maybe I'm not
8 understanding the Court correctly, but if you are saying
9 that the irrep -- that the likelihood of success is not
10 going to be a factor in your decision whether to --

11 THE COURT: No, I could say they're not going to
12 win, and it still -- I would still have to go through the
13 rest of the factors --

14 MR. KILLIPS: Of course you would, yes.

15 THE COURT: -- and balance them, so I just want
16 some testimony on the other factors. Shutting it down,
17 you're saying you guys are going to shut it down because
18 it's going to cause harm with regard to your client, they
19 have increased costs of running the machines, they have
20 more skilled labor, it's hard to get employees around
21 here. FCA is saying you do this, everyone else is in
22 line. With regard to stopping shipping, you're going to
23 shut down their lines, they have -- you know, their
24 production will stop. I don't know where, I don't know
25 how many, I don't know with regard to how much they have

1 on backorder. I don't know anything.

2 MR. KILLIPS: Well, let me do this then real
3 quick, Your Honor, if you don't mind.

4 First, can I have the terms and conditions,
5 please? No, forget -- how about the Plante Moran report?

6 Defense Exhibit 4, I believe you probably have
7 it in front of you, are the exhibits up there with you?

8 THE WITNESS: I don't have anything else in
9 front of me.

10 THE COURT: Right there.

11 MR. BARGER: It'll probably be individual
12 exhibits that are sitting there would be the --

13 MR. KILLIPS: Yeah, it's probably loose. It's
14 the Plante Moran report. It's got a line chart on the
15 front page.

16 THE WITNESS: Okay. I -- it's not numbered, but
17 I believe I have what you're referring to.

18 MR. KILLIPS: Oh, yeah. Sorry. Of course yours
19 don't have the stickers on them.

20 THE WITNESS: Are you referring to the --

21 THE COURT: Yes.

22 THE WITNESS: -- relations index? Okay.

23 MR. KILLIPS: Yep.

24 BY MR. KILLIPS:

25 Q Ms. Scott, are you familiar with this document?

1 A Yes.

2 Q You monitor what --

3 A I'm familiar with the survey. I'm not -- I have not read
4 the document that you've given me.

5 Q You -- you didn't read the 2023 survey results?

6 A I -- I did if that's what this is.

7 Q That is what that is.

8 A Okay.

9 Q Okay.

10 So you monitor and take note of what your
11 suppliers think of dealing with you, right?

12 A Sure.

13 Q And you notice in there that in fact FCA ranks last by a
14 lot in goodwill with its supply base, right?

15 A Are we last on this chart? Yes.

16 Q Okay. That fact that the -- FCA's goodwill with its
17 supply base is -- was rated very low in 2023, that didn't
18 stop Stellantis, FCA's parent, from earning record profits
19 in 2023, did it?

20 MR. BARGER: Objection, relevance, Your Honor.

21 MR. KILLIPS: It goes directly to the harm that
22 -- they are alleging this is irreparable harm that matters
23 so much, Your Honor.

24 THE COURT: Overrule the objection.

25 MR. KILLIPS: Thank you.

1 THE WITNESS: Can you ask the question again?

2 MR. KILLIPS: Sure.

3 BY MR. KILLIPS:

4 Q Did the fact that in 2023, Stellantis rated dead last
5 among the suppliers for goodwill stop it from achieving
6 record profits in 2023?

7 A Well, I can't speak if that was directly related to
8 profits. Can you rephrase the question?

9 Q Sure. Let me be more blunt about it.

10 Did Stellantis, in 2023, earn record profits?

11 A What do you define as record? Did we earn a profit? Yes.
12 I -- I don't know how to --

13 THE COURT: Was it termed record profits by
14 anybody?

15 THE WITNESS: I -- I believe so.

16 THE COURT: Okay. Who?

17 THE WITNESS: In our finance that releases our
18 financial statements.

19 THE COURT: They said you made record profits?

20 THE WITNESS: I -- I -- I believe so.

21 THE COURT: Okay.

22 THE WITNESS: I believe that word was used, yes.

23 THE COURT: Okay. Go ahead.

24 BY MR. KILLIPS:

25 Q And does about \$20 billion in profits sound right?

1 A I don't recall the exact number.

2 MR. KILLIPS: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 MR. KILLIPS: What are we on, Chris, number 5?

5 MR. STRUBLE: Yes.

6 MR. KILLIPS: We'll mark this as number 5,
7 please. Here you go, Your Honor.

8 THE COURT: Thank you.

9 MR. KILLIPS: I just wanted to make sure I give
10 one to opposing counsel here. There you go.

11 BY MR. KILLIPS:

12 Q Whether in this -- this is printed off Stellantis's
13 website -- whether in exactly this form or otherwise, have
14 you seen information like this reporting Stellantis's 2023
15 profits?

16 A Yes, I've reviewed our results. I don't -- I'm not
17 familiar with this particular document, but yes.

18 Q Does this refresh your recollection that the profits were
19 the high 18 billions in Euros?

20 A Yes, that's what it says.

21 Q Okay. That's more than \$20 billion, right?

22 A Approximately.

23 Q And so in the same year that Stellantis realized record
24 profits of \$20 billion, it also was ranked dead last in
25 goodwill by its suppliers, right? Those two things both

1 happened in 2023?

2 A Based on this data, yes.

3 MR. KILLIPS: That's my question, Your Honor.

4 THE COURT: Thank you.

5 MR. BARGER: May I cross, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BARGER: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BARGER:

10 Q Ms. Scott, good afternoon.

11 A Good afternoon.

12 Q A couple of questions about one of the exhibits that Mr.
13 Killips asked you about. Their Exhibit 4, that's that --
14 that survey?

15 A Yes.

16 Q It looks like if I read it correctly is our reputation or
17 goodwill amongst the suppliers going up between 2022 and
18 2023, even though we're last?

19 A Yes, and we've worked really hard to do that.

20 Q And I don't know we have established, what's your position
21 with FCA/Chrysler/Stellantis?

22 A I'm the head of chassis purchasing.

23 Q Okay. And how long have you been with Stellantis/FCA?

24 A I've been with Stellantis, formerly known as Chrysler FCA
25 for about 13 years, and in the industry for about 20.

1 Q Okay. And are you involved directly with conversations
2 with KAMAX concerning their parts that they have -- that
3 they threatened to stop shipping on?

4 A Yes, they're --

5 Q Okay.

6 A -- they're one of our -- my -- my suppliers.

7 Q And from your position and work with KAMAX, do you have an
8 opinion on what harm might flow to FCA if KAMAX continues
9 to stop ship and not deliver any of the -- of the parts,
10 and we'll get to the number specifically that are at issue
11 in the -- the case here?

12 A Yeah, it's -- it's catastrophic on our operations. So
13 within, you know, North America, we have 18 plants. They
14 supply 17 of them. And if they stop shipping to those
15 plants, we cannot produce vehicles, right? We have to
16 shut down plants, as we did the last time they stopped
17 shipping, we have to send workers home, right? We -- we
18 not only interrupt our plants, but then we interrupt our
19 suppliers, and we interrupt their plants, and their
20 workers, and then their suppliers have suppliers, and
21 their suppliers have suppliers, so really this whole
22 ecosystem is disrupted.

23 Q And do you have an understanding of approximately how many
24 employees at the -- at the 17 plants would have to be sent
25 home if the assembly lines stop?

1 A I believe it's about two to three thousand a plant, so
2 multiplied by --

3 THE COURT: Two to three thousand employees?

4 THE WITNESS: Per plant, yes. Multiplied by 17,
5 I forget what that calculation is --

6 BY MR. BARGER:

7 Q About 50,000, roughly?

8 A About 50,000 employees at our plants impacted.

9 Q And is there any other impact that flows from the company
10 having to stop down -- stop its assembly lines in addition
11 to sending the employees home? Specifically, does that
12 impact the dealers, for example?

13 A Yes, if we're not making vehicles, we can't supply them to
14 the dealers, and ultimately, we can't get them to the
15 customers.

16 Q I was going to say, does -- do the customers factor into
17 the harm that flows if Chrysler has to stop work?

18 A Yes. Again, if we can't produce vehicles, we can't get
19 them to the customers.

20 Q And Mr. Killips, in his Exhibit 4, this exhibit concerned
21 our --

22 THE COURT: Will you give me one second?

23 MR. BARGER: Yes, Your Honor. Sorry.

24 THE COURT: Go ahead, please.

25 MR. BARGER: Yes, Your Honor.

1 BY MR. BARGER:

2 Q So in Exhibit 4, this exhibit -- this -- this survey
3 concerned Stellantis's reputation among suppliers. My
4 question is from your testimony you just gave, is the harm
5 that flows from stop -- stopping the plan from operating
6 go beyond simply what FCA's reputation is with the
7 suppliers?

8 A Yes. I mean it -- it -- again, it impacts our plants, the
9 people working at our plants, we're not able to produce
10 vehicles, we have to send people home, we interrupt our
11 suppliers, right? Our suppliers are due to ship product
12 that they -- I mean that disrupts their operation. So it
13 really disrupts our entire process in manufacturing, our
14 suppliers, and -- and our employees.

15 Q And even if, assuming the accuracy of the survey on
16 Exhibit 4, that we don't -- we rank, you know, last with
17 the suppliers, if we are shutdown, is our reputation with
18 the suppliers in your opinion going to get even worse?

19 A Yes. Yes. I mean they're expecting to ship parts and if
20 we're down, then they're not -- you know, they can't ship
21 parts in, make revenue, so it's impacting their operations
22 as well.

23 Q And I take it from that would it impact -- impact their
24 employees as well?

25 A That's right.

1 Q And I know you -- I used supplier broadly, would that
2 apply to what we might call tier 1 and tier 2 suppliers?

3 A Yes.

4 Q Does it -- does it trickle or expand beyond simply the
5 tier 1s?

6 A Yes, so we have approximately 17, you know, just-in-time
7 suppliers for each plant, so it shuts them down, it shuts
8 our tier 1 suppliers down, potentially their tier
9 suppliers, all the way through the supply chain.

10 Q And the Court --

11 THE COURT: Okay. So hold on.

12 MR. BARGER: Yes, Your Honor; sorry.

13 THE COURT: So you have two, three thousand
14 employees per plant, there's 17 plants; did these go on
15 every vehicle?

16 THE WITNESS: They go into -- these parts go
17 into 17 of our 18 plants.

18 THE COURT: I know they go into 17 out of 18
19 plants. Do they go into all the vehicles?

20 THE WITNESS: I believe it's every vehicle in
21 those plants.

22 THE COURT: Okay. And then with regard to --
23 you have the tier 1s and the tier 2s that would also be
24 shutdown --

25 THE WITNESS: Yes.

1 THE COURT: -- and then you said you have 17
2 just-in-time suppliers for each plant.

3 THE WITNESS: Yes.

4 THE COURT: And then what -- the other suppliers
5 are how many?

6 THE WITNESS: Well, thousands of other --

7 THE COURT: Suppliers, not just your just-in-
8 time suppliers.

9 THE WITNESS: Other suppliers supplying into our
10 plants is thousands. I don't have the precise number, but
11 it's thousands.

12 MR. BARGER: Your Honor, may I proceed?

13 THE COURT: Yes, please.

14 MR. BARGER: Thank you, Your Honor.

15 BY MR. BARGER:

16 Q There were some questions or colloquy by the Court with
17 defense counsel about -- about EDI. What is EDI, as you
18 understand it?

19 A EDI is Electronic Data Interchange.

20 Q If you look at the Defendants' exhibits that are loose,
21 you should have one that'll say Exhibit 2?

22 A Yes, I do.

23 Q And I know it's typed out. From your review of that, does
24 that appear to you to be -- and you've heard Mr. Mahaffy
25 testify -- the EDI information in connection with KAMAX?

1 A It appears to be, yes, but, you know, I would like to add
2 that when we send our purchase order to a supplier via
3 EDI, each supplier, you know, depending on how they
4 extract it from their EDI, their system might look a bit
5 different, so --

6 Q Okay.

7 A -- I have not seen this before. This is specific to
8 KAMAX.

9 Q And when you say this, meaning the typed out in this
10 format.

11 A That's right, yes.

12 Q As you understand it, is the information that is
13 transmitted to KAMAX in EDI, is it the same information
14 that is on their proposed Exhibit 1, that we haven't put
15 into evidence yet, but it's -- it's the PO that Mr.
16 Mahaffy said he hadn't seen that format before?

17 A Yes, that's correct. So the -- the key information in the
18 purchase order goes via EDI to suppliers. It may look a
19 little different, right, this form versus this form, but
20 my understanding is it's the same information.

21 Q In your years with dealing with KAMAX, have you ever had
22 Mr. Mahaffy or anybody else at KAMAX complain that they
23 didn't understand or couldn't decipher or couldn't read
24 the EDI information?

25 A Not to my knowledge.

1 Q Or complained they didn't understand the quantities of
2 parts that were being asked for in the EDI information?

3 A Not to my knowledge, no.

4 Q There was testimony by Mr. Mahaffy about the fact that
5 KAMAX is asking for approximately \$4 million in increased
6 prices for them. I'm not going to get into the
7 discussions you and he have had. Well, there -- you've
8 had discussions while this case has been pending, correct?

9 A Yes.

10 Q And I'm not going to get into the substance, but an effort
11 to see if you all could resolve your --

12 A Yes, we have.

13 Q Okay.

14 Have you done any analysis of their proposed
15 price increases to determine from FCA's standpoint whether
16 what he contends is about 4 million is accurate from what
17 your analysis has been?

18 A Yes, we have.

19 Q And what have you concluded?

20 A Well, looking at the price increases, they range from 5
21 percent to 800 percent, one even was I believe 35,000
22 percent, which is just exorbitant as a percentage of the
23 -- the piece price increase, and -- and there has been no
24 data provided to support that level of an increase. So to
25 me it is -- it is just totally exorbitant, those

1 percentages.

2 Q Are you aware of the accommodation agreement that's been
3 referenced here?

4 A I am. I -- I signed the document.

5 Q Okay. And what -- what's your understanding of what
6 parts, if any, KAMAX was asking FCA to resource?

7 A So in the June timeframe in 2023, this is when, you know,
8 we became -- we started to see signals that KAMAX was
9 struggling operationally, and they have -- they have, you
10 know, indicated that to us, and they came to us asking --
11 well, actually not asking, demanding, rather, in a letter,
12 that we resource a set of parts, approximately 60 of their
13 parts, or they would -- they would no longer ship them.

14 Q Okay. And I've said 40, so I -- obviously, I remembered
15 incorrectly. Your understanding is approximately 60 parts
16 to be resourced as -- to a different supplier?

17 A That's correct.

18 Q And what was your understanding from KAMAX why they wanted
19 you to do that?

20 A Well, they stated they were not profitable, that, you
21 know, they were causing operational inefficiencies. You
22 know, despite the fact that KAMAX accepted the business on
23 these parts, they just decided that in the June timeframe
24 that they no longer wanted to supply them.

25 Q And as you understood it, were they still obligated to

1 supply them?

2 A Yes.

3 Q Even though you -- you believed them to be obligated, what
4 efforts, if any, has FCA made to honor KAMAX's request to
5 resource some of these what they consider to be less
6 profitable or difficult parts?

7 A Yeah. So when KAMAX came to us and demanding that we
8 resource in 90 days, of -- I mean of course, we cannot
9 resource in 90 days --

10 Q I was going to go there, but --

11 A -- okay?

12 Q -- go ahead, if you want to go there first, that's fine.

13 A So if I can add, I mean these are parts that secure seats
14 to vehicles, right? We have to make sure that we have a
15 capable supplier, we worked through our sourcing process,
16 we worked through our technical evaluation, so -- so when
17 KAMAX approached, I mean look, they've been our partner
18 for 30 years, despite all the accommodations we had
19 provided prior to that, we agreed -- we agreed in that
20 agreement, you know, we will work with you, but we cannot
21 commit to a specific date. So my team did commit to
22 working with them, we've launched source packages, we've
23 started working with suppliers, frankly, we're working as
24 aggressively as we can, but we don't have another supplier
25 that is validated yet.

1 So we have done things to -- to find an
2 alternative, but it takes more time, and so we told KAMAX
3 we would work with them, but we can't commit to a specific
4 date.

5 Q And in -- do you have enough experience in FCA that you
6 have an opinion on approximately how long it would take to
7 resource these kinds of sometimes safety parts?

8 A Yes. It can take up to 18 months. So again, I mean these
9 are not fasteners you can go to Home Depot and pick out of
10 a bin and buy. They're specially engineered, they're
11 safety critical parts, so as a result of that, there's
12 extra validation and testing that's required, just to make
13 sure our vehicles are safe.

14 Q Are you familiar with the November 20th letter that KAMAX
15 sent in this case?

16 A Yes.

17 Q And so when KAMAX essentially said if you don't give me an
18 increase -- another increase, I'm -- I'm stopping
19 deliveries on February 20th, so 90 days, my question is,
20 is 90 days to resource now 180 parts versus the 60 you
21 were working on, is that a realistic timeframe for FCA?

22 A No, it is not.

23 Q Why not? I think you covered it, but why not?

24 A No, I mean again, these are specially engineered
25 fasteners, they're not off-the-shelf parts. Not only

1 that, I mean they -- they require extensive testing and
2 validation to make sure they're safe in our vehicle. We
3 cannot resource in that timeframe.

4 Q You heard Mr. Mahaffy -- I'm trying to go quickly here,
5 and I -- I'm trying to go -- sorry. You heard Mr. Mahaffy
6 testify about the -- the payment terms in the
7 accommodation agreement and that -- and that we never sped
8 up our payment terms.

9 A Yep.

10 Q Do you have any information or knowledge about whether
11 that's accurate or not?

12 A Yes. I believe we did update payment terms. In fact, we
13 have an email, I can't remember who from, KAMAX responded,
14 indicated that -- indicating that they had started
15 receiving these payment term adjustments, so frankly, my
16 team assumed they were done. At no time during this
17 accommodation period, to my knowledge, did anyone from
18 KAMAX reach out to my team to let us know that we had
19 failed to update the payment terms.

20 The first I heard of it was actually just before
21 the TRO hearing and we took immediate action to get the
22 payment terms updated, and again at no point prior to --

23 THE COURT: So then they weren't updated?

24 THE WITNESS: I'm sorry?

25 THE COURT: So then they weren't --

1 THE WITNESS: We had some that were, and we
2 found out due to a system issue some were not, and we
3 immediately corrected it.

4 BY MR. BARGER:

5 Q And do you --

6 MR. BARGER: Sorry, Your Honor; you had a
7 follow-up question?

8 THE COURT: I have a lot of follow-up questions.
9 But I have another hearing I've already
10 adjourned twice --

11 MR. BARGER: Okay.

12 THE COURT: -- today to accommodate you guys,
13 and then I have some meetings, so I -- I need to wrap it
14 up.

15 MR. BARGER: Yes. I need --

16 BY MR. BARGER:

17 Q To follow-up on the Judge's question, what do -- what's
18 your understanding of what percentage of the payment terms
19 had been increased to the net --

20 A My understanding is it was the majority, and again, at no
21 time did KAMAX approach and say hey, you guys failed to do
22 this, so I had assumed it was 100 percent complete.

23 Q Okay.

24 Last topic, just to -- to wrap up.

25 You heard some testimony from Mr. Mahaffy. I

1 asked him some questions about accommodations -- not
2 accommodations -- payment increases that had been made to
3 F -- to KAMAX in 2022 and 2023; can you briefly summarize
4 how much FCA has increased payments to KAMAX as a result
5 of their request to work with them?

6 A Yeah. You know, just briefly, despite that we have a
7 fixed price contract, you know, given the fact that KAMAX
8 has been a partner for 30 years, we have worked with them.
9 In 2022, we paid about \$2.7 million not just for raw
10 material, we're already paying raw material, that's for
11 increases in raw material, so it's a delta above.

12 In '23, we paid further increases of raw
13 material, another 2.2 million. We also paid approximately
14 7.5 percent increases for inflation. So that's about \$2.5
15 million, okay? So we had -- we gave them accommodations
16 in '22. In '23, they approached us again, this was around
17 the time they were having their operational issues, they
18 asked for more, we said okay, you know, they've been a
19 partner for 30 years, we're willing to work with them, we
20 gave them increases.

21 Not even two weeks after we implemented those
22 increases, that's when KAMAX came in with a letter stating
23 hey, if you -- you know, these parts, we need you to
24 resource them in 90 days or we're going to stop shipping,
25 right? So we asked -- we told KAMAX look, we are willing

1 to work with you, but we can't do it in 90 days. We need
2 you to supply these parts. What is it going to take?
3 That's ultimately how we got to the accommodation
4 agreement. KAMAX asked to be paid faster, they asked us
5 not to debit them for logistics costs we were incurred,
6 and we did commit to work in good faith to resource the
7 parts. In exchange, I asked for assurances from KAMAX
8 that they would supply the parts and they would no longer
9 threaten us on stop shipments, and they agreed, and they
10 signed that.

11 After we signed that document, again,
12 approximately two weeks later, that's when we received the
13 letter stating -- now this time it was what we believe is
14 8.9 million, I understand KAMAX believes it's 4, that's
15 when we received a letter that says okay, now I need
16 increases across the board of \$9 million or I'm -- I'm
17 going to stop shipments in 90 days.

18 So for me, it's we've made accommodations, we've
19 tried to be a partner, and it just doesn't stop.

20 Q All right. Let me -- just a couple more quick points.

21 In your dealings with KAMAX let's say from 2022
22 and 2023 to the end of 2023, did Mr. Mahaffy or anybody at
23 KAMAX ever contend to you that KAMAX did not believe it
24 has a requirements contract?

25 A Not to my knowledge, and not to my knowledge in the 30

1 years that we've been doing business together.

2 Q Okay.

3 MR. BARGER: Last housekeeping, Your Honor, I
4 wanted to offer what have in tab 2, which are the purchase
5 orders, which I think have been -- the parties have
6 stipulated to. I just want to make sure I'm making the
7 record. So we'll offer those as Plaintiff's Exhibit G, I
8 believe G.

9 THE COURT: Yeah, G.

10 MR. BARGER: If I can just double check.

11 MR. KILLIPS: Your Honor, our only issue with
12 Exhibit 2 is none of these are in the format that we
13 received them. We don't get documents that look anything
14 like these, but we've already stipulated that the con --
15 the content that we're arguing about today and that is
16 relevant for the preliminary injunction is contained both
17 in this format and in the format that we received, so with
18 that caveat, we don't object.

19 THE COURT: Okay.

20 With regard to your testimony, you indicated
21 that you understood that KAMAX was struggling. How did
22 you come to know that?

23 THE WITNESS: They -- they told us that. So
24 they --

25 THE COURT: Was their performance indicative of

1 that as well?

2 THE WITNESS: Yes, that's when -- you know, in
3 the '23 timeframe, my team started getting involved with
4 our supply chain team, hey, you know, they're struggling
5 to keep up with requirements. They also indicated to us
6 that they were having operational issues at their plants.

7 THE COURT: Okay. So you knew that -- that they
8 were struggling.

9 THE WITNESS: Yes.

10 THE COURT: And so if you continue to push on
11 the issue then with regard to the preliminary injunction,
12 then they could end up going out of business?

13 THE WITNESS: No, I don't believe so.

14 THE COURT: Well, you indicated that they were
15 struggling, right, and you knew that they were having
16 supply issues, you started to partner with them to try to
17 give them some relief --

18 THE WITNESS: But if they're aren't supplying,
19 they aren't making revenue, so I mean all we're simply
20 asking for is for KAMAX to honor the agreement --

21 THE COURT: Which agreement?

22 THE WITNESS: -- that we have.

23 THE COURT: Which agreement?

24 THE WITNESS: The contract that we have to
25 supply parts, and I mean if they're not supplying parts,

1 they're not making money, so to me they should be
2 supplying parts so they can make revenue for their -- for
3 their plant, you know, and their company.

4 THE COURT: Do you know how many people work at
5 the plant?

6 THE WITNESS: KAMAX?

7 THE COURT: Mm-hmm.

8 THE WITNESS: I do not.

9 MR. BARGER: Your Honor, may I ask a follow-up?
10 Sorry; I didn't --

11 THE COURT: Yes, sir.

12 BY MR. BARGER:

13 Q With regard to the Court's question about you had an
14 indication that KAMAX was struggling, does FCA get
15 visibility into sort of the financial health of its
16 suppliers?

17 A We do.

18 Q Generally, how does that process work? Because I
19 understand there's some confidentiality where you don't
20 get --

21 A Yeah.

22 Q -- all access. Can you explain to the Court briefly what
23 that is?

24 A We have a risk management team that handles that process.
25 For suppliers that are privately held, that information is

1 confidential, so that is shared with our select
2 individuals, it's confidential.

3 What I receive is a rating for a supplier, so
4 red, yellow, or green.

5 Q And what have you -- have you seen the rating for KAMAX?

6 A I have. At this plant, I believe it to be red; however,
7 overall, KAMAX, their corporation, I believe is green.

8 Q Okay. And do you have -- have you had visibility into the
9 particular -- the plant you're talking about, the one --
10 is it Lapeer?

11 A Lapeer.

12 Q Lapeer.

13 A Lapeer, I believe, yes.

14 Q Shows -- sorry. It's one word, not two, right? Lapeer.

15 Do you have any visibility into its health over
16 -- over the period of time -- in other words, has it been
17 red the whole time or has it been green then red, and --
18 if you know?

19 A I do recall that it was green. The -- the farthest back I
20 recall is 2017, so it was green, green, green, leading up
21 to I believe that they changed in '22 or '23 and turned to
22 red.

23 Q All right.

24 And if -- if --

25 THE COURT: And that -- that measures only the

1 financial stability?

2 THE WITNESS: Of --

3 THE COURT: What does that measure?

4 THE WITNESS: Of that plant. So there's a set
5 of metrics that we look at within the risk management,
6 looking at financial statements, a number of criteria, but
7 yes, at that plant, and then we also have a -- we call it
8 a parent reading for the corporation of KAMAX, which I
9 believe is green.

10 THE COURT: But in 2022, you noticed it was red?

11 THE WITNESS: I -- I can't recall if it was '22
12 or '23, but yes, around that timeframe.

13 BY MR. BARGER:

14 Q Last question.

15 If the Court grants the preliminary injunction
16 and KAMAX is required to ship, have we -- are we committed
17 to continue to pay them the prices that we'd agreed to?

18 A Yes, and I would like to -- to point out that last year in
19 '23, we gave them an increase for inflation of 7 1/2
20 percent. That is in the piece price today despite
21 inflation is coming --

22 THE COURT: That was across the board --

23 THE WITNESS: -- down.

24 THE COURT: -- right? That was across the board
25 to all of the companies --

1 THE WITNESS: Across the board, and it's -- it's
2 still --

3 THE COURT: Not -- not just KAMAX though?

4 THE WITNESS: No.

5 THE COURT: It was across the board to all the
6 suppliers?

7 THE WITNESS: No.

8 THE COURT: Oh, it's not?

9 THE WITNESS: No.

10 THE COURT: Okay. This was only to KAMAX --

11 THE WITNESS: This was only for KAMAX. And
12 again, it's --

13 THE COURT: 7.5 percent?

14 THE WITNESS: Yes. And it's in the price,
15 despite inflation is coming down, and I have agreed to
16 leave that in price despite frankly I think we should be
17 talking about removing a portion of it now.

18 MR. BARGER: Your Honor, I'm -- I'm sure I
19 missed something, but we are where we are, no more
20 questions.

21 THE COURT: I'm sorry?

22 MR. BARGER: Oh, and Your Honor -- I said I have
23 no more questions. Sorry, I said I'm sure I missed
24 something, but --

25 THE COURT: Oh, okay.

1 MR. BARGER: -- I have no more questions.

2 Can I ask the Court how much time we have left?

3 We do have an additional witness, Ms. Marlo Vitous, who is
4 Ms. Scott's boss can also speak to some of these issues
5 that have been raised by the Court, but I didn't know how
6 much time we have left.

7 THE COURT: You don't have any time left.

8 MR. BARGER: Okay.

9 THE COURT: With regard to -- what's your offer
10 of proof; I'm sorry?

11 MR. BARGER: Ms. Gambino can offer that, and we
12 need to offer their biographies --

13 MS. GAMBINO: Your Honor, we were going to, if
14 we had time, call Ms. Vitous. Ms. Vitous is the senior
15 vice president of procurement for FCA. Ms. Vitous will
16 testify that there is approximately 3,000 -- up -- 3,000
17 people that work at each plant. She will testify that the
18 workers in the plants are unionized. She will testify
19 that the annual car production in terms of what they make
20 is 8,000 cars a day, and that will stop if they don't get
21 parts. She will testify that if -- if KAMAX stopped
22 delivering parts as of Monday, two plants would
23 immediately go down. There would be -- I think this is
24 seven plants would go down by Thursday, and the remaining
25 -- and the remaining plants would fall -- would fall the

1 day after.

2 She would also testify that -- I'm sorry -- that
3 she's worked really hard to bring up the goodwill since
4 she's gotten this position in the last 2 years. That that
5 goodwill index reflects that -- that FCA is really working
6 on actually having better relationships with the
7 suppliers, and if it has to shutdown plants, that will go
8 -- basically fall by the wayside, and they will sink.

9 She will testify that she cannot just simply pay
10 under protest. Here, that's an \$8.7 million check. Doing
11 so -- FCA does not have unlimited resources. She will
12 testify it would have to come out of the production
13 budget, but the cost for the parts is fixed. It would
14 have to come from the labor of which that comes from
15 basically reducing shifts of union laborers that she is
16 not able to do, because she has a UAW agreement which, you
17 know, promises that the workers will get certain shifts.

18 That said, if the plants had to shut down, they
19 have to pay unionized workers for the first day of the
20 shutdown, but all the remaining days those union workers
21 go home, they don't get paid.

22 Second, she will testify that she can't just pay
23 under protest and pass -- as was suggested -- pass the
24 price along to the consumer. She will testify that if she
25 tried to do that, that cars would be completely cost

1 prohibitive. They're already very -- they've already
2 trying to make up market share, which they don't have.
3 You can't -- this was her example -- you can't simply
4 raise a minivan by \$2,000 with their number one
5 competitor, I think it's Hyundai -- Honda Odyssey? Okay.
6 A Honda Odyssey. She's like that is -- that is a prime
7 example of where they can't just pass a cost increase like
8 that, because no one would buy them, and -- and she will
9 testify that essentially, as soon as she pays under
10 protest under the auspices of we don't have a purchase
11 order -- we don't have a purchase order that states a
12 quantity term, literally she has gotten letters saying pay
13 under protest, pay under protest, so the \$8.9 million will
14 easily become tens to hundreds of millions of dollars,
15 because all of her suppliers --

16 THE COURT: I understand.

17 MS. GAMBINO: -- which there's 2,500 have
18 similar language.

19 THE COURT: Thank you.

20 MS. GAMBINO: Thank you, Your Honor.

21 THE COURT: Okay. You can step down, thank you.

22 (At 12:44 p.m., witness excused)

23 MR. KILLIPS: Your Honor, do you have time for
24 any closing, especially on the irreparable harm issue?
25 There's some points there I'd particularly like to --

1 THE COURT: I mean you guys can wait around. I
2 have other meetings and I have other hearings that we can
3 keep pushing off, so if you guys want to --

4 MR. KILLIPS: I'm here as long as you need me,
5 Your Honor.

6 THE COURT: Go off the record, please.

7 (At 12:44 p.m., off the record; no further
8 recording provided.)

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CERTIFICATION

I certify that this transcript, consisting of 153 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine, on Friday, March 15, 2024, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



Deanna L. Harrison, CER 7464
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FCA US, LLC,

Plaintiff,

vs

Case No. 24-205863-CB

KAMAX, INC., and KAMAX MEXICO
S DE RL DE CV,

Defendants.

/

MOTION

BEFORE THE HONORABLE VICTORIA A. VALENTINE

Pontiac, Michigan - Friday, May 17, 2024

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None.

EXHIBITS:

Admitted

None.

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Pontiac, Michigan

Friday, May 17, 2024

- - -

(At 10:18 a.m., proceedings begin)

THE CLERK: Calling case number 2024-205863-CB,
FCA versus KAMAX.

THE COURT: Okay. Good morning, again. Can you
put your appearances on, please?

MS. GAMBINO: Sure. Michelle Gambino for FCA
US, LLC.

MR. BARGER: David Barger for FCA as well, Your
Honor. Good morning.

MR. KING: Stephen King on behalf of FCA. Good
morning.

THE COURT: One more time.

MR. KING: Stephen King on behalf of FCA.

THE COURT: Thank you.

MR. KILLIPS: Sorry about that, Mr. King.
Your Honor, Jason Killips on behalf of KAMAX,
Inc.

MR. STRUBLE: Good morning, Your Honor. Chris
Struble for KAMAX, Inc.

THE COURT: Okay. Then party representatives,
state your names, please.

MR. KILLIPS: Mr. Mahaffey, that would be you.

1 MR. MAHAFFEY: Mark Mahaffey, KAMAX, Inc.

2 MS. GAMBINO: Stephanie, go ahead.

3 MS. SCOTT: And Stephanie Scott, FCA.

4 MS. GAMBINO: And Jeff.

5 MR. MIES: Good morning. This is Jeff Mies, in-
6 house attorney for Stellantis, FCA.

7 THE COURT: Thank you.

8 Okay. Go ahead with the agreement, please.

9 MS. GAMBINO: Jason, do you want me to do it or
10 you?

11 MR. KILLIPS: Either one. You're the Plaintiff,
12 go ahead.

13 MS. GAMBINO: Okay.

14 Your Honor, we have agreed -- rather than having
15 the Court need to set a specific bond, the parties have
16 agreed that to the extent that KAMAX recovers a judgment
17 in this case, that FCA US, LLC will -- will pay for the
18 final judgment issued in KAMAX's behalf.

19 I probably could have said that a little better,
20 but I tried.

21 MR. KILLIPS: And I think the additional
22 clarification here, Your Honor, is simply that there --
23 there is some I think somewhat unclear case law from the
24 Michigan Court of Appeals suggesting that a -- a defendant
25 who was enjoined may have its damages limited by the

1 amount of any injunction bond, and we simply wanted to
2 make clear that in lieu of requiring a judgment bond or a
3 injunction bond from FCA, FCA is going to agree that there
4 is no limit on the damages that we recover, if in fact we
5 do recover and prove our case and damages at the
6 resolution of this case.

7 THE COURT: Okay. And both parties have the
8 authority to enter into this agreement?

9 MS. GAMBINO: Yes, Your Honor.

10 MR. KILLIPS: Yes, Your Honor.

11 THE COURT: Okay. And then you'll submit an
12 order with regard to the bond motion.

13 MS. GAMBINO: Yes.

14 MR. KILLIPS: We will, Your Honor.

15 MS. GAMBINO: It'll be better worded.

16 THE COURT: Thank you.

17 With regard to the motion for summary
18 disposition.

19 MS. GAMBINO: Yes, Your Honor. We're ready to
20 proceed, if Jason is.

21 MR. KILLIPS: I am, Your Honor.

22 THE COURT: Okay. Go ahead, please.

23 MR. KILLIPS: So, Your Honor, I know you will
24 have read all of the papers in this case, so I don't need
25 to go into all of that in great detail.

1 I really want to start by addressing the
2 Cadillac Rubber issue.

3 This Court must make a determination whether
4 Cadillac Rubber and Airboss conflict, and if so, which
5 controls. And I know I said must there; the must doesn't
6 come from me, that comes from the Michigan Court of
7 Appeals, first in that Michigan Millers Mutual Insurance
8 Company case that we cite in our briefing, that discussed
9 what the trial courts, and I'm quoting, are required to do
10 when facing these sorts of conflicts, and then also from
11 the Michigan Court of Appeals in the Woodring case, and
12 that case holds that when a Michigan Supreme case, an
13 opinion conflicts with a Michigan Court of Appeals
14 opinion, the courts may not follow the Michigan Court of
15 Appeals case.

16 So this determination does need to be made of
17 whether there is a conflict and which one controls.

18 The -- the which case controls I think is an
19 easy question. Airboss is from the superior court, and
20 more recent, so I think there's no question that if there
21 is a conflict, Airboss wins.

22 As to whether there is a conflict, I think there
23 is, and here's where it comes from. Airboss held that
24 there must be -- or to have an enforceable requirements
25 contract, the quantity term must be for a precise set

1 share of the buyer's needs.

2 Now if you look at the Cadillac Rubber contract,
3 that contract, and there would be some ellipses in here,
4 but what it says is the buyer shall purchase no less than
5 one piece of each of the supplies, and no more than 100
6 percent of buyer's requirements for the supplies.

7 Now really, that's a contract for at least one
8 part. The buyer has no obligation to purchase any set
9 share of its needs from the seller, so that's not an
10 enforceable requirements contract under Airboss, yet the
11 Michigan Court of Appeals, in Cadillac Rubber, said that
12 it was an enforceable requirements contract, that's the
13 conflict between the two cases, is how they would have
14 resolved language like that. And as -- for the reasons
15 that we said, Airboss controls in the case of that
16 conflict, and this Court should not follow Cadillac
17 Rubber.

18 Now the purpose of that precise set share
19 requirement from Airboss is the same purpose that the
20 quantity term serves generally in all contracts for the
21 sale of goods. It serves as a measurement of the party's
22 performance, right? That's why the quantity term, as
23 Michigan courts have recognized for decades, is the one
24 essential term in a contract for the sale of goods
25 governed by the Uniform Commercial Code.

1 And we can see this just by taking the example
2 of a fixed quantity contract, right? Imagine that the
3 buyer needs 1,000 widgets. Well, we can easily look then
4 to see if the buyer bought 1,000 widgets from the seller,
5 or the seller delivered 1,000 widgets, and we can tell
6 whether each party did what it had agreed to do. So it
7 makes measurement of performance easy.

8 The same is true with a precise set share. So
9 expand the example a little bit, let's say this is a 75
10 percent requirements contract, and let's say that the
11 buyer again needs 1,000 widgets. Well, it's pretty easy
12 to determine that the buyer needs to buy 750, and the
13 seller needs to deliver 750, and you can easily tell
14 whether each of them did what they were supposed to do.

15 This is where the contracts at issue in this
16 case fall short of what the Airboss court required. Based
17 on FCA's briefing, I think we all agree what the contract
18 says and what it means. It mean that if FCA needed 1,000
19 parts, continuing that example, FCA would say well it must
20 buy at least 650 of them from KAMAX. Well, but we know
21 this isn't a 65 percent requirements contract, which that
22 sort of looks like, but we know it's not that for two
23 reasons. One, plainly, the contract doesn't say so, it
24 includes this to 100 percent range, that this Court would
25 actually have to read out of the contract to interpret

1 this as a 65 percent requirements contract. But we also
2 know it's not a 65 percent requirements contract, because
3 FCA doesn't want it to be, and never intended it to be.

4 You'll see nowhere in its brief does it say that
5 this is a 65 percent requirements contract, and I think
6 it's pretty obvious that FCA doesn't want it to be that,
7 because FCA wants and needs all the parts that it needs
8 from KAMAX.

9 And by the way, it's -- this is also not a 100
10 percent requirements contract for the very same reason;
11 you'd have to ignore other parts of the contract, the 65
12 percent number, for example, to interpret this as a 100
13 percent requirements contract.

14 So what are these contracts? I think you need
15 to take FCA at its word. It's a contract that obligates,
16 by its plain language, FCA to buy at least 65 percent of
17 what it needs from KAMAX, but under which FCA could
18 purchase more if it wants to, and that KAMAX must deliver
19 all the parts that FCA orders.

20 But it's that last part that is really important
21 here, because it means that KAMAX's obligation to deliver
22 is not tied, or to use the language of Section 2306 of the
23 Uniform Commercial Code, it's not measured by FCA's needs.
24 It's measured by what FCA chooses to order.

25 And there is -- to be clear, there is no

1 ambiguity about any of this. This is what the plain
2 language says, and this is what FCA says in its briefing
3 that these contracts mean.

4 This contract then looks a lot like those in
5 Advanced Plastics or Ultra Manufacturing. Both of those
6 cases featured contracts that had sort of requirements
7 like language, but in which the seller's obligation to
8 deliver was really measured by how much the buyer chose to
9 order, not by any set share of the buyer's requirements,
10 and in both of those cases, the courts held that those
11 were not requirements contracts. The same is true here.

12 Really, this looks the most, I think, like the
13 Ultra Manufacturing contract, and like that decision.
14 Ultra Manufacturing, the contract said it covered some
15 portion or all of buyer's requirements. So we know that
16 the buyer had to buy something, but anything above that
17 something was at the buyer's choice, and Judge Steeh, I
18 think wisely ruled that that was not a requirements
19 contract, but a release-by-release contract. This case
20 tracks that, I think, pretty darn closely.

21 So all this means that these are release-by-
22 release contracts. As the Court's, I think, well aware at
23 this point, KAMAX rejected any future releases many months
24 ago; I think it gave notice of that on -- back in November
25 of 2023, and that it would not accept anymore releases

1 after February of 2023 -- or 2024, excuse me.

2 So that means that KAMAX's contractual
3 obligations to deliver parts to FCA have simply expired,
4 and they expired months ago. All of FCA's claims depend
5 on these being ongoing requirements contracts. So since
6 these are not ongoing requirements contracts, all of FCA's
7 claims must fail.

8 That also means that there is no further basis
9 for this injunction. The injunction should be dissolved.
10 And it also mean -- means that KAMAX prevails on its
11 claims. The only real defense that FCA raises to FCA's
12 or, excuse me, to KAMAX's claims, is that there is an
13 enforceable contract here. Well, if there isn't, that
14 defense goes away as well.

15 So, Your Honor, look, I'd -- I'd much rather
16 talk with you about the questions that you have or the
17 things that interest you here, so I'm happy to answer any
18 questions, but otherwise, we ask that our motion for
19 summary disposition be granted.

20 THE COURT: Thank you.

21 Ms. Gambino?

22 MS. GAMBINO: Your Honor, we ask for the exact
23 opposite. We believe the motion should be denied. I
24 think it's pretty straightforward.

25 I want to kind of address Mr. Killips' points as

1 he brought them up, and then I -- I have two slides I
2 think -- I'm a visual person, so if the Court would let me
3 share the screen when it's appropriate, I'll ask the Court
4 to indulge me on that.

5 One, let me reframe this. Mr. Killips started
6 out and said this is really Cadillac Rubber versus
7 Airboss, and the Court is asked to reconcile the two of
8 them. No, you don't have to do that, Your Honor. You
9 don't have to do that at all, because the footnote in the
10 Airboss case is footnote four, and what Airboss -- what
11 the Michigan Supreme Court says is that Airboss has asked
12 it to reconcile and/or overrule Cadillac Rubber as it
13 relates to another case, which is the Acemco case. I'm
14 probably slaughtering that name, so apologies, I can give
15 the Court the cite, if the Court needs it. That's what
16 the Supreme Court said is the issue, can I reconcile
17 Cadillac Rubber with Acemco. It didn't say can I -- can I
18 reconcile this holding with Cadillac Rubber.

19 Airboss stands for the very unremarkable, truly
20 unremarkable, what we all learned in contracts class as we
21 were in law school, you can't have a bargain that's one-
22 sided, you have to have a person agree and a UCC contract
23 to buy something. A blanket order is vague. No one knows
24 what that means, there's no number associated with it, you
25 can't find an integer in it. That's what the court

1 decided. Nothing more, nothing less. And the Michigan
2 Supreme Court, let's not be fools here, if they wanted to
3 reverse Cadillac Rubber, they could have done it. In
4 fact, they note that they were asked to do it. And did
5 they do it? They chose not to. They instead reversed
6 Great -- Great Northern. So they know how to do it, and
7 so if they thought that a range didn't suffice, they could
8 have said that. They didn't, and they -- and they don't
9 have to. Why? Because a range does suffice. A
10 mathematical range is exactly what a quantity is. They're
11 both finite numbers.

12 Now, the big difference is -- Mr. Killips says
13 well, it's not really fair, because then my supplier
14 doesn't exactly know, is it going to be 65 percent, 85
15 percent, or 100? Well then the answer to that is the fact
16 of -- that it may not be fair or the supplier doesn't like
17 the range, the answer is so simple. They don't agree to
18 the purchase order when it's sent to you. You have the
19 choice, supplier, to say I don't want to work in that
20 range. For instance, if -- if a supplier says I don't
21 feel -- the range, like it is in Cadillac Rubber, is 1 to
22 100 percent of all parts, if the supplier doesn't want to
23 agree to that, they don't have to, but that doesn't make
24 the range not a quantity term, right?

25 Here, if it -- KAMAX did not want to agree to

1 the 65 to 100 percent, which it can -- it can do the math,
2 oh, that means either say 65,000 parts or 100,000 parts,
3 I'm good for that, I'm happy to provide somewhere in that
4 range, because I know my profit margin will be X, they can
5 do that. That's a choice. But that doesn't negate what
6 the range is, which is a quantity term.

7 And so don't -- respectfully, Your Honor, don't
8 go down the rabbit trail of -- of what Mr. Killips is
9 asking you to do, which is overrule Cadillac Rubber and
10 the Court of Appeals. The Michigan Supreme Court did not
11 do that, and I strongly ask the Court not to do the same.

12 Your Honor, if I can share my screen, if that
13 would be okay? Sometimes I think that's helpful.

14 THE COURT: Go ahead, please, and allow share
15 screen.

16 MS. GAMBINO: Thank you.

17 Can the Court see the PowerPoint?

18 THE COURT: Yes.

19 MS. GAMBINO: Okay.

20 So, Your Honor, I'm very visual in terms of like
21 putting it in simple terms. I think in simple terms --
22 and so I -- I tried to do that here.

23 Is it a quantity term? Yes. The plain language
24 obligates FCA to do something. What is that? To buy at
25 least 65 percent and up to 100 percent from this supplier.

1 That is different than Airboss that relates to solely a
2 blanket order, which is too vague to -- to know exactly
3 what is being asked of, of the supplier.

4 The Ultra case that Mr. Killips likes out of the
5 Eastern District, which is again, not binding on this
6 Court, does the same thing; it says some portion. Well,
7 we don't have that language here. We have 65 percent to
8 100 percent of our requirements. They know that that
9 requirement number is going to be, and they can find --
10 they can literally do the math, even though I probably
11 can't, they can do the math, because they're more
12 sophisticated, and distill that range into numbers.

13 So that is a mathematical term, that is a
14 quantity term. Cadillac Rubber said it was, and -- and
15 you don't have to believe me, Your Honor. Mr. Killips has
16 not come before the Court with any other case that says a
17 mathematical range does not suffice under the UCC as a
18 quantity term. He has come forward with no cases from any
19 other jurisdiction that found that.

20 In fact, the case law says outside of Michigan,
21 ranges do suffice, and I think we put that in our brief,
22 Second Circuit case, another case out of Connecticut
23 speaks to why it is a range. I found that very
24 instructive when I was learning about the requirements
25 contracts.

1 And then last, look at the way the law, Your
2 Honor, is going. There is -- there is law right now out
3 of the Dayco case, out of the Higuchi versus Autoliv case
4 that just went up to the Second Circuit, where courts have
5 found that just the language of our requirements, this
6 order is for our requirements; that suffices.

7 So our language, which I have on the screen, is
8 even more specific than those last two words of our order,
9 and so if those last two words, our requirements, suffice,
10 this must too, because this is even more specific.

11 So what did Airboss -- what did it have to do
12 with this? Nothing. This is not a blanket purchase
13 order. Airboss did not stand for the proposition that
14 there's a one-size-fits-all quantity term. What Airboss
15 said -- and I went through the entire opinion -- it says
16 set share once. In this entire opinion, Airboss said a
17 set share once. It also said a quantity term can be all,
18 some portion, a portion of the buyer's needs, a fixed sum;
19 it gave many examples of what would suffice. That is what
20 the court wanted to see on a purchase order, and that is
21 what exists on ours.

22 And then, Your Honor, finally we go into the
23 approximately. I haven't heard Mr. Killips argue that, so
24 I won't even focus on that.

25 The -- the Acemco case, which is what Cadillac

1 Rubber -- what Airboss called out and said I -- I might
2 need to at some point reconcile Cadillac Rubber with this
3 case, that one is so easily distinguishable. That case
4 literally said hey, I might buy -- I might purchase
5 something from you, if I choose to do so, and send you a
6 release. That is not what we have here. Cadillac Rubber
7 was I will buy 1 to 100, that was, I, buyer, am doing
8 something affirmative for you, you know how many. We are
9 doing the same thing in this case, 65 to 100 percent.

10 So the Acemco case, I -- I truthfully believe,
11 if we were going on the esoteric exercise of seeing if we
12 can, you know, reconcile those cases, they can easily be
13 so. They're very, very different.

14 And then last is the mutuality issue that Mr.
15 Killips likes, which is, you know, hey, it's not fair, our
16 obligations -- you know, you might be thinking 65, and I'm
17 not sure, my supplier might be thinking 75. Again, it
18 goes back to if there is a need for clarity, if that
19 supplier only wants to supply a fixed sum, then it should
20 reject the purchase order. That did not happen here.

21 The mutuality is -- is, in fact, present in this
22 case, because they accepted the mathematical range.

23 And -- Mr. King --

24 THE COURT: I'm getting some feedback.

25 MS. GAMBINO: Yeah.

1 THE COURT: Someone's not -- Mr. King, sir,
2 you're not muted. Go ahead.

3 MS. GAMBINO: Your Honor, thank you.

4 So, Your Honor, there is mutuality. What --
5 what -- you know, and I cited a case, which is this
6 Toussaint versus Blue Cross, and that says mutuality is
7 present when there's consideration present. So even if
8 Mr. Killips is right, and this is just in his mind 65
9 percent or 100 percent, consideration exists. It exists,
10 because it is a quantity term that they accepted.

11 So respectfully, Your Honor, and I can -- the
12 last slide is this; it is 100 percent -- I could say that
13 and be a little facetious with the percentages. It's 100
14 percent of requirements contract here. It is without
15 question. And why? You don't have to go and make it be
16 -- you know, make new law. It's because the Court of
17 Appeals in Cadillac Rubber said ranges suffice. That's
18 what the Court has today. Judge Warren recently looked at
19 the same issue. He said in a very comical, fun opinion
20 that Cadillac Rubber is still the law of the land with a
21 lot of Monty Python weaved into it, but he said it's still
22 the law of the land, and he's correct, and this Court
23 should not disregard it, especially when the Supreme Court
24 was not willing to do so.

25 And so the last question is this. Mr. Killips

1 is right, I do agree that because it's a requirements
2 contract, the economic loss rule will bar any of his tort
3 claims. However, to the extent the Court disagrees with
4 me, then we have fact questions tied to the conversion.
5 What -- what is it? To have conversion, I have to have a
6 wrongful taking. Mr. Killips is arguing for his client
7 that the injunction constitutes a wrongful taking, even
8 though we are lawfully allowed to ask the Court to
9 intervene in equity.

10 So as a matter of law, I think that's a wrong
11 use of the tort by using basically the Court to perform
12 the tort. I think that's novel, and I think that -- you
13 know, that claim will fail on its face, but separately,
14 Mr. Mahaffey, if the Court remembers, testified in front
15 of Your Honor and said I'm willing to provide this as long
16 as you pay me, and Ms. Scott said I'm willing to pay you.
17 So the difference is just the price difference, and so
18 whether it's wrongful or not under conversion is a fact
19 question.

20 And separately, Ms. Scott is going to testify,
21 and we have an affidavit in the record so the Court can
22 see the fact issue, that she went to the court seeking
23 equity relief in the form of an injunction, not to
24 wrongfully take, but in -- in good faith, believing that
25 it is a requirements contract. That alone, that intent is

1 a fact question.

2 Same goes with unjust enrichment. There's going
3 to be a fact question about whether or not they have been
4 unjustly enriched to the extent it's not a requirements
5 contract, because I believe the testimony will play out
6 that the parts that -- that they have been supplying and
7 are getting paid for are actually the market value, if not
8 more than what those parts are worth in the market right
9 now, and so there's going to be no unjust enrichment,
10 because in fact FCA is paying over and above the market
11 price.

12 So, Your Honor, thanks for indulging me so long
13 and letting me share the screen.

14 For the reasons I've stated, I respectfully ask
15 the Court to deny the motion for summary disposition.

16 THE COURT: Thank you.

17 Mr. Killips, anything further?

18 MR. KILLIPS: Yes, Your Honor.

19 So Ms. Gambino said this is really about
20 Cadillac Rubber versus Airboss, or she characterized that
21 as being my position here, and she said the -- you know,
22 you look at footnote 4, the court -- court -- sorry, the
23 Michigan Supreme Court left Cadillac Rubber in place. But
24 what it really said is that it left that issue for another
25 day. That it didn't have to resolve the question of

1 whether Cadillac Rubber remained good law to resolve the
2 question that was before it. But it certainly recognized
3 that that day could come, and I think the day is here
4 coming in a couple of different cases, both before this
5 Court, before Judge Warren, a couple different places,
6 that question is coming up now.

7 Yes, the Michigan Supreme Court reversed Great
8 Northern, because that case directly affected the question
9 that was before the Court about blanket orders. Cadillac
10 Rubber did not, that's why it left it for another day.

11 When Airboss talks about the types of quantity
12 terms that will work, and it talks about all or a portion
13 or some portion, most of the time there, it's -- it's
14 being descriptive, it's not using quotes to say a contract
15 for some portion of the buyer's requirements states a
16 quantity. What it's saying is that you could have a
17 contract that identifies some portion more specifically,
18 75 percent, two-thirds, whatever specific thing you want
19 to do, but it still says you have to have that set share.
20 And the reason you have to do it, it's not that the
21 supplier doesn't like the range, which is how Ms. Gambino
22 put it, it is that under Section 2201 of the Uniform
23 Commercial Code, a contract for the sale of goods, its
24 enforceability is limited by the stated quantity term, so
25 the buyer's obligation to buy also limits the seller's

1 obligation to deliver.

2 That's why this is so important and why that
3 range doesn't make any sense as an enforceable quantity
4 term for a requirements contract, because if -- you know,
5 if FCA needs 1,000 parts, does it have order 650 from
6 KAMAX? Well, maybe under this contract it does. Does it
7 have to order 700 or 750? All of that is left to the
8 buyer's discretion, but any chunk of this that is left to
9 the buyer's discretion also means the contract isn't
10 enforceable for that same chunk.

11 Finally, the -- the last thing I'd like to point
12 the Court's attention to is Ms. Gambino talked about the
13 Dayco case and the Higuchi versus Autoliv case, and says
14 look, those contracts are far less specific than this
15 contract here, because those contracts were for our
16 requirements or buyer's requirements, something like that.
17 I -- I disagree with her characterization though. Our
18 requirements or buyer's requirements means all our
19 requirements, all buyer's requirements. It means 100
20 percent. It's a very specific percentage. So we clearly
21 know there we can convert. You need 1,000 units, we can
22 convert it to an integer. We must therefore deliver 1,000
23 units to you. That's far more specific than a range is.

24 I think I've addressed all the -- everything
25 else in the briefing, Your Honor. If you have any

1 questions, I'm of course happy to answer them, but
2 otherwise, I'll digitally sit down at this point.

3 THE COURT: Okay. I will issue an opinion.

4 MS. GAMBINO: Thank you, Your Honor.

5 MR. KILLIPS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. STRUBLE: Thank you, Judge. Have a good
8 day.

9 THE COURT: You too.

10 MR. BARGER: Thank you, Judge.

11 (At 10:46 a.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 25 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Friday, May 17, 2024, as recorded by the clerk.

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STATE OF MICHIGAN
IN THE COURT OF APPEALS
(On Appeal from the Oakland County Circuit Court)
Court of Appeals Case No. 371234
Case No. 2024-205863-CB

FCA US LLC,

Plaintiff/Counter-Defendant-Appellee

v.

KAMAX Inc.,

Defendant/Counter-Plaintiff-Appellant,

and

KAMAX Mexico S. de R.L. de C.V.,

Defendant.

REMOTE PROCEEDINGS BEFORE:

THE HONORABLE MICHAEL J. KELLY
THE HONORABLE MATTHEW S. ACKERMAN
THE HONERABLE BROCK A. SWARTZLE

DATE TAKEN: MAY 6TH, 2025

TIME: 10:00 a.m. - 10:48 a.m.

TRANSCRIBED BY: JANENE CLEARY, Michigan CSR No. 16359

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THE COURT: -- 71234 FCA US, LLC, versus KAMAX, Inc.

Have you determined who's arguing, and time and that
and...

MR. KILLIPS: Yes, I'm Jason Killips. I'll be arguing
for KAMAX.

MS. FILIPOVICH: Good morning, Your Honor.
Cynthia Filipovich on behalf of (indiscernible).

THE COURT: Okay. Great.

MS. FILIPOVICH: Thank you.

MR. KILLIPS: Begging the Court's indulgence for a
moment while I set up the blind guy's notepad.

THE COURT: Sorry. While -- while you do what? Oh.

MR. KILLIPS: Set up the blind guy's notepad here.

THE COURT: Okay.

MR. KILLIPS: Good morning. And may it please the
Court, Jason Killips on behalf of KAMAX.

Creating a requirements contract is straightforward
and simple if that is what the parties intend to do. You simply
need to write, this contract is for 100 percent of the buyer's
requirements, or 70 percent, or half, or a third. That language
was enforceable before AirBoss. It's enforceable now. But the
if -- the if that is what the parties wanted to do, that's why
we're here.

Because FCA is clear in its briefing that it did not

1 intend a 100 percent requirements contract. It didn't intend a
2 65 percent requirements contract. In fact, it's got an entire
3 brief section. Argument B of its brief the heading is, An
4 Estimated Range Above Zero Constitutes A Valid Quantity Term.
5 So its position is that, one part to 100 percent requirements
6 contract, which really means any amount but nothing, even one
7 peppercorn is enough to create a contract that is enforceable
8 for the buyer's requirements. FCA is wrong. And explain why I
9 want to focus on three points of tho- -- of course I'll take
10 questions on -- on anything this Court wants to ask about.

11 For the three points I want to address, first I want
12 to talk about some vocabulary that The Supreme Court uses that I
13 think is simply helpful in discussing this issue. Then I want
14 to use that to talk about concepts of precise set share, and
15 parol evidence, and precision. And then, finally, wrap up with
16 talking about how these things all work together in practice,
17 and, in particular, with this contract.

18 The vocabulary I wanted to focus on are the terms
19 "specific quantity" and "total quantity," and how those differ
20 from quantity term. And the -- in AirBoss, the Michigan Supreme
21 Court said, these are not synonymous. That's on Page 193.
22 There's a difference between a quantity term, it said, such as
23 all my apples -- to go back to the produce market that I think
24 the Court used so well -- and a precise quantity, meaning a
25 specific number of bushels. That's also on 193. So what the

1 produce market example shows us is that a quantity term refers
2 to that percentage. The all my apples, the 100 percent, the 70
3 percent. But specific and total quantity are used to describe
4 how many bushels of apple I need next week -- that's a spec- --
5 excuse me -- that's a specific quantity, or how many bushels of
6 apples I'm going to need during the life of the contract, you
7 know, the -- this produce season, this vehicle program, whatever
8 the case may be. And, so, those things are -- are different and
9 AirBoss court used them for very specific reasons.

10 Now, the Michigan Supreme Court focused on the
11 quantity term in AirBoss, as it should have, and it held three
12 important things about that quantity term. First it said,
13 that's the only essential term in a contract for the sale of
14 goods. Second it said that, when we're talking about a
15 requirements contract, the quantity term must be a set share of
16 the buyer's requirements. And then, finally, it said that, the
17 contract -- or, sorry, that the quantity term cannot be
18 imprecise.

19 And it didn't make any of this up. This comes out of
20 the -- this is firmly rooted in the Uniform Commercial Code.

21 JUDGE SWARTZLE: Does that mean that you can't have a
22 range, a defined range of quantity in a requirements contract?

23 MR. KILLIPS: I don't think that you can.

24 JUDGE SWARTZLE: Okay.

25 MR. KILLIPS: You know, I think of a requirements

1 contract sort of as a pie chart. All right. So you've got your
2 circle. That's all the requirements that the buyer has. And
3 then you've got a wedge, right? And the wedge is whatever the
4 set share is of the buyer's requirements. And under 2-201 of
5 the Uniform Commercial Code, it's got to be precise, that
6 quantity term. The reason it's got to be precise is, you know,
7 the quantity tells you how many parts the buyer must buy.

8 But then, under Subsection one of 2-201, the -- the
9 final clause, it says, but the contract is not enforceable
10 beyond the quantity of goods shown in the writing. So it's got
11 to be on the face of the contract. And that stated quantity is
12 both the sealing of the buyer's obligation to buy this -- or the
13 floor -- excuse me. This is how many the buyer must buy, but
14 it's also the cap on the seller's obligation to deliver, right?
15 It's not enforceable beyond that quantity.

16 So I'll get to the requirements contracting in just a
17 moment, but to take the simpler example of a fixed quantity PO
18 or contract, if we have a contract for 10 parts, then the buyer
19 must buy 10, and the seller must buy 11, but it's not enf- --
20 I'm sorry. Seller must buy 10 -- goodness. The buyer must buy
21 10, the seller must deliver 10, but the buyer cannot force the
22 seller to deliver an eleventh. Because, under 2-201, that
23 stated quantity of 10, that is the limit of the enforceability
24 of that contract.

25 When we're talking about a requirements contract, then

1 that precision must translate to the set share. That comes both
2 from 2-201 and from 2-306. 2-306 Sub 1 is what defines a
3 requirements contract under the Uniform Commercial Code. And it
4 says it's a term that measures the quantity by the requirements
5 of the buyer. I think the word measure does some important work
6 there, because it talk -- it really talks about a link between
7 however many parts the buyer needs, and how many it must buy,
8 and the seller must deliver. And that link has to be translated
9 into something related to the requirements. So there's got to
10 be that mathematical linkage that a set share provides.

11 JUDGE SWARTZLE: Can we get this from AirBoss, this --
12 this -- this requirement that essentially pushes any range,
13 range, range down to just a single quantity? Is that, you know,
14 we -- we make some inferences from The Supreme Court's re- --
15 ruling in AirBoss, or is there another Michigan case that you're
16 drawing on for that very specific proposition?

17 MR. KILLIPS: I think AirBoss is your best case for
18 that proposition. But when AirBoss was talking about all of
19 this, it wasn't really breaking any new ground. The only really
20 new ground that AirBoss broke was when it was talking about
21 whether blanket is a quantity term. Everything else that it was
22 doing was describing what was really well established Michigan
23 law.

24 You know, Frost estate, I think, provides a great
25 example, right? Frost estate was the all wood soluble case that

1 came out of this court a few decades ago. And the way AirBoss
2 interprets Frost Estate and talks about it, it said, look, it's
3 got a precise set share, it's got a defined quantity term
4 because it uses all. So we know -- we know how big the wedge
5 is. The wedge actually happens to encompass all of the pie in
6 that case. Where it's ambiguous, where we don't know what it's
7 referring to is, what parcel of land we're taking the all wood
8 soluble from. That's okay, because we can use parol evidence to
9 figure out that part of this question. We can use parol
10 evidence to get to the specific or the total quantity, but not
11 that set share. That set share must be precise. And under
12 2-201, it must be shown on the face of the contract.

13 Another good example comes from the Port City case out
14 of Alabama. I normally wouldn't divert down to Alabama for a
15 UCC case, but Frost estate relied on it. And that was the all
16 concrete necessary for -- for the slab. Well, we knew the all,
17 we knew the 100 percent, so we knew the precise size of that pie
18 piece, but we're going to take some parol evidence to figure out
19 what slab the parties were talking about.

20 Same sort of thing here. The produce market example
21 from AirBoss, I think, really kind of highlights this and
22 demonstrates this in the best way, right? It compares two
23 contract provisions. First, there's the contract provision
24 where the produce market says it's going to buy all my apples
25 from orchard X. And the Court said, that's an enforceable

1 requirements contract. Because we know the precise percentage,
2 even though we don't know the total number of bushels that are
3 going to be purchased during the season. However, if we have a
4 contract that calls for a price -- I think it was \$3 a bushel --
5 but doesn't say what percentage the produce market is going to
6 buy from the orchard, now not only do we not know the -- the
7 total, we also don't even know the percentage. And when we
8 don't know the percentage, we don't have a requirements
9 contract.

10 Impracticality in this case, right, we need that
11 precise set share so that we have a link. And thi- -- this link
12 has a practical purpose. It is what allows the parties to know,
13 if the buyer requires this many parts, how many -- what --
14 what's my wedge of that? How many am -- am I obligated to
15 deliver as the seller, how many am I obligated to buy as the
16 buyer. Approximately 65 percent to 100 percent of the buyer's
17 requirements, which is what we have as the quan- -- asserted
18 quantity term here, is doubly imprecise.

19 First it's imprecise because it uses the word
20 approximately. And the only reason you would use the word
21 approximately at the beginning of a purported quantity term is
22 to build imprecision into it. That's what that word is for.
23 But then, also, we've got this range. If you tell me that you
24 are FCA and you have -- you're -- you've got a vehicle program,
25 we don't know at the outset whether it's going to be incredibly

1 successful. Is this going to be the Ram truck, right? The --
2 the pie chart is huge. Is this going to be the Dodge Dart.
3 It's smaller. We don't know, right? But if -- if you've got a
4 range, you also don't even know what the p- -- what the shape of
5 that pie wedge is going to be, right? So you can tell me, I
6 need to build 100,000 vehicles this year. That tells me nothing
7 about how many I have to deliver unless I know what the precise
8 set share is. And a range doesn't get you there.

9 AirBoss was clear, on Page 189, when it was talking
10 about this Court's opinion and interpretation of the contract at
11 issue in AirBoss. It said that the Michigan Court of Appeals
12 had interpreted the word blanket to be intended as an imprecise
13 quantity term. And that was the basis for The Supreme Court to
14 overturn this Court in that -- in that decision, because you
15 can't have an imprecise quantity term.

16 Well, here we have a quantity term that is imprecise
17 in two different ways. It's both the range and it's the precise
18 set share. So this is -- you know, if we -- if the buyer needs
19 100 parts here, we have no idea how many we have to deliver.
20 Because how many we have to deliver term's not on some
21 measurement of the buyer's requirements but on the buyer's
22 discretion. This is not enforceable under AirBoss, it's not
23 enforceable under 2-201, and it's not enforceable under 2-206,
24 at least as for the buyer's requirements. You know, we -- we
25 don't dispute that there's a release by release contract here,

1 but it is not a requirements contract.

2 Unless the Court has further questions, I'll save the
3 rest for rebuttal.

4 THE COURT: No, I don't.

5 MS. FILIPOVICH: Good morning.

6 THE COURT: Morning.

7 MS. FILIPOVICH: Cynthia Filipovich appearing on
8 behalf of the plaintiff/appellee, FCA US LLC. With me today at
9 counsel table is my co-counsel Michelle Gambino from Greenberg
10 Traurig.

11 May it please the Court. Unlike the blanket quantity
12 terms of the agreements in AirBoss, which the Court found
13 obligated the buyer to purchase nothing, the agreements at issue
14 between FCA and KAMAX obligates FCA to purchase, at a minimum,
15 65 percent of its needs. As such, the agreements between FCA
16 and KAMAX demonstrate a real transaction between the parties.
17 Not an illusory promise. And we thereby satisfy the statute of
18 frauds, and that's exactly why we win today.

19 To demonstrate, I'd like to focus on AirBoss
20 initially, and point out four important takeaways. First
21 takeaway, when the Court began its analysis in AirBoss, it
22 looked to Cadillac Rubber. And it said, we agree with Cadillac
23 Rubber that requirements contracts in Michigan need not be
24 exclusive. Right there the Court demonstrated a more relaxed,
25 flexible approach to requirements contracts in Michigan.

1 Number two important takeaway from AirBoss is, the
2 footnote 4 we've heard about. In footnote 4 the Court said, we
3 recognize AirBoss has asked us to overrule Cadillac Rubber. The
4 Court declined to do so. The remainder of that footnote is
5 largely a red herring. And I say that because the Court went on
6 to say, not that we're going to leave any apparent conflict
7 between AirBoss and Cadillac Rubber for another day, instead the
8 Court said, well, we know that Cadillac Rubber says a range is a
9 valid quantity term.

10 And there's some apparent conflict with ACEMCO. And
11 ACEMCO the language was not a range, but the seller agrees to
12 sell to the buyer such quantities of products as the buyer may
13 specify in its purchase orders. That was not a range. That was
14 illusory. It would be illusory under AirBoss. There simply is
15 no conflict, and there certainly is no conflict between AirBoss
16 and Cadillac Rubber.

17 The third important takeaway from AirBoss is that, in
18 addition to not expressly overruling Cadillac Rubber, the Court
19 did not implicitly overrule Cadillac Rubber. And how do we know
20 that? When the Court looked at the blanket purchase orders in
21 AirBoss, it turned its attention back to Cadillac Rubber, and it
22 said, because no such quantity term exists in this case, the
23 requirements contracts violate the statute of frauds. That no
24 such quantity term was the range, the quintessential range, if
25 you will, from Cadillac Rubber, one part to 100 percent of the

1 buyer's needs.

2 The Court could have looked at a -- a definite
3 integer. It didn't. It looked to the range in Cadillac Rubber
4 as the comparator, as the benchmark, if you will, for a valid
5 quantity term. So we know it did not impliedly overrule
6 Cadillac Rubber. It embraced it.

7 And what's the fourth important point, and that is the
8 conclusion in AirBoss. There the Court says, looking at the
9 documents between the parties, quote, no document reflected a
10 number or a portion of parts. And that's important. The Court
11 used the disjunctive or a number, a definite integer, or a
12 portion of parts that the buyer committed to buy from the
13 seller; as such, it was not a requirements contract. And then,
14 the second important point of that conclusion is this, the term
15 blanket is not a quantity term, and we overrule Great Northern
16 to the extent that it conflicts with the holding here today.

17 So we know four things: It agreed with Cadillac
18 Rubber; expanded what requirements contracts are; it did not
19 overrule Cadillac Rubber; it did not impliedly overrule Cadillac
20 Rubber; and it said in its conclusion a set number or a portion
21 of parts. And it went on to expressly overrule Great Northern
22 to the extent that it says, blanket is good enough. So we know
23 the Court of a- -- the Michigan Supreme Court knows how to
24 overrule a case. It could have said, and we overrule Cadillac
25 Rubber to the extent it uses a quantity term. It did not.

1 JUDGE SWARTZLE: So opposing counsel argued that there
2 has to be some precision in the -- the requirements contract
3 with regard to quantity, and we may quibble about how precise
4 is -- is necessary. But I think at the beginning you said, you
5 know, here, at a minimum, 65 percent has to be purchased, but
6 that's not quite right. The language is, this order is for
7 approximately 65 to 100 percent of our requirements. That
8 approximately, how does that word not kind of build in the
9 imprecision that opposing counsel is concerned about.

10 MS. FILIPOVICH: Your Honor, I would draw the Court's
11 attention to the record. It's right in the record. First
12 point, it's right in the record why approximately is not what
13 counsel represented this morning. Approximately modifies the 65
14 to 100 percent. And you don't have to take my word for it.

15 I'm going to draw the Court's attention to FCA's
16 appendix at Pages 055 to 063. It's the declaration of Stephanie
17 Scott. She is the head of chassis and adaptation purchasing for
18 Stellantis North America. There in paragraph 16 and 17 of her
19 declaration, Ms. Scott states -- and this is paragraph 17 -- the
20 use of the word approximately in the purchase order simply
21 modifies the range given to denote FCA will order is between 65
22 percent and 100 percent of its requirements from KAMAX.
23 Paragraph 16 states that, on the face of the purchase order, FCA
24 agrees to purchase, at a minimum, of 65 percent. This is at
25 the -- this is in the record. And, more importantly, KAMAX

1 knows it. These companies have been doing business for decades.
2 They've attempted to extort more money --

3 JUDGE SWARTZLE: Well --

4 MS. FILIPOVICH: -- from time to --

5 JUDGE SWARTZLE: -- I mean, I -- I agree with you that
6 approximately modifies the range, but so does that mean that if
7 KAMAX supplied 63 percent, that that would be sufficient for
8 that year and it would -- it would satisfy the require -- or the
9 contract here because it's -- it's approximately 65 percent?
10 It's only a couple below. Is that what approximately is doing
11 here that there's a little fuzziness around 65? It could be 64,
12 63, but it certainly can't be, for example, 25. Is that what
13 approximately means? Is that what you think it means here?

14 MS. FILIPOVICH: No, Your Honor, it does not mean --

15 JUDGE SWARTZLE: Okay.

16 MS. FILIPOVICH: -- that. It does not mean that from
17 Ms. Scott's declaration. It does not mean that to the custom
18 and usage of the parties for over two decades.

19 JUDGE SWARTZLE: So what does it mean?

20 MS. FILIPOVICH: It means that 65 percent is the
21 floor. And to your point, Judge Swartzle, if FCA only ordered
22 63 percent, they could sue us. We'd be in breach. The floor --
23 we're on the hook. Why we're, FCA, is on the hook for a minimum
24 of 65 percent of its needs, period.

25 THE COURT: Well, approximately is not the best choice

1 of words there; is it?

2 MS. FILIPOVICH: Well, Your Honor, perhaps a different
3 word could have been used. However, first, it's the word that
4 KAMAX agreed to. This is a multibillion dollar conglomerate
5 represented by counsel. It could have negotiated a different
6 deal. It didn't. It agreed to those terms. And --

7 JUDGE SWARTZLE: Well -- and I don't want to -- you
8 know, I -- I don't know how important it is, but I don't think
9 approximately means what -- what you're arguing it means.
10 Because if KAMAX supplied 65 percent, it would be precisely
11 meeting that term. If it met -- or if it provided 67 percent,
12 it would be meeting precisely that range. And, I mean, anything
13 between -- from 65 up to 100 meets that precise term.

14 It's -- there's nothing approximate about 75 percent.
15 It's within that range. Approximately can only mean that KAMAX,
16 during a particular -- particular year, could do something a
17 little less than 65 percent and not be in violation of the
18 contract. But maybe 25 percent is -- you know, is not in good
19 faith and is too far away. I mean, I don't -- I don't see how
20 approximately is not superfluous if it means what you're
21 suggesting it means.

22 MS. FILIPOVICH: I think, Your Honor, if you look at
23 the word approximately as modifying the range 65 to 100 percent.

24 THE COURT: But the range doesn't have to be modified
25 it's a --

1 MS. FILIPOVICH: Corre- --

2 THE COURT: -- range, 65 up.

3 MS. FILIPOVICH: That's correct, Your Honor.

4 THE COURT: So it's not approximate --

5 MS. FILIPOVICH: But the --

6 THE COURT: -- it's within the range. It could be 65.
7 It can be 100. So it's not approximately. I mean, it's just --
8 it's a bad choice of words. As Judge Swartzle said, it's --
9 it's superfluous. It was completely unnecessary to put that
10 word there. Now, whether it affects the outcome of the case is
11 a different question, but I -- I think it's -- it's unarguable
12 that that -- that word doesn't fit there as far as meaning what
13 you are telling us that you think it means.

14 MS. FILIPOVICH: To the extent that the word
15 approximately is there, and to the extent the Court disagrees
16 with the meaning that FCA has stated that it means, and what --
17 what the custom and usage for over decades has shown that it
18 means, the -- the Court -- the Court can look beyond that. It
19 does nothing to invalidate the fact that a range is a valid
20 quantity term, nothing. And --

21 JUDGE SWARTZLE: And I think that's your stronger
22 point, is that a range is -- is a -- is an acceptable quantity.
23 I think the approximately just doesn't -- doesn't carry the
24 weight I think either side is putting on it. I think anybody
25 who reads this understands, all right, if one year they hit, you

1 know, 64.5 percent, okay, good enough, not a -- not a -- not a
2 contract breach. But I think putting -- I think both sides are
3 missing the ball with -- with regard to this -- this adverb.

4 MS. FILIPOVICH: To the extent, Your Honor, that, you
5 know, we're all in agreement that a range is valid, that brings
6 us to my next point. After we look at the va- -- these four
7 important points from AirBoss, that brings us to a point that
8 was raised this morning in the prior case, and that is, because
9 Cadillac Rubber is a published decision issued after 19 --
10 November 1st, 1990. It's a published decision that established
11 a rule of law. What is that rule of law? That a range is a
12 valid quantity term. As such, this Court is bound by MCR 7.215
13 to follow Cadillac Rubber.

14 And we know from the four points noted earlier,
15 AirBoss did not overrule Cadillac Rubber despite point-blank
16 being asked to do so, nor did it modify Cadillac Rubber. And
17 it's only when a published decision issued after November 1990
18 has been overruled or modified by our Supreme Court, or be -- by
19 a special panel that this Court can do what KAMAX is asking you
20 to do this morning. Overrule Cadillac Rubber, this Court
21 cannot.

22 We all know that how this case got here, KAMAX sought
23 a bypass application. It was denied. KAMAX sought leave before
24 this Court. It was denied. It then went to The Supreme Court,
25 and The Supreme Court brought it back to this Court as on leave

1 granted. So, The Supreme Court wants to hear from this Court.
2 And the message to be sent is that Cadillac Rubber set forth a
3 rule of law that is a good rule of law, and we're going to
4 follow it.

5 We know that there is a certified question before The
6 Supreme Court on this very issue in a case called Detroit Diesel
7 versus Martin Rio, but, again, this -- The Supreme Court has
8 clearly signalled it wants to hear from this Court first, and
9 that's the message that must be sent.

10 So you may be asking, well, Ms. Filipovich, why are we
11 here? AirBoss was so clear. Our -- we're bound by 7.215 in the
12 rule of law established by Cadillac Rubber. Why are we here?
13 It's plain and simple. Suppliers like KAMAX want out of the
14 deals they've struck. And, so, they've created this
15 fictionalized conflict in the law between AirBoss and Cadillac
16 Rubber where the law otherwise lives in complete harmony.

17 And think about it for a minute. That has to be the
18 case, because to conclude otherwise means The Supreme Court
19 knowingly being asked to overrule Cadillac Rubber, knowing that
20 Cadillac Rubber established -- the only case that's established
21 the rule of law as to a range in the State of Michigan, just
22 said, you know what, we're going to leave this bad law in the
23 jurisprudence, and, well, let it the chips fall where they may.
24 We know our Supreme Court did not do that. It's an untenable
25 position that cannot be accepted.

1 But to the extent that the Court chooses to entertain
2 KAMAX's position this morning, that a range does not satisfy the
3 statute of frauds, we need to think about the real consequences
4 of that. This is not simply a dispute between two commercial
5 enterprises, this is a dispute that -- strikes at the very heart
6 of the automobile industry. This is the Motor City. It's the
7 bread and butter of this state's economy. It's the number one
8 contributor to the GDP. If this Court was to go against the
9 rule of law established in Cadillac Rubber, it would create
10 complete devastating consequences, not only to the supply chain
11 industry in the -- of the automobile industry, but to
12 manufacturing.

13 If you'll note on footnote 4 of the amicus brief filed
14 by the automobile alliance, it points out that courts have long
15 recognized disruption in the supply manufacturing chain has far
16 reaching consequences. It has far reaching consequences to the
17 person on the line at --

18 THE COURT: You know --

19 MS. FILIPOVICH: -- FCA.

20 THE COURT: -- I don't know that we need to hear --
21 you know, yeah, the law is the law, and --

22 MS. FILIPOVICH: Thank you, Your Honor.

23 THE COURT: -- however we rule on this, if -- what the
24 consequences are shouldn't be contrary to how we review the law
25 in this.

1 MS. FILIPOVICH: Thank you, Judge Kelly. I will move
2 on.

3 To sort of reinforce the point that seems crystal
4 clear this morning, I would just like to turn the Court's
5 attention to the UCC that KAMAX has brought up this morning.
6 The UCC was enacted with three purposes in mind.

7 Number one, to simplify, clarify, and modernize the
8 law. Number two, to permit continued expansion of commercial
9 practices through custom and usage. And, number three, to make
10 uniform Michigan's laws with the laws of the other states. To
11 accept KAMAX'S position turns a blind eye to those very
12 purposes, and it returns us to a single integer quantity that
13 runs afoul of those purposes.

14 Indeed 2-201, which counsel has relied on this
15 morning, in the commentary says, the quantity term, quote, need
16 not be accurately stated, but recovery is limited the amount
17 stated. Then we look to the commentary of 2-306. Reasonable
18 elasticity in the requirements ordered is expressly envisioned,
19 and, quote, any minimum or maximum set by agreement shows a
20 clear limit on the intended elasticity.

21 And I'd like to then show why this discretion, that
22 seems to be so devastating to KAMAX and other suppliers, is
23 equally as fictionalized as this purported conflict in the law.
24 KAMAX has been operating with FCA under these agreements for
25 decades. KAMAX has t its fingertips daily reports as to

1 quantity expectations, et cetera, that FCA is going to need.
2 KAMAX gets monthly forecast reports, and that's in the affidavit
3 of Ms. Scott in our -- in FCA's appendix. So KAMAX knows
4 there's not this, oh, my goodness, what do we need to build?
5 How many widgets do we need to have on the shelf? Not so. And
6 what KAMAX is actually asking this Court to do is, look at the
7 sufficiency of the consideration. This range is not a
8 sufficient consideration to show a mutuality of obligation.

9 This, we know from General Motors' Department of
10 Natural Resources, the Court cannot do. It's a fictionalized
11 conflict in the law just as it's a fictionalized unknowing as to
12 this, quote, unfettered discretion. KAMAX is a multibillion
13 dollar corporation. It knew exactly what it was agreeing to
14 when it entered into this contract. It could have negotiated a
15 different deal. It didn't. And this Court cannot do it for
16 KAMAX.

17 I'll return the Court to AirBoss where, at .196, the
18 Court said, and although parol evidence can be used to determine
19 the specific total of an imprecise quantity and requirements of
20 output contract under the UCC, it cannot be used to determine
21 the existence of the quantity term itself. Here there is a
22 valid quantity term expressed in a range that follows the rule
23 of law in Cadillac Rubber. AirBoss declined to overrule
24 Cadillac Rubber. This Court is bound by 7.215 from overruling
25 Cadillac Rubber. And unless the Court has any questions, we

1 rest on our brief, and we ask that you res- -- that you affirm
2 the trial court.

3 THE COURT: No. Thank you very much.

4 MS. FILIPOVICH: Thank you, Judge Kelly. Thank you.

5 MR. KILLIPS: Well, I'd like to start with this issue
6 of 7.215 and whether this Court can overrule Cadillac Rubber.
7 Clearly can. As this court held in the Woodring (phonetic)
8 case -- it's in our brief, it's from 2018 -- that this Court,
9 speaking about the Michigan Court of Appeals, may not follow any
10 opinion previously decided by this Court no matter when, to the
11 extent that opinion conflicts with binding precedent from our
12 Supreme Court.

13 Kennedy from 2015 said the same thing in a conflict
14 between a Michigan Supreme Court decision and a Michigan Court
15 of Appeals decision you've got to follow the Supreme Court.
16 Murray Trust from 2013 says that's a principle of starry
17 discitis. So certainly this Court is not bound by AirBoss if it
18 agrees with KAMAX'S position that AirBoss is in conflict with
19 Cadillac Rubber, and that conflict cannot be reconciled.

20 The concern with a range being a valid quantity term,
21 which I know Ju- -- Judge Swartzle, you brought up, is that,
22 even if it is, it's only got to be enforceable at the bottom
23 end, right? If I promise my kid, I'm going to give you 5 to \$10
24 for mowing the lawn depending on how good a job you do -- this
25 isn't a hypothetical, I did this this weekend -- he can't be

1 upset with me if I only give him the five bucks, right? That's
2 all I promised to do.

3 JUDGE SWARTZLE: That's a tricky lawyer trick to pull
4 on your son.

5 MR. KILLIPS: You ought to hear some of his counter
6 arguments. He's -- he's getting pretty good at them. He may
7 end up here in about 10 years. We'll have to see. But, you
8 know, he can't be upset with that. And, similarly, if -- if
9 FCA's obligation were to pur- -- purchase 65 percent, then under
10 2-201 that is also the cap on KAMAX'S obligation to deliver,
11 it's got to be that 65 percent.

12 But that's not actually what FCA is arguing for here.
13 What it is saying is that if we agree to buy something -- sure,
14 right now it's 65 percent is what it's saying, but in it's brief
15 it's clear. If we promise you a peppercorn, you're obligated to
16 deliver everything that we could possibly ask for. In other
17 words, the buyer's obligation is minimal while the seller's
18 obligation is maximal, or as the suppliers amicus brief said,
19 FCA wants KAMAX to be married while FCA is free to date.

20 JUDGE SWARTZLE: Well, I mean, if -- if this contract
21 was similar to the one in Cadillac Rubber, which was one to, you
22 know, all, then I can see your point. But, I mean, it seems
23 like fairly consistently this language about approximately 65 to
24 100 percent is used, and I just don't think the adjective
25 approximately really does anything. I mean, your -- your issue

1 is with the range. Whether it's a little fuzzy at the bottom or
2 not, you don't like the range, and you want a precise quantity.
3 But -- so, you know, this -- this idea that while, you know, the
4 peppercorn or the one would be -- would be upheld, and that's
5 Cadillac Rubber, but that's not the facts in this case. It's 65
6 to 100.

7 MR. KILLIPS: Well, but there is nothing in the UCC
8 that distinguishes between either of those things. A 10 percent
9 requirements contract would be enforceable for --

10 JUDGE SWARTZLE: I'm just --

11 MR. KILLIPS: -- 10 percent.

12 JUDGE SWARTZLE: I'm suggesting, this case --

13 MR. KILLIPS: Yes.

14 JUDGE SWARTZLE: -- they're not asking you -- they're
15 not telling you one to everything, they're telling you 65 to
16 100.

17 MR. KILLIPS: And even if they are, then at a mi- --
18 that -- all that could be enforceable for them is the 65
19 percent, but I don't think you can actually get to that 65
20 percent. Because to do that, you have to ignore other language
21 that they wrote into their asserted quantity term. You have to
22 ignore the up to 100 percent. You have to read that out of the
23 contract and interpret it to be mere surplusage, right? And we
24 have a canon of interpretation that says we don't do that,
25 particularly when that's a position that FCA is not arguing for

1 here. You know, they keep coming back to the question of
2 whether there's a real transaction here, right? Whether there
3 is consideration here. That's not the issue. Because what --
4 the question is whether this is a requirements contract or a
5 release by release contract. Both contract structures are
6 enforceable. Both are supported by consideration. There's a
7 mutual obligation. There's mutuality of obligation under both
8 things. That's not a distinction between the two. What The
9 Supreme Court said is, the distinction between the two is the
10 level of mutual obligation. And this is where we get to the
11 point that, you know, if you're having a requirements contract,
12 okay, the buyer must buy at a particular level, 100 percent, 70
13 percent, whatever it is, but that level then matches the
14 seller's obligation to deliver.

15 This goes back to the point of precision, right?
16 Release by release, the obligations are down here. You're
17 trading vulnerability for flexibility, right? The Supreme Court
18 didn't make this up, right? It -- it cr- -- it used the term
19 release by release for the first time, but it got this from at
20 least Advanced Plastics, which was from the mid '90s, right?
21 This principle has been around a long time that you can simply
22 have a blanket agreement and contract on a release by release
23 basis. And from a course of performance standpoint, I mean,
24 first, I don't think that you can consider course of performance
25 to create a requirements contract, because that's parol

1 evidence. That's not shown in the writing as 2-201 requires.
2 But even if you look at the course of performance, there is no
3 difference between the course of performance under a 100 percent
4 requirements contract and the course of performance under a
5 release by release contract where the buyer, in every instance,
6 chooses to issue a release to the seller, and the seller accepts
7 it and performs. You can't look at those two and say, well,
8 obviously, the seller agreed with the buyer's interpretation of
9 the contract. Simply not true.

10 You know, we look at that as ACEMCO language that
11 Ms. Filipovich brought up. The holding in ACEMCO is that any
12 quantity is no quantity at all. Well, here we're really looking
13 at any quantity but zero, or any quantity within a particular
14 range, but there's no meaningful difference between those and
15 the holding in ACEMCO that any quantity is no quantity at all.
16 We simply don't have a quantity term here unless and until FCA
17 issues a release.

18 That's the flexibility FCA wants. It says so in its
19 briefing. It wants that flexibility to be able to choose, maybe
20 most of the time to issue 100 percent of its releases to a
21 particular supplier, but sometimes to dual source. Sometimes to
22 go 60/40. It wants that flexibility. Well, you can have one or
23 the other; you can't have both.

24 To be clear, AirBoss, when it described Cadillac
25 Rubber's holding -- which it did. It described it. It didn't

1 bless it. It didn't embrace it as Ms. Filipovich argued. It
2 simply said the Michigan Court of Appeals found this was a
3 requirements term, and then immediately dropped footnote 4,
4 which says, we reserve that question for another day. I don't
5 think either party can stand up here and pretend that AirBo- --
6 bo- -- excuse me -- that AirBoss either explicitly overruled
7 Cadillac Rubber or that it embraced it and said that it's
8 perfectly good law.

9 It says, there's an apparent inconsistency here and
10 we'll answer that question later, because we don't need to
11 answer that question on our way to determining whether the word
12 blanket is a quantity term. I wish it had overruled Cadillac
13 Rubber at the time I asked it to, but I certainly understand why
14 it didn't.

15 You know, they also quoted some language from AirBoss
16 where Ms. Filipovich argues they're -- they're blessing an
17 imprecise quantity term. Here's what AirBoss says. There is a
18 difference between a quantity term, all my apples, and a precise
19 quantity, a specific number of bushels. They are not
20 synonymous. A contract may leave the final or total quantity
21 ambiguous. Don't know how big the pie is going to be, but it
22 may not state an imprecise quantity term. And a range is an
23 imprecise quantity term. They're arguing that the seller wants
24 out of the deal that they struck.

25 Well, a couple of things there. First, this isn't the

1 deal that they struck, all right? KAMAX has always interpreted
2 this to be a release by release contract. Simply because the
3 parties have done business for a long time doesn't mean that
4 KAMAX agrees with FCA's interpretation of the contract. And if
5 we want to look at how these deals are normally struck, FCA's on
6 an island here. There is a reason that this is the first case
7 coming before this Court or any court I'm aware of asking for an
8 interpretation of a range as a requirements contract. Ford, GM,
9 Toyota, they all use 100 percent requirements contracts. Every
10 OE that I'm aware of uses 100 percent requirements contracts, or
11 in a few rare cases explicitly state, this is not a requirements
12 contract. Tesla does that. I think MBUSI still does that.
13 Maybe a couple of others. FCA is alone here.

14 And, so, when it says to you, look, there's going to
15 be this great disruption in the auto industry, there'll be an
16 affect at FCA if you rule in KAMAX'S favor here, but Ford, GM,
17 Toyota, and all the rest are not going to be affected. A very
18 minimum of suppliers used something like Cadillac Rubber before,
19 this one part to 100 percent requirements contract. And even
20 fewer of them have used it since The Supreme Court issued
21 AirBoss, because at least it highlighted that that could be a
22 risky proposition going forward. Every buyer in a case like
23 this comes before the Court and says, if you don't inter- --
24 enforce our contract, you're going to blow up the auto industry.

25 That argument was made in AirBoss. It was made by

1 Gucci. It was made in Ultra Manufacturing. It was made in the
2 FCA versus MacLean-Fogg case and countless others. And it
3 hasn't blown up yet. And the reason it hasn't blown up yet is
4 pretty simple. Sure the parties then have to make a new deal,
5 but buyers like FCA want to build vehicles, so they need parts.
6 Sellers like FCA only make -- or like KAMAX, we only make money
7 if we're selling parts.

8 We have an interest in sitting down at the table and
9 figuring out how to make a deal happen here. I don't think
10 there's going to be any dramatic consequences here. And, of
11 course, I agree with you, Judge Kelly, that that shouldn't
12 influence your interpretation anyway, but I don't think that
13 there is going to be any great disruption here.

14 The last point I want to touch on is this elasticity
15 that Ms. Filipovich was referring to in quoting some comments
16 from the UCC. The elasticity, that's the whole point of a
17 requirements contract. But the elasticity is not about the
18 slice of the pie, it's about how big the pie is, right? During
19 COVID, the auto market shrunk.

20 So 100 percent requirements contract that
21 had looked -- had this volume the year before suddenly turned
22 into this volume. And then, as interest rates change and
23 pricing changes and all these other things happen, right, now
24 the requirements go back up. Then maybe they go back down,
25 right? That's the elasticity. That's why you have a 100

1 percent requirements contract, because you need to be able to
2 say, I don't know how many parts or how -- excuse me -- how many
3 vehicles I'm going to build, but I'm going to buy all of my
4 engines from you, or I'm going to buy half of my windshields
5 from you.

6 JUDGE SWARTZLE: From the seller's perspective, why
7 does it matter whether the elasticity is based on the size of
8 the pie or the share of the pie? The elasticity means that
9 there's uncertainty in the future regardless. I --

10 MR. KILLIPS: Well --

11 JUDGE SWARTZLE: I mean, where -- so where in the
12 comments do we see a clear indication that what the commentators
13 meant was elasticity based on the size of the pie, not the share
14 of the pie?

15 MR. KILLIPS: I don't think they actually said that in
16 the commentary one way or the other what they were talking
17 about, but I think it's clear in context that we're talking
18 about the share of the pie. And the reason that sellers want it
19 that way, right, that you would care about the size of the pie
20 and not the size of the slice is because, then they know what
21 risk they are taking, right?

22 Just as an auto company taking a gamble on a
23 particular new vehicle. It's hoping it'll sell a million of
24 them next year. It's building plants, it's hiring workers and
25 everything else, right. So to its supply base is taking a

1 gamble. I believe in this product that FCA is making. I think
2 they're going to sell billion of these Ram trucks, so I want to
3 be on that program, but at least they know what gamble they're
4 taking.

5 When we're talking about this percent -- this slice of
6 the pie, you can't know what gamble you're taking as a buyer,
7 because even if you are right, you bel- -- you sign up for a
8 program, you believe it's going to be a good program, on their
9 whim, FCA could decide, but you know what, I know that you
10 priced this, you built a facility, you hired all these workers
11 thinking you were going to get 100 percent of my business. I'm
12 only going to give you 65.

13 So even though you made the right assessment of the
14 product, by discretion, I'm going to give you 65. And it's that
15 discretion, whether that discretion is between one part and 100
16 percent, or 65 percent to 100 percent, that discretion breaks
17 the link between the buyer's requirements and the quantity
18 required by 2-306 of the UCC. Once you brea- -- once you
19 interject discretion there, now you've got an Advanced Plastics
20 case, which was the case on which the Supreme Court based the
21 release by release analysis. That's where you end up.

22 Unless the Court has any other questions, I'll rest on
23 my brief.

24 THE COURT: No. No. Okay.

25 JUDGE SWARTZLE: Thank you all.

1 THE COURT: Thank you very much both. That case will
2 be submitted.
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DATED this 14th day of JULY 2025



JANENE CLEARY, Michigan CSR No. 16359

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Pleadings, Exhibits (MCR 7.212(J)(3)(e))

STATE OF MICHIGAN
IN THE SUPREME COURT

MSSC, INC.,
Plaintiff-Appellee,

v

AIRBOSS FLEXIBLE
PRODUCTS CO.,
Defendant-Appellant.

Supreme Court No. 163523

Court of Appeals No. 354533

Oakland County Circuit Court
No. 2020-179620-CB

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**APPELLANT AIRBOSS FLEXIBLE PRODUCTS CO.'S
BRIEF ON APPEAL**

ORAL ARGUMENT REQUESTED

FILED UNDER AO 2019-6

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STATEMENT OF APPELLATE JURISDICTION

The Court of Appeals issued its published decision on July 29, 2021. Defendant-Appellant AirBoss Flexible Products Co. filed a timely application for leave to appeal in this Court on September 9, 2021. On January 26, 2022, this Court granted the application for leave to appeal. Accordingly, this Court has jurisdiction to hear this appeal under MCR 7.303(B)(1) and MCL 600.215.

STATEMENT OF QUESTION PRESENTED

Under MCL 440.2201(1), a contract for the sale of goods over \$1,000 is not enforceable unless there is “a writing sufficient to indicate a contract for sale has been made” and not “beyond the quantity of goods shown in the writing.” Plaintiff-Appellee MSSC, Inc. sent a purchase order to AirBoss marked “blanket” that incorporates MSSC’s material terms and conditions, but neither of those writings specify a particular quantity of parts that MSSC must order.

Does MSSC’s purchase order, together with the relevant written terms and conditions, satisfy the requirements of the Uniform Commercial Code’s (“UCC”) statute of frauds, MCL 440.2201(1)?

The trial court answered:	Yes.
The Court of Appeals answered:	Yes.
Defendant-Appellant answers:	No.

INTRODUCTION

Our Legislature has decided that a promise to buy or sell goods worth over \$1,000 is not judicially enforceable unless a

writing exists to prove that the contract was actually made between the parties and that writing shows the quantity of goods being purchased. This Court held in *Lorenz Supply Co v Am Standard, Inc*, 419 Mich 610, 614-615; 358 NW2d 845 (1984), that for a quantity of goods to be shown in the writing as the statute of frauds requires, the quantity must be “specifically stated.” If a quantity is not specifically stated in writing, then a sale of goods over \$1,000 cannot be enforced. The purpose of this legislative policy is to prevent fraud and the enforcement of promises that were never made.

In this case, the parties at one time discussed making the automotive parts “100% sourced to [AirBoss] for the life of the program,” which would obligate MSSC to purchase its requirements of parts from AirBoss. But the blanket purchase order and terms that MSSC later issued did not include that language. In fact, they indicated MSSC had no legal obligation to purchase even a single part from AirBoss. When AirBoss later raised the price of its parts, MSSC sued to enforce the purchase order, claiming AirBoss was obligated to sell at the prices set in that writing, in whatever quantities MSSC later specified in its written releases.

Like AirBoss, neither the circuit court nor the Court of Appeals could determine a specific quantity of goods that MSSC was required to order based on the purchase order. But the lower courts nevertheless inferred the term “blanket” stood for some unspecified quantity and held that the writings therefore satisfied the statute of frauds. Looking beyond the writing, both courts determined for different (and wrong) reasons that “blanket” referred to MSSC’s requirements—even though MSSC’s requirements were never mentioned in the writing. As a result, AirBoss is being forced to deliver

whatever quantity of parts MSSC specifies in its future releases at prices set in 2019. The lower courts' decisions stand in direct conflict with both the plain text of the statute of frauds and *Lorenz*. They should be reversed.

For the writing to satisfy the statute of frauds, it must (1) be "sufficient to indicate that a contract for sale has been made between the parties," and (2) show a quantity in the writing. MCL 440.2201(1). To form a contract for the sale of goods, the buyer must be obligated to buy and the seller must be obligated to sell a specific quantity of goods. The UCC recognizes that the specific quantity does not have to be numerically stated; it can be measured by the buyer's requirements or the seller's outputs over the life of the contract, which in the end is a specific number. Thus, "[a] requirements or output term of a contract, although general in language, nonetheless is, *if stated in the writing*, specific as to quantity, and in compliance with § 2–201." *Lorenz*, 419 Mich at 615 (emphasis in original). But the courts may not enforce a quantity that is not shown in the writing, as the lower courts have done here.

This Court should (1) reaffirm that to satisfy the statute of frauds, the writing must specifically state a quantity that the buyer is obligated to purchase and (2) hold that the purchase order and incorporated terms do not satisfy that requirement. The writings relied upon by MSSC to enforce a requirements contract state no specific quantity that MSSC is obligated to purchase, much less MSSC's requirements. On the contrary, the writings indicate MSSC had no purchase obligation at all. Accordingly, this Court should reverse.

STATEMENT OF FACTS

AirBoss and MSSC are automotive suppliers. MSSC is a “Tier 1” supplier, supplying finished automotive assemblies directly to original equipment manufacturers, and AirBoss is a “Tier 2” supplier, supplying parts for incorporation into MSSC’s larger assemblies. (Gallagher Aff ¶ 3, App 120a.) AirBoss performs bushing, bonding, and assembly work on components. (MSSC Compl Ex 1, App 42a.) It then delivers the parts to MSSC for installation in suspension systems to be sold further up the supply chain. (See MSSC Mot for TRO & Br 4.)

Although MSSC sources parts from AirBoss, it also competes with AirBoss for practically identical work. The parts at issue are for MSSC’s customer’s WK Program. (Gallagher Aff ¶ 14, App 122a.) MSSC competed with AirBoss in quoting a price for the customer’s next generation of this program, called “WL,” and won that business. (*Id.*) The differences between the WK parts and WL parts are minor and technical, such that one could manufacture the WK parts using the same tooling. (*Id.* ¶ 15, App 122a.) AirBoss continues to ship whatever quantity of parts MSSC requests at the prices MSSC set in 2019 only because the Circuit Court and Court of Appeals concluded that MSSC’s purchase order obligated AirBoss to do so for the life of these programs.

MSSC issues a “blanket” purchase order purporting to bind AirBoss to deliver whatever quantity of parts MSSC may order for the lifetime of the program.

MSSC’s claims in this case are based on a document titled “Purchase Order.” (See MSSC Compl Ex 1, App 42a-

47a.) The Purchase Order is identified as a “blanket” order (*id.*, App 43a), which it explains as follows:

If this Purchase Order is identified as a “blanket” order, this order is valid and binding on seller for the lifetime of the program or until terminated pursuant to MSSC’s Terms and Conditions. [*Id.*, App 43a.]

Importantly, the Purchase Order does not specify any quantity to be purchased over the lifetime of the program. It does not, for instance, state that MSSC will order all or even a percentage of its parts requirements from AirBoss. The form states at one point that “[a]nnual volume is an estimate based on the forecasts of MSSC’s customers and cannot be guaranteed.” (*Id.*) But the Purchase Order provides no volume estimates and no promise that MSSC will actually purchase any particular volume at all from AirBoss.

The Purchase Order also incorporated by reference MSSC’s standard terms and conditions, which were available on MSSC’s website. (*Id.*) The following sections of MSSC’s Terms & Conditions (the “Terms”) are particularly relevant to this appeal:

2. BLANKET ORDERS: If this order is identified as a “blanket order,” [MSSC] shall issue a “Vendor Release and Shipping Schedule” to [AirBoss] **for specific part** revisions, **quantities** and delivery dates for Products. [MSSC] shall have the right to cancel, adjust or reschedule the quantities of Products shown in such “Vendor Release and Shipping Schedule,” except that it may not cancel, adjust or reschedule the Products shown as “Firm Obligations” on such “Vendor Release and Shipping

Schedule.” [MSSC Compl Ex 4, ¶ 2, App 55a (emphasis added).]

Like the Purchase Order itself, the Terms contain no delivery schedule or minimum order quantities and no promise to order all or even a percentage of its parts requirements from AirBoss. Instead, the Terms punt the determination of any “firm” quantities to subsequently issued individual releases that will contain whatever quantity MSSC may later choose and may be cancelled at MSSC’s discretion, unless MSSC chose, in its discretion, to show them as “firm.” (*Id.*)

When the parties were negotiating revisions to the Purchase Order in 2015, an MSSC representative proposed to send AirBoss a Purchase Order “stating the [program] is 100% sourced to [AirBoss] for the life of the program.” (MSSC Compl Ex 3, App 53a.) But MSSC never included this proposed language or anything like it in the Purchase Order. And the Terms rejected all prior discussions between the parties, stating: “This order supersedes any prior agreements or discussion (whether written or oral) between Buyer and Seller about the subject matter of this order.” (MSSC Compl Ex 4, ¶ 26, App 62a.)

Instead, MSSC ordered parts through a series of “releases” that contained whatever quantities MSSC chose to order. (Gallagher Aff ¶ 5, App 121a.) The releases used the Purchase Order’s pricing, but only the releases specified quantities. (*Id.*)

AirBoss requests a price increase, triggering a dispute over whether AirBoss is bound to deliver whatever quantities MSSC orders under existing prices.

For a number of years, AirBoss accepted each release that came in by producing and shipping the quantities requested.

(*Id.*) MSSC would revise the parts and the pricing in the Purchase Order from time to time to capture changes in sub-supplier prices. (See MSSC Compl Ex 1, App 42a.)

In April 2019, AirBoss sent an email to MSSC requesting a correction of “pass-through” pricing from a sub-supplier that MSSC directed AirBoss to use on certain parts. (MSSC Compl Ex 5, App 64a.) The new pricing should have been passed through to MSSC through revised pricing for AirBoss, which was responsible for releasing and paying for these components. (*Id.*, App 66a) MSSC complained that AirBoss did not bring this issue to its attention sooner, but ultimately agreed to the price increase for parts already delivered, and paid the amount requested. (See MSSC Compl Ex 6, App 78a.) It also updated the price for future releases. (See MSSC Compl Ex 1, App 42a.)

In exchange for retroactively paying the \$305,041.26, AirBoss signed a letter agreement, stating that it would honor existing and future contracts, including the pricing in the contracts, and would not seek price increases “except as expressly permitted by the contracts or otherwise agreed upon between AirBoss and MSSC.” (MSSC Compl Ex 6, App 78a.)

Because several of the older part prices no longer covered AirBoss’s costs to manufacture the parts, AirBoss approached MSSC in mid-2019 about increasing the prices for future purchases of six of 42 parts to better reflect AirBoss’s costs. (Gallagher Aff ¶¶ 7-8, App 121a.) But MSSC was unwilling to negotiate and flatly rejected AirBoss’s proposal. (*Id.* ¶ 10, App 121a.)

By the end of 2019, AirBoss was losing over \$1 million a year on just the six parts for which it requested price adjustments. (*Id.* ¶ 11, App 122a.) So AirBoss notified MSSC on December 2, 2019, that it would continue to accept releases and ship parts for the next four months—through March 31, 2020—so that MSSC could find another supplier, but that AirBoss could not afford to continue doing so after that date without any adjustments in pricing. (MSSC Compl Ex 8, App 82a.) To be as transparent as possible, AirBoss shared its cost numbers with MSSC showing the negative impact the old pricing had on AirBoss’s operations. (Gallagher Aff ¶¶ 9-10, App 121a; see also MSSC Compl Ex 11, App 88a.)

MSSC refused to negotiate. It contended that AirBoss “has fixed price contracts with MSSC” and pointed to the fact that “MSSC purchase orders with Flexible expressly provide fixed pricing for the lifetime of the program.” (MSSC Compl Ex 9, App 84a.) It also pointed to the letter agreement requiring AirBoss to honor its contracts with MSSC. (*Id.*)

MSSC sues, and the trial court grants a preliminary injunction, interpreting the “lifetime of the program” term as a requirements term.

MSSC filed a complaint in Oakland Circuit Court for breach of contract (Count I), declaratory relief (Count II), and specific performance (Count III). (MSSC Compl 10-13, App 35a-38a.) Count I alleged that AirBoss committed anticipatory breach of the Purchase Order and sought damages for the breach. (*Id.* at 10-11, App 35a-36a.) Count II sought a declaratory judgment that AirBoss was required to ship whatever quantities MSSC releases “for the life of the vehicle program at the fixed prices specified in the Purchase Order.” (*Id.* at 12, App 37a.) Count III sought a judgment that

compelled AirBoss to supply the parts in alleged conformity with the Purchase Order. (*Id.* at 13, App 38a.) In its complaint, MSSC repeatedly alleged that it “abided by and performed its obligations under the [Purchase Order].” (*Id.* ¶¶ 43, 57, App 36a, 38a.) But MSSC did not say what those obligations were.

On the same day, MSSC also moved for a preliminary injunction to force AirBoss to continue delivering whatever quantities of parts MSSC ordered during the pendency of the case at the current prices. AirBoss opposed MSSC’s motion and argued that MSSC was not likely to succeed on the merits of its claims because the Purchase Order—by itself—is not an enforceable contract. (AirBoss Resp in Opp’n to Mot for Inj Relief Br at 1.) The trial court granted MSSC’s motion, ruling that, based on the Purchase Order, AirBoss had “entered into a contractual relationship with MSSC to supply automotive parts at the fixed prices contained in the purchase order between the parties for the life of the vehicle programs.” (2/26/2020 Prelim Inj Order, App 123a.)

At the hearing on the motion, the trial court expressed its view that the Purchase Order was “basically a requirements contract,” despite AirBoss’s argument to the contrary. (2/26/2020 Hr’g Tr 7-9, 11, App 126a-128a.) Finding that MSSC would suffer irreparable harm without judicial intervention, the trial court compelled AirBoss to “continue to supply the parts identified in Purchase Order No. P047819 to MSSC at the current fixed prices identified therein, pursuant to releases issued by MSSC and in quantities consistent with the parties’ historical practice and projected volumes, until further order of this Court.” (2/26/2020 Prelim Inj Order, App 124a.)

The trial court grants summary disposition to MSSC, this time interpreting the term “blanket” as a requirements term.

AirBoss responded to MSSC’s complaint with counterclaims for unjust enrichment and quantum meruit to try to recover the difference between the true value of the parts it was being forced to sell to MSSC and the price MSSC would pay for those parts under the trial court’s injunction. (Countercls, App 112a.) AirBoss promptly moved for summary disposition on all of MSSC’s claims under MCR 2.116(C)(7) (claim barred by the statute of frauds) and (10) (no genuine issue of material fact) because the Purchase Order failed to satisfy the statute of frauds and showed no mutuality of obligation for one simple reason: it did not obligate MSSC to purchase any quantity of parts. (AirBoss Summ Disp Mot 8.)

AirBoss also moved for summary disposition on its own counterclaims under MCR 2.116(C)(9) (failure to state a valid defense) and (C)(10) because MSSC’s only defense to those equitable claims was that AirBoss is bound by the Purchase Order, which is unenforceable. (*Id.*) AirBoss argued again that because the Purchase Order did not contain a quantity term, it did not establish an enforceable contract under the doctrine of mutuality of obligation and Michigan’s statute of frauds, MCL 440.2201. (*Id.* at 13.)

MSSC responded as it had in defense of its motion for injunctive relief, except that it was now forced to embrace the trial court’s prior ruling that the Purchase Order was a requirements contract—something MSSC had seemingly

intentionally avoided saying at the injunction stage.¹ MSSC also requested summary disposition in its favor under MCR 2.116(I)(2) (“If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.”). (*Id.* at 3.)

The trial court decided the motions without a hearing, issuing an order and opinion granting summary disposition in MSSC’s favor. (7/17/2020 Op & Order 10, App 19a.) In its opinion, the trial court pivoted away from its conclusion at the injunction stage that a “life of the program” term creates a requirements contract, and instead found that the word “blanket,” by itself, was a quantity term sufficient to mutually bind the parties and satisfy the statute of frauds. (*Id.* at 6, App 15a.)

From this, the court concluded that “[s]ince the quantity term is stated, the Court may consider parol[] evidence in determining what quantity was intended by the term ‘blanket.’” (*Id.* at 6-7, App 15a-16a.) The trial court summarized the purported parol evidence as MSSC having ordered parts from AirBoss according to material releases incorporating the Purchase Order’s pricing since 2013. (*Id.* at 8-10, App 17a-19a.) Notably, the trial court did not find that MSSC had ordered all of its requirements exclusively from AirBoss, nor could it have, as there was no evidence to this effect. The

¹ MSSC has the ability to produce the parts at issue itself. (Gallagher Aff ¶¶ 14-15, App 122a.) It thus seems likely that MSSC tried to avoid arguing that the Purchase Order is a requirements contract because MSSC would like the future flexibility to be able to stop purchasing from AirBoss should it ever become more profitable for MSSC to produce the parts itself.

trial court concluded that the series of releases was sufficient to interpret the term “blanket” as a requirements term.

As a result, the trial court denied AirBoss’s motion for summary disposition of MSSC’s complaint and AirBoss’s counterclaims under MCR 2.116(C)(7), (9), and (10). (*Id.* at 10, App 19a.) The trial court granted MSSC’s motion under MCR 2.116(I)(2) and held that MSSC was “entitled to judgment as a matter of law on its Complaint.” (*Id.*) The trial court subsequently entered an order disposing of AirBoss’s counterclaims and granting MSSC’s request for specific performance on the basis of that prior opinion. (8/12/2020 Stip Order, App 7a.)

The Court of Appeals affirms in a published decision.

On appeal, AirBoss argued that the Purchase Order was not an enforceable contract under the statute of frauds because it does not order any quantity of parts. AirBoss also challenged the trial court’s purported review of parol evidence, pointing out that it was improper for the trial court to have reviewed parol evidence to supply a missing quantity term. In any event, AirBoss argued the only parol evidence available actually supported AirBoss’s understanding of the parties’ contractual relationship. (AirBoss Ct App Br 20-31.)

MSSC responded by parroting the trial court’s conclusion that the word “blanket” is a quantity term, but did not argue that this term meant “requirements” or otherwise say what the quantity is. (MSSC Ct App Resp Br 22-28.) Instead, MSSC argued that the Purchase Order must be interpreted as a requirements contract because it contained terms imposing a “lifetime of the program” duration and fixed prices. (MSSC Ct App Resp Br 28-30.)

In a published decision, the Court of Appeals affirmed, but on a different basis than the trial court. The Court of Appeals' analysis focused on the provisions in the Purchase Order and Terms that define "blanket." Without any explanation, the Court of Appeals concluded that "the use of 'blanket order' in this case was intended as an imprecise quantity term." (Ct App Op 4, App 4a.) It reasoned that the Purchase Order "did not state a specific quantity because plaintiff's need for parts was dependent on its customer's production schedule, which is common in the automotive industry." (*Id.*)

This Court grants leave to appeal.

AirBoss sought leave to appeal to this Court, which this Court granted in an order issued January 26, 2022. The order directed the parties to "include among the issues to be briefed whether the purchase order between the parties, together with the relevant written terms and conditions, satisfied the requirements of the Uniform Commercial Code's statute of frauds, MCL 440.2201(1)." The argument below addresses both that issue and the relief that should be granted if the Court concludes (as it should) that the Purchase Order does not satisfy the statute frauds.

STANDARD OF REVIEW

This appeal presents an issue of statutory interpretation, which this Court reviews de novo. *DeRuiter v Twp of Byron*, 505 Mich 130, 139; 949 NW2d 91 (2020). This Court reviews the grant or denial of summary disposition de novo. *Id.*

ARGUMENT

I. For a sales contract to be enforceable under the UCC's statute of frauds, there must be a writing showing a specific quantity of goods that the parties contracted for sale.

This appeal turns on the proper interpretation of the UCC's statute of frauds, codified at MCL 440.2201. "The primary goal of statutory interpretation is to give effect to the Legislature's intent." *Ricks v State*, 507 Mich 387, 397; 968 NW2d 428 (2021). The most reliable evidence of that intent is the text of the statute itself, and that is where the analysis begins. *Id.*

The statute provides:

Except as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing. [MCL 440.2201(1).]

The official comment² to this section clarifies that the writing must satisfy "three definite and invariable requirements." UCC § 2-201, official comment 1. "First it must evidence a

² Although the UCC's comments do not have the force of law, they remain useful aids for interpreting and construing the meaning of this provision. *Shurlow v Bonthuis*, 456 Mich 730, 735 n 7; 576 NW2d 159 (1998).

contract for the sale of goods; second, it must be ‘signed’. . . and third, it must specify a quantity.” *Id.*

To satisfy the first requirement, the writing must necessarily indicate mutuality of obligation, since mutuality of obligation is essential to the formation of any contract, *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 508; 885 NW2d 861 (2016). For a sale of goods, this means it must indicate the buyer is obligated to purchase and the seller is obligated to sell a certain quantity of goods. See 2A Anderson (3d ed), UCC § 2-306:46 (“An agreement between the seller and the buyer that does not impose any obligation on the seller to sell anything, nor on the buyer to buy anything, is merely ‘an illusory contract.’ ”); see, e.g., *id.* (“[A]n agreement that requires the buyer to purchase all his or her requirements from the seller but that does not require the seller to sell anything to the buyer is not enforceable.”). There are many writings—offers, counteroffers, requests for proposals, volume estimates—that may show a quantity of goods but are not sufficient to indicate mutual obligation to buy and sell goods. If there is no indication of mutual obligation, there is no indication of a contract for the sale of goods.

The second sentence of MCL 440.2201(1) goes on to clarify the first. The UCC official comments first explain that the writing need not “contain all the material terms of the contract,” and does not fail if these terms are not “precisely stated.” UCC § 2-201, official comment 1. But it then identifies the only exception: quantity. Other terms can be left out or imprecisely stated and shown by other evidence besides the writing. But quantity is the one term that cannot be omitted from the writing. It is not enough that a writing indicate a contract for sale of goods has been made; the statute of frauds

requires the writing to show a specific quantity of goods contracted for sale.

A. A “quantity” is an ascertainable number or measurable amount.

Although the statute requires a quantity shown in the writing, the statute does not define “quantity,” and this Court has never squarely addressed the exact meaning of that term. When a statute’s term is not defined, this Court will apply its “plain and ordinary meaning,” and may consult dictionary definitions in the process. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011). Black’s defines ‘quantity’ as “the amount of something measurable; the ascertainable number of countable things.” *Black’s Law Dictionary* (11th ed).

The UCC, as adopted by the Legislature, acknowledges that the exact number can be “measured” by the buyer’s requirements or seller’s output. See MCL 440.2306(1) (“A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith”). In those two instances—outputs and requirements contracts—the exact number of goods cannot always be determined at the start of performance, but the quantity is still set at the beginning, and it can eventually be ascertained with precision at the end. As this Court observed in *Lorenz*, “[a] requirements or output term of a contract, although general in language, nonetheless is, *if stated in the writing, specific* as to quantity, and in compliance with § 2–201.” *Lorenz*, 419 Mich at 615 (italics in original, underlining added).

B. A quantity of goods must be specifically stated in the writing.

It goes without saying that the quantity is not “shown in the writing” if one cannot discern from the writing alone the specific quantity that the parties have agreed will be sold. MCL 440.2201(1). For that reason, this Court was quite adamant in *Lorenz* that the quantity must be “specifically stated” in the writing. *Lorenz*, 419 Mich at 615. The official UCC comments agree, explaining that “shown in the writing” means the writing “must specify a quantity.” UCC § 2-201, official comment 1. “Most, if not all, commentators [also] agree . . . that a writing must specify a quantity.” *Lorenz*, 419 Mich at 614 n 4. For a requirements contract, this means the buyer’s requirements must be specifically “stated in the writing.” *Id.* at 615.

That does not mean the quantity term must be *correctly* stated. UCC § 2-201, official comment 1 (“The only term which must appear is the quantity term which need not be accurately stated but recovery is limited to the amount stated.”). The statute of frauds just limits the contract’s enforceability to the amount stated. A hypothetical helps illustrate the concept. Imagine two merchants who discuss the sale of 500 widgets. When the buyer later confirms a contract in writing, the sloppy drafter accidentally writes the quantity as “50,” rather than “500.” Under MCL 440.2201(1), this writing may be sufficient to indicate a contract for sale has been made, “but the contract is not enforceable [] beyond the quantity of goods shown in the writing.” *Id.* The contract would be enforceable for the sale of 50 widgets—and no more.

**C. The quantity must be contracted for sale, i.e.,
an amount the buyer is obligated to purchase.**

Even if a quantity of goods is specifically stated in writing, that alone does not make it enforceable under the UCC. The statute of frauds requires the quantity to be stated in a writing that is “sufficient to indicate that a contract for sale has been made.” MCL 440.2201(1). A contract is made for the sale of that quantity of goods only if the buyer is obligated to purchase, and the seller is obligated to sell, that specific quantity of goods. See 2A Anderson (3d ed), UCC § 2-306:46; *cf.* *Innovation Ventures*, 499 Mich at 508 (mutuality of obligation is an essential element of a valid contract).

A writing that does not indicate the buyer must purchase the quantity stated does not satisfy the statute of frauds. For example, after reviewing a purchase order, its incorporated terms and conditions, and the buyer’s weekly forecasts indicating its estimated product needs, the district court in *Aleris Aluminum Canada LP v Valeo, Inc*, 718 F Supp 2d 825, 832 (ED Mich, 2010), concluded that none of the documents “obligated [the buyer] to purchase any quantity of products, whether measured in terms of a set number or merely as some or all of [the buyer’s] requirements.” *Id.* The purchase order there did not state any quantities, and the terms and conditions noted only that, in some of the buyer’s business relationships, “deliveries are specified to be in accordance with [the buyer’s] written releases.” *Id.* Thus, the court held, none of the writings established a requirements contract between the parties and, “given the lack of a quantity term, [the buyer] should not be permitted to use parol evidence to establish the existence of a requirements contract.” *Id.* at 833.

Aleris Aluminum correctly recognized that even if a writing refers to the buyer's estimated product needs, it does not form an enforceable requirements contract unless the buyer is actually obligated to purchase its needs from the seller. Prior to the decision below, the Court of Appeals had reached the same conclusion in a similar case. See *Acemco, Inc v Olympic Steel Lafayette, Inc*, unpublished per curiam opinion of the Court of Appeals, issued October 27, 2005 (Docket No. 256638), p 5 (reasoning that a document that allowed the buyer to set quantities in future orders was not an enforceable contract because "[a]ny quantity is in fact no quantity at all").

* * *

The text of the statute of frauds, the commentary, and *Lorenz* all make clear that a contract for the sale of goods must specify a measurable quantity of goods for which the parties have a contract for sale. The quantity must be specifically stated in writing and the writing must indicate this is a quantity the buyer is obligated to purchase. The quantity term cannot, for instance, be a promise to issue a series of releases for which the quantity has yet to be determined or be a stated volume estimate that the buyer has no obligation to purchase. If the quantity is not specifically stated in the writing, or the buyer has no obligation to purchase that quantity, then the writing does not satisfy the statute of frauds.

II. MSSC's Purchase Order and Terms do not satisfy the statute of frauds because they do not show a specific quantity MSSC is obligated to purchase.

MSSC claims that AirBoss is contractually obligated to supply the WK parts at the prices specified in the Purchase Order, for the life of the WK programs, in such quantities as

MSSC would specify in future releases that it may issue. The only writing that MSSC pointed to for purposes of satisfying the statute of frauds and enforcing those quantities is the Purchase Order and Terms, since the future written releases did not yet exist. But the Purchase Order and Terms do not satisfy the statute of frauds because they do not show any specific quantity that MSSC must purchase from AirBoss. None of the provisions relied upon by the Court of Appeals, circuit court, or MSSC show a requirements term, an outputs term, or a numeric quantity term. The writings instead indicate that MSSC has no obligation to purchase even one part. The Purchase Order is nothing more than a framework and a price quote for future releases that specify a quantity. The lower courts erred in holding otherwise.

A. No written term identified by the Court of Appeals, trial court, or MSSC specifies a quantity of parts that MSSC is obligated to purchase.

Over the course of this litigation, the lower courts and MSSC have pointed to a variety of different terms as a “quantity term,” but none of them specifically state a quantity.

1. The term “blanket” is not a quantity term.

The Court of Appeals held that, “[l]ike in *Great Northern [Packaging, Inc v Gen Tire & Rubber Co]*, 154 Mich App 777; 399 NW2d 408 (1986)], the use of ‘blanket order’ in this case was intended as an imprecise quantity term” and pointed to the definitions of “blanket” in the Purchase Order and Terms. (Ct App Op at 4, App 4a.) None of those provisions, however, specify a quantity of parts that MSSC is obligated to purchase, either measured as a numeric amount, as MSSC’s re-

quirements, or as AirBoss's outputs. The Purchase Order states:

If this Purchase Order is identified as a "blanket" order, this order is valid and binding on seller for the lifetime of the program or until terminated pursuant to MSSC's Terms and Conditions. [MSSC Compl Ex 1, App 42a.]

This term shows the duration of the Purchase Order's terms. It does not show what quantity MSSC is obligated to purchase. No Michigan court has ever held that a "lifetime of the program" duration term can moonlight as a quantity term. See, e.g., *Foamade Indus v Visteon Corp*, unpublished per curiam opinion of the Court of Appeals, issued March 4, 2008 (Docket No. 271949), p 11 (understanding a "life of the program" term as a duration term); *Eberspaecher N Am, Inc v Nelson Glob. Prods, Inc*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued September 23, 2012 (Case No. 12-11045), p 7 (same). This may very well be the sort of term one would find in a requirements contract; but this is not a requirements term, as it does not even mention MSSC's requirements, much less show MSSC is obligated to purchase its requirements from AirBoss. It does not indicate MSSC has any obligation at all; it only purports to bind AirBoss.

MSSC's Terms further provide that the term "blanket" means the following with respect to releases:

If this order is identified as a "blanket order", Buyer shall issue a "Vendor Release and Shipping Schedule" to Seller for specific part revisions, quantities and delivery dates for Products. Buyer shall have the right to cancel, adjust or reschedule

the quantities of Products shown in such “Vendor Release and Shipping Schedule,” except that it may not cancel, adjust or reschedule the Products shown as “Firm Obligations” on such “Vendor Release and Shipping Schedule.” [MSSC Compl Ex 4, ¶ 2, App 55a.]

This provision does not show a quantity either. It does not specify what amounts will be in the releases. And it does not say that the yet-to-be-determined quantities on those releases will add up to all or even some percentage of MSSC’s requirements.

If anything, this provision demonstrates MSSC had no obligation to purchase any parts from AirBoss. It indicates that MSSC was free to cancel releases at any time. Only if and when MSSC issued quantities on releases that were “firm” quantities would MSSC be bound, but MSSC was not obligated to include any firm quantities on its releases. MSSC could have ordered all of its requirements from another vendor without breaching these terms.

The Court of Appeals reached a different conclusion in error largely by relying on *Great Northern*. In that case, the buyer issued a purchase order for “fifty units,” but then later modified that term to say “Blanket Order.” *Great Northern*, 154 Mich App at 780. The court there held that this was a quantity term sufficient to satisfy the statute of frauds, albeit an “imprecise one,” as it did not know “what quantity, if any, was stated by the ‘blanket order’ language of the purchase orders.” *Id.* at 787.³ In this case, the Court of Appeals deemed

³ Before this case, *Great Northern* had never been approvingly cited by any Michigan appellate court for this portion of its holding. See *Acemco*, unpub op at 5 (distinguishing *Great Northern*).

“blanket” to be an “imprecise” quantity term for exactly the same reason—it could not discern what quantity MSSC would order. (Ct App Op at 4, App 4a.) It nevertheless concluded that “ ‘blanket order’ was a quantity term sufficient to satisfy the statute of frauds.” (*Id.*) This is wrong.

A quantity term cannot be “imprecise” and satisfy the statute of frauds for two reasons. First, if this means the parties have not contracted for a precise quantity of goods, then there is no mutual obligation to buy and sell any number of goods, and there is no contract for the sale of goods. See *Acemco*, unpub op at 5 (reasoning that a document that allowed the buyer to set quantities in future orders was not an enforceable contract because “ ‘[a]ny’ quantity is in fact no quantity at all”). Second, if the quantity is “imprecise” in the sense that the writing leaves one uncertain of what quantity was contracted for sale, then the quantity is not “shown in the writing,” MCL 440.2201(1), or, as *Lorenz* would say, it is not specifically stated, 419 Mich at 615.

Lorenz illustrates these points. There, this Court considered whether a distributorship agreement was a contract for the sale of goods within the meaning of MCL 440.2201. *Id.* at 613. The Court of Appeals had ruled that it was not because “[t]he agreement did not require Lorenz to buy a certain quantity of goods or, indeed, to buy any goods from the defendant in the future.” *Lorenz Supply Co v Am Standard, Inc*, 100 Mich App 600, 608; 300 NW2d 335 (1980). This Court affirmed, explaining that “[b]ecause many distributorship agreements are not requirements or output contracts and in such cases the quantity term is generally uncertain, we conclude that the drafters of the Uniform Commercial Code did not intend that all distributorship agreements be regarded as

‘contracts[s] for the sale of goods.’” *Lorenz*, 419 Mich at 615. In short, a writing where the quantity to be purchased is uncertain is not even a contract for the sale of goods, much less enforceable under MCL 440.2201(1).

The Court of Appeals was thus incorrect to affirm the lower court based on a determination that “ ‘blanket order’ in this case was intended as an imprecise quantity term.” (Ct App Op at 4, App 4a.) The Purchase Order and Terms do not show the parties intended this, and in any event, such a term would not satisfy the statute of frauds if they did. Any attempt to otherwise allow the parties’ perceived intent to trump the writing is error because “[a] case cannot be taken out of the statute of frauds by the intention of the parties.” *Spedding v Griggs, Fuller & Co*, 196 Mich 571, 575; 162 NW 956 (1917). “To so hold would be to render the statute nugatory.” *Id.* Either a quantity is specifically stated in the writing, or it is not. Here, it is not.

2. No requirements term is shown in the writing, and one may not be inferred.

The Court of Appeals and the circuit court concluded for different reasons that the parties had an enforceable requirements contract. No provision in the Purchase Order or Terms says “MSSC will source 100% of its parts requirements from AirBoss,” “MSSC agrees to purchase 50% of its parts requirements from AirBoss,” or even “MSSC will obtain at least 1% of its requirements from AirBoss.” If MSSC had included the language proposed during the parties’ contract negotiations, “100% sourced to [AirBoss] for the life of the program,” that too would have obligated MSSC to purchase its requirements from AirBoss. (MSSC Compl Ex 3, App 53a.) But MSSC declined to

do so. Because there is no such provision in writing, it was error to hold that the parties had an enforceable requirements contract.

Being unable to discern from the writing that the quantity was MSSC's requirements, the Court of Appeals merely asserted in a footnote, "Defendant does not appear to contest that, if the trial court correctly held that 'blanket' was a quantity term, then the parties had a requirements contract." (Ct App Op at 4 n 1, App 4a.) This is nonsensical.

To start, AirBoss argued in its initial brief, in its reply, and at oral argument that the parties did not have a requirements contract. (See, e.g., AirBoss Ct App Br 21, App 22a ("The Purchase Order does not create mutuality of obligation because it does not obligate MSSC to purchase any of its requirements."); AirBoss Ct App Reply Br 6, App 25a ("The Purchase Order is not an enforceable contract because it does not contain a quantity term and does not obligate MSSC to purchase any of its requirements from AirBoss.").) At no point did AirBoss ever concede that if a quantity term were found, a requirements contract would be formed.

Further, this line of reasoning makes no sense. A quantity term creating a requirements contract would itself state that MSSC was ordering all or some of its requirements of parts. If a quantity term were specifically stated, there would be no second step in the analysis in which to contest whether it is a contract for requirements or some other quantity. This underscores the illogic of *Great Northern's* holding that the quantity was "shown in the writing" as required by the statute of frauds even when it could not discern "what quantity, if any, was stated." *Great Northern*, 154 Mich App at 787.

The Court of Appeals also at one point quotes the Purchase Order and adds a reference to MSSC's requirements that is not there. The Purchase Order says that "annual volume is an estimate based on a forecast and provided by the OEM and cannot be guaranteed." (Compl Ex 1, App 42a.) The Court of Appeals took this provision, changed "volume" to "volume [required]," and relied on this revision in support of its conclusion: "The purchase order specified certain parts to be supplied by defendant and a unit price for those parts, but did not specify a quantity of parts to be supplied, instead stating that the '[a]nnual volume [required] is an estimate based on' the forecast of the OEM." (Ct App Op at 2, App 2a.) In doing so, the Court of Appeals improperly inferred that the volume would be an estimate of MSSC's requirements (perhaps because it had already concluded, erroneously, that "blanket" meant MSSC's requirements). This is exactly what this Court said not to do in *Lorenz*.

In his *Lorenz* concurrence, Justice Brickley suggested that a requirements term can be judicially inferred to avoid rendering an agreement unenforceable. 419 Mich at 614. The rest of the Justices rejected that idea, holding that "this Court would exceed its role if it were to imply a provision akin to a requirements term" when a requirements term was not specifically stated. *Id.* at 615. See also 2 Anderson (3d ed), UCC § 2-201:181 ("While it is not possible to state a quantity numerically in the case of a requirements contract, the writing must state that it is for the sale of the requirements of one party").

The circuit court also ran afoul of this rule, but took a different tack than the Court of Appeals. The trial court concluded that a requirements contract was stated under the

precedent set in *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC*, 331 Mich App 416; 952 NW2d 576 (2020). There, the purchase order noted “MATERIAL REQUIREMENT WILL BE RELEASED WEEKLY” and the material obligated the buyer to purchase “a quantity between one part and 100% of its requirements.” *Id.* at 430. Based on these writings and the material releases, the Court of Appeals concluded an enforceable, “non-exclusive” requirements contract existed. *Id.* at 431. The seller was thereby obligated to sell whatever amount the buyer requested, but the buyer could order its requirements from other vendors; it had no obligation to purchase any specific amount from the seller beyond one part. *Cadillac Rubber* is distinguishable from this case in that a quantity was actually stated in the writing (i.e., “one piece”). But the Court of Appeals still went too far there—the purported contract should not have been enforceable beyond that quantity. There is no contract for the sale of the buyer’s requirements if the buyer is not obligated to purchase those requirements. See *Innovation Ventures*, 499 Mich at 508. Nor is a quantity “specifically stated” if the quantity could be anything between one and the buyer’s requirements. *Lorenz*, 419 Mich at 615.⁴

Here, there is no way to read the Purchase Order and Terms as showing any specific quantity of goods contracted for

⁴ *Cadillac Rubber* and both courts below in this case relied in part on *Johnson Controls, Inc v TRW Vehicle Safety Sys, Inc*, 491 F Supp 2d 707 (ED Mich, 2007), where the court found the statute of frauds was satisfied because the purported contract’s terms provided “some nexus to the notion of amount or quantity.” *Id.* at 717. This is far afield from this Court’s rule that a quantity be “specifically stated” in the writing. *Lorenz*, 419 Mich at 615. Perhaps unsurprisingly, *Johnson Controls* was led astray by chiefly relying on *Great Northern*. See 491 F Supp 2d at 716-717.

sale, much less MSSC's requirements. In fact, the Purchase Order specifically allows MSSC to purchase any quantity from zero to infinity. That is not a specific quantity of goods. It was doubly erroneous for the circuit court and Court of Appeals to enforce a requirements contract in this case, where there was no obligation to purchase even one part and MSSC's requirements were never specifically stated in the writing.

B. At best, the writings indicate a series of spot-buy contracts; the Court of Appeals holding to the contrary undermines the statute of frauds.

Rather than creating a requirements contract, the Purchase Order merely lays the foundation for a spot-buy relationship, which is common in the automotive industry and myriad other industries. The parties formed individual contracts through the spot-buys executed through individual releases. Those releases would contain actual quantities and delivery dates. MSSC's duration and shipping terms, indicated by the term "blanket," were incorporated into individual releases. Once AirBoss accepted releases containing ascertainable quantities—either in writing or through its conduct—it was bound to the Purchase Order and Terms for the quantity of parts shown in the release, but nothing more, as the only writings specifically stating any quantities were the releases. See MCL 440.2201(1).

The Court of Appeals' contrary ruling means that, since February 2020, AirBoss has been ordered to produce and sell parts in quantities that it never agreed to, and at a significant financial loss. In effect, the Court of Appeals' approach allows buyers to force a seller to continue delivering goods, without the seller having any certainty as to what quantity it is bound to produce, or whether the buyer is in breach for ordering parts

from another vendor. At worst, this destroys the freedom to contract on a spot-buy basis. At best, it leaves suppliers like AirBoss uncertain as to whether they had a requirements contract or a spot-buy arrangement. Either way, it defeats the purpose of the statute of frauds.

As its name indicates, the purpose of the statute of frauds is to prevent fraud or the opportunity for fraud, *Kent v Bell*, 374 Mich 646, 654; 132 NW2d 601 (1965) (citation omitted), and to eliminate the potential for perjured testimony in contract cases. 1 White, Summers, & Hillman, Uniform Commercial Code (6th ed), § 3:11. The reason the statute of frauds requires a quantity to be shown in the writing—whether that quantity is a discrete number of goods or a buyer’s requirements—is so a merchant cannot falsely claim that another merchant made a legally enforceable promise to supply all of their requirements. 2 Anderson (3d ed), UCC § 2-201:175 (“The Code requires the statement of a quantity term to prevent the enforcement of promises that were never made.”). Requiring that kind of promise to be shown in writing both prevents fraud and unnecessary litigation.

The pitfalls of eliminating the writing requirement are evidenced here. As the costs of goods have risen drastically over the years, MSSC has every incentive to claim that its Purchase Order with AirBoss is a long-term requirements contract; however, if the costs of goods had decreased over the years, nothing in the Purchase Order would prevent MSSC from buying the same Parts from another supplier at lower prices than those identified in the Purchase Order. Contract law and the statute of frauds do not allow this.

Automotive suppliers are sophisticated legal parties; they know when to contract on a spot-buy basis instead of through a requirements contract. And when automotive suppliers *do* contract on a spot-buy basis, the automotive industry does not shut down. Numerous cases demonstrate this.⁵ But to elect a requirements contract, they must show in writing that they have done so, as a matter of legislative policy. That requirement is meant to avoid exactly the sort of disruptive disputes that have occurred in this case, and it should be consistently enforced to provide suppliers certainty as to when that election has been made.

Because no quantity of goods is shown in the Purchase Order and the Terms, these writings alone do not satisfy the statute of frauds for purposes of enforcing a requirements contract or any other quantity of goods. For that reason, the trial court should have granted AirBoss's motion for summary

⁵ See *Aleris*, 718 F Supp 2d 825; *In re Dana Corp*, unpublished opinion of the United States Bankruptcy Court for the Southern District of New York, issued November 14, 2007 (Case No. 06-10354), p 3 (blanket purchase order for an unspecified quantity containing a clause allowing the buyer to terminate "for convenience at any time" could not give rise to a requirements contract under Michigan law); *Harris Thomas Indus, Inc v ZF Lemforder Corp*, unpublished opinion of the United States District Court for the Southern District of Ohio, issued October 19, 2007 (Case No 3:06CV190), p 5 ("[T]he Sixth Circuit has held that where there is a blanket purchase order in effect, but material releases are issued which govern supply and delivery, the only contracts are the releases that have been accepted between the parties."). The same is true in other industries too. See *Advanced Plastics Corp v White Consol Indus, Inc*, unpublished opinion of the United States Court of Appeals for the Sixth Circuit, issued January 18, 1995 (Case No. 93-2155), p 2; 47 F3d 1167 (Table) (holding that a blanket purchase order did not establish a valid requirements contract because the buyer had no obligation to purchase the quantity of goods stated).

disposition under MCR 2.116(C)(7) and (C)(9), dismissing MSSC's claims and granting AirBoss judgment on its counter-claims except with respect to damages.

CONCLUSION AND REQUESTED RELIEF

For the reasons discussed above, AirBoss asks this Court to hold that MCL 440.2201(1) requires a writing to show the specific quantity of goods that the buyer is obligated to purchase and the seller is obligated to sell. The quantity may be measured by requirements or outputs, but that quantity must be specifically stated in writing, and the writing must indicate they are both bound to it. Because the writing in this case does not satisfy those requirements, AirBoss respectfully asks this Court to reverse the decision of the Court of Appeals, reverse the trial court's grant of summary disposition in MSSC's favor and denial of AirBoss's dispositive motion for summary disposition under MCR 2.116(C)(9), and remand this case to the Oakland Circuit court to grant AirBoss's motion for summary disposition and hold further proceedings to determine AirBoss's damages.

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Respectfully submitted,

Dated: March 28, 2022

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the type-volume limitation pursuant to Administrative Order 2019-6. The brief contains 8,471 words of Century Schoolbook 13.5-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

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STATE OF MICHIGAN
IN THE SUPREME COURT

MSSC, INC.,

Supreme Court No. 163523

Plaintiff/Appellee,

Court of Appeals No. 354533

v.

Oakland County Circuit Court
No. 2020-179620-CB

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PRODUCTS CO.,

Hon. James M. Alexander

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**APPELLEE MSSC'S RESPONSE BRIEF TO APPELLANT
AIRBOSS'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED
FILED UNDER AO 2019-06**

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STATEMENT OF JURISDICTION

MSSC does not dispute AirBoss's Statement of Appellate Jurisdiction of this Court.

COUNTER-STATEMENT OF QUESTION INVOLVED

Under MCL §§ 440.2201(1) and 440.2306(1), a contract for the sale of goods may define the quantity of goods to be delivered in terms of the requirements of the buyer rather than a specific quantity. Plaintiff-Appellee MSSC, Inc., and Defendant-Appellant AirBoss Flexible Products Co. agreed to do business pursuant to a “blanket purchase order,” pursuant to which MSSC was required to purchase certain materials it required from AirBoss.

1. Did the blanket Purchase Order, together with its Terms and Conditions, satisfy the requirements of the Uniform Commercial Code’s statute of frauds, MCL § 440.2201(1)?

Defendant/Appellant answers:	No.
Plaintiff/Appellee answers:	Yes.
The Circuit Court answered:	Yes.
The Court of Appeals answered:	Yes.

INTRODUCTION

The statute of frauds, MCL § 440.2201(1), exists to ensure that only agreements actually entered into by the parties will be enforced. It accomplishes this by requiring proof that a contract rests on a *bona fide* agreement between the parties. Such proof comes in the form of a writing “sufficient to indicate that a contract for sale has been made.” *Id.* This writing may “omit[] or incorrectly state[] a term agreed upon” without jeopardizing the contract’s enforceability up to “the quantity of goods shown in the writing.” *Id.*

The statute of frauds thus conducts a threshold inquiry into the foundation of an agreement rather than its substance—so long as a writing demonstrates the parties agreed to exchange a quantity of goods, it suffices to show that an agreement was made and thus the agreement can be enforced. Once that threshold is cleared, it is appropriate for courts to refer to other sources and parol evidence to determine what specific quantity was agreed to. Accordingly, “[t]he fact that a quantity term is not precise is not fatal to the claim that a writing satisfies the statute of frauds.” 2 Anderson UCC § 2-201:177 (3d ed) (citing *Great Northern Packaging, Inc v Gen Tire & Rubber Co*, 154 Mich App 777; 399 NW2d 408 (1986)).

Prior to the filing of this case, the parties had spent seven years exchanging goods according to the terms of a “blanket order.” The terms of the order obligated MSSC to issue periodic “Release Schedules” specifying quantities of parts it required from AirBoss, which AirBoss was to provide at the prices specified in the blanket order. This arrangement was necessary because MSSC’s customers—car manufacturers—order automotive suspension systems from MSSC

on a “just-in-time” basis with slim margins for delay. “Blanket orders” ensure that MSSC will have a reliable and predictable supply of safety-critical components—which given their nature cannot be sourced elsewhere on the timeframes set by MSSC’s customers—throughout a product’s life cycle. Without agreements defining a seller’s price at the outset of a production line, the just-in-time market for specialized safety-critical automotive parts would place buyers at sellers’ mercy each and every time additional parts are needed.

AirBoss violated the terms of this blanket order, along with other agreements between the parties, by unilaterally demanding MSSC pay a higher price than agreed upon for its required parts. And when sued to be held to its agreements, AirBoss argued that the agreements were unenforceable under the statute of frauds due to the lack of a “precise” quantity term. Both courts below rejected AirBoss’s position, finding that the term “blanket order” as used in the parties’ agreements expressed the quantity of goods to be sold in terms of MSSC’s requirements—a common approach to contracting among automotive parts manufacturers and expressly authorized by Michigan law. *See* MCL § 440.2306(1). These courts concluded that the quantity term was not “precise,” but nonetheless satisfied the statute of frauds by demonstrating the parties had an agreement relating to some quantity of goods.

The decisions below rejecting AirBoss’s arguments correctly understood the scope and purpose of the statute of frauds. Therefore, this Court should affirm.

COUNTER-STATEMENT OF FACTS

I. Factual Background.

A. The Parties' Background, Supply Relationship, and Blanket Purchase Order.

MSSC is a global leader in the manufacture and supply of automotive and off-road suspension systems. V Compl, App 28a. MSSC supplies various Original Equipment Manufacturers (“OEMs”) with essential components of automotive suspension systems, including stabilizer bars, coil springs, and torsion bars. V Compl, App 28a. AirBoss is a developer and manufacturer of high-quality proprietary rubber-based products for various industries, including automotive, heavy industry, construction and infrastructure, oil and gas, and defense. V Compl, App 28a.

In or around July, 2013, MSSC and AirBoss¹ entered into a contractual relationship whereby AirBoss agreed to assemble and supply various safety critical components (the “Parts”) to be installed in MSSC’s suspension system parts for the WK and WD programs (Jeep Grand Cherokee and Dodge Durango vehicles) that were in turn supplied to FCA US, LLC (“FCA”), one of MSSC’s OEM customers. *Id.*

The agreement for the manufacture, supply, and assembly of the Parts was memorialized in a blanket purchase order from MSSC to

¹ The company was originally named Flexible Products Co., and many of the exhibits reflect that name. AirBoss later purchased Flexible Products Co. and changed the name to AirBoss Flexible Products Co.

AirBoss (the “Purchase Order”). *Id.* It was amended from time to time (primarily on an annual basis) to reflect agreed-upon modifications of the Purchase Order between the parties relating to, among other things, changes in price, delivery, parts, or processes. V Compl, App 28a-29a. The most recently issued Purchase Order, No. P047819, is dated April 3, 2019. V Compl, App 29a; V Compl, Ex 1, App 41a-48a.

Under the terms of the Purchase Order, MSSC was obligated to issue material releases, or “Schedules,” *i.e.*, the direction from MSSC to AirBoss to ship the parts that had been manufactured and assembled. V Compl, App 28a. AirBoss, in turn, supplied the Parts as specified in the releases. V Compl, App 28a. The Purchase Order required AirBoss to supply MSSC with the Parts listed **for the life of the OEM vehicle program**:

If this Purchase Order is identified as a “blanket” order, **this order is valid and binding on seller for the lifetime of the program** or until terminated pursuant to MSSC’s Terms and Conditions. A “blanket” order may be re-issued annually, **but that does not change its binding effect for the lifetime of the program** or until terminated.

V Compl, Ex 1, App 42a (emphasis added).

The “life of the program” term was reemphasized in language bargained for by AirBoss. V Compl, App 29a. On April 10, 2015, Doug Reid, AirBoss’s president at the time, issued a credit to MSSC

and requested that the Purchase Order specifically state that the Parts would stay with AirBoss:

Make sure purchase orders state that the bonding for these models will stay with AirBoss Flexible Products.

V Compl, Ex 2, App 50a. On April 30, 2015, Kim Luepke of MSSC emailed Mr. Reid stating that she would “have the updated blanket to you in the next week stating the FY16 WK WD is 100% sourced to Flexible for the life of the program.” V Compl, App 30a, Ex 3, App 53a. Mr. Reid responded, “Looks good to me.” V Compl, Ex 3, App 53a. The Purchase Order was then updated the next day to include this information:

Dated 5/1/2015:

The following 2016 WK/WD part numbers will be added to the blanket as line items when the parts are PPAPed approved. **AirBoss Flexible Products is awarded the bushing/bonding/assembly value add of MSSC for the life of the 2016/2017 generation of the WK74 and WD75 program** in exchange for continuous improvement and year over year productivity. (Program life could go into 2018-2019 for this generation.)

V Compl, Ex 1, App 45a (emphasis added).

The Purchase Order also incorporated MSSC’s Terms and Conditions (the “Terms and Conditions”), which contained the following agreement as to price increases:

2. BLANKET ORDERS: If this order is identified as a “blanket order”, [MSSC] **shall issue** a “Vendor Release and Shipping Schedule” to [AirBoss] for specific part revisions, quantities and delivery dates for Products. [MSSC] shall have the right to cancel, adjust or reschedule the quantities of Products shown in such “Vendor Release and Shipping Schedule,” except that it may not cancel, adjust or reschedule the Products shown as “Firm Obligations” on such “Vendor Release and Shipping Schedule.”

* * *

6. PRICES: The **prices shown in this order shall remain firm** throughout the term of this order **unless an authorized representative of [MSSC] has expressly agreed in writing to adjust the prices** shown during the performance of this order. . . .

V Compl, Ex 4, App 55a, 57a (emphasis added).

B. AirBoss Agrees to Not Demand Further Price Increases in Exchange for an Adjustment of \$305,041.26.

On or about April 22, 2019, AirBoss objected to the pricing related to two parts. V Compl, Ex 5, App 64a-65a. Specifically, on April 22, 2019, Ken Kanthook (an AirBoss account manager) sent an email to MSSC requesting a correction of pass-through pricing from a designated sub-supplier from \$7.5800 to \$8.7632 on Part No.

2555ASSY and from \$7.5500 to \$8.7632 on Part No. 2554ASSY, retroactive to August 14, 2018, to correct an error made by AirBoss. V Compl, Ex 5, App 73a-74a. Shortly thereafter, AirBoss indicated that it would be seeking price increases on additional Parts. V Compl, App 31a.

After ongoing discussion and negotiation (and to keep from impacting the supply to FCA), on July 8, 2019, MSSC agreed to the updated pass-through price going forward and the requested back payments. V Compl, App 31a; V Compl, Ex 6, App 78a. MSSC paid AirBoss the \$305,041.26 for increased pricing dating back to August 14, 2018 out of pocket, as it was then too late to seek recovery from FCA. V Compl, App 31a; V Compl, Ex 6, App 78a.

In exchange for MSSC's agreement to pay that \$305,041.26, MSSC further emphasized and reminded AirBoss of the terms of the contract by requiring AirBoss to sign and agree that:

In exchange for MSSC paying these sums, [AirBoss] agrees that [AirBoss] shall honor all terms of all contracts, existing and future, with MSSC including all contractually agreed pricing. **[AirBoss] will not seek pricing increases except as expressly permitted by the contracts or as otherwise agreed upon between [AirBoss] and MSSC.**

V Compl, App 31a, Ex 6, App 78a (emphasis added). The email chain, Exhibit 5 to the Verified Complaint, reflects that the Letter Agreement was signed by Kim Gallagher, AirBoss's Vice President of

Sales and Business Development on or about July 26, 2019. V Compl, Ex 5, App 65a; V Compl, Ex 6, App 78a.

C. Wrongful Demand for Additional Price Increases and Threat to Stop Shipment of Parts.

A mere two months after signing the Letter Agreement to “not seek pricing increases,” on October 1, 2019, AirBoss unilaterally demanded price increases, this time related to six parts. Five of the requested adjustments were from \$10.6098 to \$14.44 and the sixth requested adjustment from \$8.7632 to \$11.74, as it was previously modified based upon the Letter Agreement). V Compl, App 32a, V Compl, Ex 7, App 80a.

After later reviewing a cost breakdown provided by AirBoss, MSSC determined that AirBoss’s demanded prices amounted to: a 239% increase in labor, a 278% increase in scrap, a 176% increase in Selling, General & Administrative (“SG&A”), and a 135% increase in profit; and a 207% increase in labor, a 234% increase in scrap, a 173% increase in SG&A, and a 132% increase in profit, on the front and rear stabilizer bar bonding assemblies, respectively. V Compl, App 32a; V Compl, Ex 11, App 88a-90a.

The October 1, 2019 letter gave no reason for the substantial price increases except that “today’s business climate is very challenging for automotive suppliers and manufacturers” related to various material and labor cost increases and such impacts were “unforeseen by all parties at the time our supply relationship began.” V Compl, App 33a; V Compl, Ex 7, App 80a.

On December 2, 2019, AirBoss sent a second letter, for the first time arguing that the Purchase Order expired on March 31, 2020 (despite the clear language that the Purchase Order was for the life of the vehicle program) and “notifying MSSC that [AirBoss] is rejecting any releases for product to be delivered after March 31, 2020 unless [AirBoss] and MSSC come to mutual agreement on revised pricing,” effectively holding MSSC hostage unless MSSC agreed to the requested price increases. V Compl, App 33a; V Compl, Ex 8, App 82a.

On January 28, 2020, MSSC formally responded, clarifying that AirBoss’s contractual obligations under the Purchase Order “expressly provided fixed pricing for the lifetime of the program,” and that AirBoss had further agreed, via the Letter Agreement, that it would not seek additional price increases. V Compl, App 33a; V Compl, Ex 9, App 84a.

In response, on January 29, 2020, AirBoss formally notified MSSC that “due to the lack of an agreement on revised pricing, [AirBoss] will be terminating orders to [AirBoss’s] sub-suppliers according to their lead-times,” beginning on February 15, 2020. V Compl, App 33a; V Compl, Ex 10, App 86a.

Time is of the essence due to the just-in-time nature of the supply chain in the automotive industry. V Compl, App 33a-34a. Accordingly, if there is any delay or interruption in AirBoss’s supply of the Parts, then MSSC’s own manufacture and shipment of its suspension parts will be delayed or interrupted, which will, in turn, cause delay or interruption in FCA’s production lines. V Compl, App 33a-34a.

Further, MSSC cannot seek an alternative supplier for the Parts. V Compl, App 34a. AirBoss's Parts are unique because they are manufactured to comply with FCA's specific engineering requirements for installation into FCA's suspension system. V Compl, App 34a. Due to the time and expense necessary to manufacture the Parts, the long Production Part Approval Process ("PPAP") by the OEMs, including FCA, (approximately one year or more), and the knowledge and expertise required to manufacture and supply the Parts, there is no substitute supplier of the Parts. V Compl, App 34a. AirBoss is, therefore, MSSC's sole supplier of the Parts. V Compl, App 34a.

MSSC based its quotations for these parts to its customer, FCA, on the quotations it received from AirBoss. V Compl, App 34a. AirBoss was attempting to unilaterally alter the arrangement both parties had freely bargained for, such that MSSC alone would bear the cost and risk for the contract. V Compl, App 34a. MSSC, in fact, reached out to FCA to inquire as to whether FCA would accept price increases from MSSC, but FCA stated that price increases were not in its budget and cost recovery was not an option. V Compl, App 34a.

In addition to weekly meetings regarding these issues, in an effort to avoid this action, on February 10, 2020, MSSC reached out to Ms. Gallagher from AirBoss, inquiring about the exorbitant price increase. V Compl, App 35a; V Compl, Ex 11, App 88a-89a. Ms. Gallagher responded the same day, for the first time stating (contrary to the October 2019 letter providing that changes in the market were the reason for the increase) that there were several errors in the

original quote provided by AirBoss, including the failure to account for certain costs. V Compl, App 35a; V Compl, Ex 11, App 88a-89a.

II. Procedural History.

A. MSSC's Motion for Preliminary Injunction is Granted.

After receiving the February 10, 2020 notification from AirBoss that it would take the action outlined in its January 29, 2020 letter to stop the supply chain, on February 12, 2020, MSSC filed its Verified Complaint for Injunctive and Other Relief. *See* V Compl, App 26a-92a. It was verified by Kimberly Luepke, the Director of Procurement for MSSC, and asserted three counts:

Count I – Breach of Contract

Count II – Declaratory Judgment

Count III – Specific Performance (Alternative Remedy).

V Compl, App 35a-40a. The same day, MSSC also filed a Motion for Temporary Restraining Order and Preliminary Injunction and Brief in Support of Same (“Motion for Preliminary Injunction”), which sought a mandatory preliminary injunction requiring AirBoss to supply the Parts at issue at the fixed prices for the life of the vehicle programs. *See* Order Granting Preliminary Injunction, App 123a-24a.

AirBoss filed a Response in Opposition to [MSSC]’s Motion for Injunctive Relief (“Response to Motion for Preliminary Injunction”) and attached the affidavit of Kimberly Gallagher, the Vice President of Sales and Business Development for AirBoss. Gallagher Aff, App 120a-123a. She confirmed that AirBoss had

requested the price increases on the six parts, as alleged by MSSC. Gallagher Aff, App 121a. Ms. Gallagher also confirmed that AirBoss had misquoted the parts, “For example, AirBoss’s original quote accounted for labor costs for two operators, but as it turned out the assembly process required three.” Gallagher Aff, App 121a.

Ms. Gallagher claimed MSSC had been unwilling to negotiate, Gallagher Aff, App 121a, but she failed to even acknowledge the \$305,041.26 adjustment that MSSC had previously provided or the Letter Agreement that she signed agreeing that [AirBoss] would “not seek pricing increases except as expressly permitted by the contracts or as otherwise agreed upon between [AirBoss] and MSSC.” *See* V Compl, App 32a; V Compl, Ex 6, App 78a.

The trial court held a hearing and entered an Order Granting Preliminary Injunction the same day. Order Granting Preliminary Injunction, App 123a-124a. It found AirBoss “entered into a contractual relationship with MSSC to supply automotive parts at the fixed prices contained in the purchase order between the parties for the life of the vehicle programs” and ordered that AirBoss continue to supply the Parts identified in the Purchase Order to MSSC pursuant to the releases issued by MSSC. Order Granting Preliminary Injunction, App 123a-124a. AirBoss filed an application for leave to appeal that Preliminary Injunction Order, which the Court of Appeals denied. *See* COA Case No. 353069.

B. The Trial Court Grants Summary Disposition on MSSC's Claims and Denies Summary Disposition on AirBoss's Counterclaim.

AirBoss promptly filed an Answer, Affirmative Defenses, and Counterclaim to MSSC's Verified Complaint, ("Answer" or "Counterclaim"), App 93a-119a. AirBoss's Counterclaim sought damages in the form of the difference between the prices it requested in its October 1, 2019 letter and the price MSSC was paying under the Purchase Order. Counterclaim, App 116a-117a.

Shortly after the COA denied AirBoss's application for leave to appeal, AirBoss filed a Motion for Summary Disposition on All Claims under MCR 2.116(C)(7), (9), and (10). *See* Op and Order RE: Summary Dispositions ("Summary Dispositions") 2, App 11a. MSSC filed a Cross Motion for Summary Disposition Pursuant to MCR 2.116(I)(2). *See* Summary Dispositions 4, App 13a.

AirBoss did not raise any factual factual issues regarding the enforceability of the contract, only issues of law. *See* Summary Dispositions 2-3, App 11a-12a. Based on the parties' papers and submissions, the trial court issued its "Opinion and Order Re: Summary Disposition," App 10a-19a. The trial court found that (1) the term "blanket order" expresses a quantity term, (2) since a quantity term was stated, the trial court could consider parol evidence in determining what quantity was intended by the term "blanket," (3) the parties had been in a contractual relationship since July 2013, (4) AirBoss would produce and ship parts in accordance with MSSC's material releases, and (5) AirBoss did not contend that MSSC acted in

bad faith or in violation of commercial standards of fair dealing. Summary Dispositions 7-10, App 16a-19a.

The trial court concluded that, when the documents were considered together, an enforceable life-of-the-program requirements contract was established as a matter of law. Summary Dispositions 10, App 19a. It further found that AirBoss had breached the contract and the July 8, 2019 letter agreement by demanding a price increase and threatening to stop shipping in accordance with same. Summary Dispositions 10, App 19a.

The trial court denied AirBoss's Motion for Summary Disposition and its Counterclaims, granted MSSC's Cross Motion, and entered a Stipulated Order specifying the Opinion had the effect of dismissing AirBoss's Counterclaims and granting MSSC's claims in the Verified Complaint for declaratory judgment and specific performance. Stipulated Order, App 7a-9a. AirBoss's Claim of Appeal followed.

C. The Court of Appeals Affirms the Trial Court's Conclusions in a Published Opinion.

The Court of Appeals ("COA") began by noting that "the UCC is to be liberally construed and applied to promote its underlying purposes and policies." COA Op 3, App 3a. In the absence of a directly-controlling UCC provision, the COA noted questions were to be resolved according to general legal principles, including the law of contract interpretation. COA Op 4, App 4a.

The COA recognized that “For a requirements contract, ‘the quantity term is not fixed at the time of contracting,’ and ‘[t]he parties agree that the quantity will be the buyer’s needs or requirements of a specific commodity or service’ over the life of the contract.” COA Op 4, App 4a (citing 13 Corbin, Contracts (rev ed), § 6.5).

The COA concluded that here, as in *Great Northern Packaging, Inc v General Tire and Rubber Co*, 154 Mich App 777; 399 NW2d 408 (1986), the use of the term “blanket order” was intended as a quantity term, albeit imprecise, because it was binding “for the lifetime of the program.” COA Op 4, App 4a. It specifically held: “The contract did not state a specific quantity because plaintiff’s need for parts was dependent on its customer’s production schedule, which is common in the automotive industry.” COA Op 5, App 5a. Taken together with the incorporated Terms and Conditions, which required MSSC to issue a Vendor Release and Shipping Schedule to AirBoss, the COA held that the term “blanket” was intended to be a quantity term of a requirements contract and was sufficient to satisfy the statute of frauds. COA Op 5, App 5a. Therefore, the COA affirmed the trial court’s grant of summary disposition in MSSC’s favor in a published opinion.

AirBoss asserts that the COA did not say how the conclusion that blanket was a quantity term led to the conclusion that the Purchase Order was a requirements contract. COA Op 5, App 5a. In fact, the COA stated, “Defendant did not appear to contest that if the trial court correctly held that ‘blanket’ was a quantity term, then the parties had a requirements contract,” and thus it was limiting its

analysis to whether the parties' contract contained a quantity term. COA Op 4 n1, App 4a n1.

With respect to mutuality, as AirBoss did not argue and the evidence did not suggest a lack of good faith or violation of commercial standards of fair dealing on the part of MSSC, the COA held that AirBoss had not established a lack of mutuality of obligation. COA Op 5, App 5a.

STANDARD OF REVIEW

The grant or denial of summary disposition is reviewed *de novo* to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817, 822 (1999). A motion for summary disposition under MCR 2.116(C)(10) should be granted when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468, 471 (2003).

The proper interpretation of a contract is a question of law reviewed *de novo*. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447, 451 (2003). Statutory interpretation is also reviewed *de novo*. *Badeen v PAR, Inc*, 496 Mich 75, 81; 853 NW2d 303, 306 (2014).

ARGUMENT

The parties dispute the proper interpretation of two interrelated UCC provisions: the statute of frauds, and the provision governing requirements contracts.

The statute of frauds mandates that enforceable contracts for the sale of goods under the UCC must establish, in writing, the quantity of goods to be traded. As codified in Michigan law, the statute of frauds provides:

Except as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing.

MCL § 440.2201(1).

The provision governing requirements contracts establishes a way for contracts to satisfy this mandate—by defining the quantity of goods to be traded in terms of the buyer’s yet-to-be-determined needs rather than in concrete amounts.

A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

MCL § 440.2306(1).

This dispute centers on whether MSSC's designation of the Purchase Order as a "blanket" purchase order, as described in the Terms and Conditions, established a quantity term consistent with a requirements contract and thereby satisfied the statute of frauds. Both courts below correctly concluded that it did.

I. The Courts Below Correctly Read "Blanket" As A Quantity Term Sufficient To Satisfy The Statute Of Frauds.

A. Any quantity term can satisfy the statute of frauds so long as it demonstrates that an agreement was made between the parties.

Both courts below concluded that the term "blanket order" was a quantity term, which satisfied the statute of frauds. COA Op 4, App 4a; Summary Dispositions 7, App 15a-16a (citation omitted). While such quantity terms require additional interpretation, the fact that they

are imprecise does not affect the fact that they accomplish the goal of the statute of frauds—demonstrating that an agreement has been reached between the parties.

The statute of frauds defines a standard for proving whether a contract was made, not what the contract said. The official comment accompanying the codified statute of frauds² provides that its purpose is not to require the terms of a contract to be “precisely stated,” but to “afford a basis for believing” that an alleged contract “rests on a real transaction.” UCC § 2-201, official comment 1. It does not address “prov[ing] the terms of the contract,” *Lorenz Supply Co v American Standard, Inc*, 419 Mich 610, 615-16; 358 NW2d 845, 847 (1984), only “prevent[ing] the enforcement of promises that were never made,” 2 Anderson UCC § 2-201:175 (3d ed) (citation omitted).

A quantity term must exist in a writing to demonstrate to courts that the parties agreed to a transaction in goods. *Lorenz*, 419 Mich at 614-15. Thus, courts will not infer the existence of a quantity term where a contract does not provide one. *Id.* While AirBoss relied heavily on *Lorenz* in its Brief on Appeal, this case is markedly different. In *Lorenz* this Court was faced with a seller’s letter “welcoming” a buyer into “the numbers” of the seller’s “distributors across the country.” *Id.* at 614. Nothing in the writing so much as alluded to the quantity of goods the buyer was responsible for purchasing. *Id.* In such a circumstance, this Court concluded it would

² “[T]he official comments appended to each section of the UCC are useful aids to interpretation and construction.” *Shurlow v Bonthius*, 456 Mich 730, 735 n 7; 576 NW2d 159, 162 (1998).

“exceed its role” to “imply” the existence of a quantity term and risk enforcing an agreement “whether the parties agreed thereto or not.” *Id.* at 615. The holding in *Lorenz* does not address a situation such as this case, where a quantity term exists, but not a precise one.

Indeed, Michigan law does not hold that a quantity term must be *precise* in order to *exist*. The meaning of a quantity term, like any other term, is not what matters for statute of frauds analysis—“[t]he fact that a quantity term is not precise is not fatal to the claim that a writing satisfies the statute of frauds, as parol evidence is admissible to determine the exact meaning of the term.” 2 Anderson UCC § 2-201:177 (3d ed) (citing *Great Northern*, 154 Mich App 777). Accordingly, courts have long recognized that a quantity term can be identifiable as such, and thus fulfill the objective of the statute of frauds, even if its exact meaning is not self-evident. *See, e.g., Matter of the Estate of Frost*, 130 Mich App 556, 561; 344 NW2d 331, 334 (1983); *Great Northern*, 154 Mich App at 787; *BRC Rubber & Plastics, Inc v Cont’l Carbon Co*, 900 F3d 529, 540 n30 (7th Cir 2018) (“[T]he Statute of Frauds does not render a contract invalid due to an imprecise quantity term.”) (citation omitted).

Estate of Frost provides a clear-cut illustration of how an imprecise quantity term still provides the certainty necessary to satisfy the statute of frauds. That case dealt with an agreement for the sale of “all wood sawable,” without elaboration. 130 Mich App at 558. “All wood sawable” was indisputably describing *a quantity* of wood to be sold, but the writing was “ambigu[ous]” as to *what quantity* was meant thereby. *Id.* at 561. Nonetheless, “a quantity term [wa]s found to exist in the agreement,” and clearing that threshold “provide[d] a

basis for believing that” there had been a “real transaction.” *Id.* Thus, “the requirements of [the statute of frauds] have been fulfilled” before any analysis of a quantity term’s meaning is even necessary. *Id.*

This reasoning has been repeated, and remains in force today. The Court of Appeals relied on *Estate of Frost* just two years after it was decided to conclude that “blanket order” expresses an “imprecise quantity term” for statute of fraud purposes. *Great Northern*, 154 Mich App at 787 (citing *Estate of Frost*, 130 Mich App at 558). Federal courts have embraced this reasoning as well, particularly as it concerns “blanket orders.” *Johnson Controls, Inc v TRW Vehicle Safety Systems, Inc*, 491 F Supp 2d 707, 714-15 (ED Mich 2007) (citations omitted). Indeed, the *Johnson* court expressly noted that, as applied to “blanket order” requirement contracts, *Estate of Frost* and *Great Northern* “provide a more reasoned analysis of the issue and are consistent with the UCC’s policies,” as compared to cases that demanded precise quantity terms. *Id.* (citations omitted).

The same principle holds true here. The courts below were faced with deciding whether the Purchase Order satisfied the statute of frauds. COA Op 4, App 4a; Summary Dispositions 7, App 15a-16a (citation omitted). This task was complete the moment the courts concluded that “blanket order” was a quantity term.

B. The plain meaning and common understanding of “blanket order” describes a quantity consistent with a requirements contract.

“In interpreting a contract, it is a court’s obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning.” *In re Smith Tr*, 480 Mich 19, 24; 745 NW2d 754, 757-58 (2008); *see also City of Grosse Pointe Park v Michigan Mun Liab & Prop Pool*, 473 Mich 188, 199; 702 NW2d 106, 113 (2005) (citation omitted) (“Where a term is not defined in the [contract], it is accorded its commonly understood meaning.”).

“Blanket” is used as an adjective to describe something “all-embracing[,] indiscriminate, [or] inclusive.” *Blanket*, OXFORD ENGLISH DICTIONARY ONLINE, *available at* <https://www.oed.com/view/Entry/19889?result=1&rskey=yMVJHb&> (accessed April 28, 2022). Accordingly, a “blanket order” or “blanket purchase order” is commonly understood to mean “[a]n order negotiated by a customer with a supplier for multiple purchases and deliveries of specified goods over a stated period, as an alternative to placing a separate order for each transaction.” BLANKET ORDER, *Black’s Law Dictionary* (11th ed 2019).

An all-encompassing open-ended order addressing “multiple purchases,” “as an alternative to [] a separate order for each transaction,” *id.*, is precisely how a requirements contract operates. A requirements contract establishes an “ongoing relationship” between the parties, *Empire Gas Corp v Am Bakeries Co*, 840 F2d 1333, 1340

(7th Cir 1988), whereby “a buyer promises to buy, and a seller to supply, all the goods or services that a buyer needs during a specified period,” CONTRACT, *Black’s Law Dictionary* (11th ed 2019).

Courts have confirmed this straightforward understanding of the term “blanket order,” particularly “in the automotive industry.” *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC*, 331 Mich App 416, 419, 427-28; 952 NW2d 576, 578, 583 (2020). In this context a “blanket order” reflects “standard” “just-in-time supply” practices in the industry, whereby “the purchaser will issue a purchase order for a period of time at a fixed price” and specify the quantity ultimately required through periodic “release schedules” over the course of the order’s duration. *Id.* at 427-29 (citations omitted). Courts have concluded that such “blanket order” arrangements operate as requirements contracts. *Id.*; see also *Royal Paper Box Co v ER Apt Shoe Co*, 195 NE 96, 97-98 (Mass 1935) (“The words ‘Blanket Order’ . . . lend further support to [the] construction” that a contract was a requirements contract); *Houston v Miller Centrifugal Casting Co, Inc*, unpublished opinion of the United States Court of Appeals for the Seventh Circuit, issued May 20, 1993 (Case No. 92-2279) p. 1, 996 F2d 1219 (table) (“As they use the term ‘blanket order,’ the parties are apparently referring to a ‘requirements contract.’ . . . Thus the parties have a binding contract even though the exact quantity of items sold fluctuates according to the buyer’s needs.”).

Thus, even if viewed in isolation, the term “blanket order” plainly conveys that an order is intended to be all-encompassing within a defined period. In that way, it defines the quantity of goods

to be sold consistently with the approach of other requirements contracts—and in doing so, satisfies the statute of frauds.

C. The Blanket Order operated as a requirements contract by imposing an ongoing obligation on MSSC to purchase its requirements from AirBoss.

MSSC's Terms and Conditions specify the obligations that arise from a "blanket order" between these parties. These obligations, coupled with the terms of the specific Purchase Order at issue, are characteristic of requirements contracts and thus reinforce the conclusion that MSSC and AirBoss agreed to such a contract here.

A requirements contract is distinct from an options contract or an illusory contract because it imposes obligations on the buyer to make purchases. As "the party who will determine quantity," the buyer is obligated to operate "in good faith and according to commercial standards of fair dealing" to ensure that the requirements ordered "will approximate a reasonably foreseeable figure." *Cadillac Rubber*, 331 Mich App at 426; 952 NW2d at 582 (quoting UCC § 2-306, official comment 2).

The nature of these obligations still leave room for considerable flexibility. Because "good faith" and "fair dealing" bind the buyer, it is possible that market conditions can reach the point where "a lack of orders" leads to a "shut-down" by the buyer. UCC § 2-306, official comment 2. In these transactions, "[t]he seller assumes the risk of all good faith variations in the buyer's requirements, even to the extent of

a determination to discontinue the business.” *U & W Indus Supply, Inc v Martin Marietta Alumina, Inc*, 34 F3d 180, 188 (3d Cir 1994); *see also Royal Paper Box Co*, 195 NE at 98 (“If business conditions . . . resulted in reducing the [buyer]’s requirements . . . that is the misfortune of the [seller] and any loss to it is a consequence of the kind of agreement into which it entered.”).

Nonetheless, courts will not find requirements contracts exist where the buyer does not face some obligation to make purchases. For example, where an agreement provides only for sales “specified to be in accordance with [buyer]’s written releases,” the buyer is not directly obligated to make any purchases. *Aleris Aluminum Canada LP v Valeo, Inc*, 718 F Supp 2d 825, 832 (ED Mich 2010). But so long as an obligation is placed on the buyer, the agreement imposes sufficient mutual obligations to create a requirements contract. *See, e.g., Cadillac Rubber*, 331 Mich App at 430 (requirement to buy “between one part and 100% of [buyer]’s requirements” was sufficient mutuality of obligation).

The Purchase Order at issue here incorporated language from MSSC’s Terms and Conditions, imposing a requirement to make purchases on MSSC:

If this order is identified as a “blanket order,” Buyer **shall** issue a “Vendor Release and Shipping Schedule” to Seller **for specific** part revisions, **quantities** and delivery dates for Products. Buyer shall have the right to cancel, adjust or reschedule the quantities of Products shown in such “Vendor Release and Shipping Schedule,” **except**

that it may not cancel, adjust or reschedule the Products shown as “Firm Obligations” on such “Vendor Release and Shipping Schedule.”

V Compl, Ex 4, App 55a (emphasis added).

The word “shall” indicates that MSSC had “a duty,” or “more broadly, [wa]s required to” issue Schedules ordering parts from AirBoss. SHALL, *Black’s Law Dictionary* (11th ed 2019). MSSC could modify these schedules, but it could not refuse to issue them. V Compl, Ex 4, App 55a.

Additional language specific to the parts at issue here—added at AirBoss’s request—further reinforces MSSC’s obligation to make purchases. On April 10, 2015, Doug Reid, AirBoss’s president at the time, issued a credit to MSSC and requested that the Purchase Order specifically state that the Parts would stay with AirBoss:

Make sure purchase orders state that the bonding for these models will stay with AirBoss Flexible Products.

V Compl, Ex 2, App 50a. On April 30, 2015, Kim Luepke of MSSC emailed Mr. Reid stating that she would “have the updated blanket to you in the next week stating the FY16 WK WD is 100% sourced to Flexible for the life of the program.” V Compl, App 30a; V Compl, Ex 3, App 53a. Mr. Reid responded, “Looks good to me.” V Compl, Ex 3, App 53a. The Purchase Order was then updated to provide that AirBoss was “awarded the . . . value add of MSSC for the life of the WK74 and WD75 program.” V Compl, Ex 1, App 44a.

Accordingly, the parties operated as though bound by a requirements contract. As the Court of Appeals noted, MSSC “has purchased its requirements of parts from [AirBoss] for the past seven years without any claims of bad faith or unfair dealing.” COA Op 5, App 5a. In light of the long and costly process of certifying a supplier with MSSC’s OEM customers, *see* V Compl, App 34a, MSSC did not and *could not* seek out an alternative supplier at any point in those seven years.³ And the parties’ negotiations over amendments to the purchase order took place against a backdrop of AirBoss “agree[ing] to continue to be bound by the Terms and Conditions.” V Compl, Ex 5, App 66a.

Taken together, the Purchase Agreement along with the Terms and Conditions defined an all-encompassing “blanket” order that obligated MSSC to purchase goods from AirBoss for the life of the vehicle program. Such an arrangement is properly viewed as a requirements contract—and by giving rise to this arrangement, the

³ AirBoss claims that “MSSC has the ability to produce the parts at issue itself,” *see* AirBoss Br at 17 n1, which misses the point that only manufacturers with PPAP approval from MSSC’s OEM customers can supply the safety-critical parts at issue. V Compl, App 34a. AirBoss offers nothing to show that MSSC so much as began the process necessary to become capable of supplying itself with the WK and WD components at issue here—much less violated standards of good faith and fair dealing by actually supplying its own requirements. Further, the affidavit making this claim was founded only “upon information and belief” and sheer speculation that because MSSC had tooling for a different program, it could be modified to produce the parts AirBoss was supplying for the WK program. Gallagher Aff ¶15, App 122a.

term “blanket order” is properly viewed as satisfying the statute of frauds.

II. AirBoss’s Counterarguments Are Wrong Both Factually And Legally.

A. AirBoss incorrectly argues that imprecise quantity terms do not satisfy the Statute of Frauds.

The crux of AirBoss’s objections to the holdings below is its assertion that “[a] quantity term cannot be imprecise and satisfy the statute of frauds.” AirBoss Br at 29; *see also id.* at 25 (arguing the purchase order “do[es] not satisfy the statute of frauds” because it “do[es] not show a specific quantity [of goods] MSSC is obligated to purchase”).

AirBoss’s argument is inconsistent in describing the purported problem with the Purchase Order. AirBoss acknowledges that when discussing requirements contracts the quantity delivered is only “ascertain[able] with precision at the end” of performance, with the initial contract merely defining the metric that will be used to ascertain said quantity—*e.g.*, “50% of . . . requirements,” “100% of . . . requirements,” or some other yet-to-be-ascertained figure. AirBoss Br. at 22, 30. This acknowledgement appears to miss the point that this is how the Blanket Order at issue works. It defines the quantity to be purchased in terms of an imprecise as-yet-to-be-ascertained figure (the amounts in MSSC’s Schedules), and at the end

of the term of the contract it can be ascertained whether that quantity was bought or sold.

Nonetheless, it is clear that AirBoss can only prevail if this Court overrules a line of Court of Appeals decisions stretching back at least to *Great Northern*. See AirBoss Br at 31 (describing “illogic” of *Great Northern*’s holding), 33 n4 (describing courts as “led astray” by “chiefly relying on *Great Northern*”). Although *Estate of Frost* is not cited in AirBoss’s brief, AirBoss presumably wants that case jettisoned as well, as it formed the basis for the holding in *Great Northern*. See *Great Northern*, 154 Mich App at 787 (“[I]n our opinion this case is analogous to *In re Frost Estate*.”).

Estate of Frost and *Great Northern* have endured because they were correctly decided, and should not be overruled now. AirBoss’s argument to the contrary rests on two related mistakes: an overbroad reading of *Lorenz* and a misconception of the purpose of the statute of frauds.

AirBoss holds out *Lorenz* as support for its assertion that “[a] quantity term cannot be imprecise and satisfy the statute of frauds.” AirBoss Br at 29 (citing *Lorenz*). But *Lorenz* held only that judges cannot impute a *nonexistent* quantity term. See *Lorenz*, 419 Mich at 614-15. As already explained, see Part I.A, *supra* pp 26-29, there is a meaningful distinction between *imprecise* and a *nonexistent* quantity terms.

AirBoss conflates these ideas because it believes the statute of frauds exists to address the substance of contracts, rather than their

origins. See AirBoss Br at 29 (“[I]f the quantity is ‘imprecise’ in the sense that the writing leaves one uncertain of what quantity was contracted for sale, then the quantity is not ‘shown in the writing.’”). AirBoss acknowledges that the statute exists to “prevent enforcement of promises that were never made,” AirBoss Br at 35 (quoting 2 Anderson UCC § 2-201:175 (3d ed)), but takes the point too far. Indeed, the very treatise AirBoss quotes for this premise not only expressly provides that “[t]he fact that a quantity term is not precise is not fatal to the claim that a writing satisfies the statute of frauds,” but cites *Great Northern* in doing so. 2 Anderson UCC § 2-201:177 (3d ed) (citing *Great Northern*, 154 Mich App 777).

Similarly, AirBoss makes a limited embrace of the *Cadillac Rubber* decision in arguing that the agreement in that case satisfied the statute of frauds because it provided a “one piece” minimum quantity. AirBoss Br 33 (citing *Cadillac Rubber*, 331 Mich App at 431). But this places too much weight on the facts of that case, since the court there did not find the statute of frauds was satisfied because of the obligation to purchase “one piece”—the court was satisfied with the presence of language with “some nexus to the notion of amount or quantity in light of the customary practice in the automotive industry.” *Cadillac Rubber*, 331 Mich App at 429 (quoting *Johnson Controls*, 491 F Supp 2d at 717).

The UCC provides other mechanisms for determining the substance of an agreement after the agreement is found to be enforceable, including by “liberally incorporating trade usage, custom and practice, course of dealing, and course of performance into parties’ agreements in fact.” *Johnson Controls*, 491 F Supp 2d at 716.

Shoehorning the statute of frauds into this later substantive inquiry would crowd out these tools, while at the same time “minimally advanc[ing] the statute of frauds’ purpose to provide a basis for believing a contract exists.” *Id.*

B. AirBoss incorrectly presents the blanket purchase order as imposing no obligations on MSSC.

AirBoss’s remaining arguments rest on the faulty premise that MSSC had no obligations under the Purchase Order. So the theory goes, the Purchase Order did not obligate MSSC to buy goods from AirBoss, AirBoss Br at 28, and therefore the blanket order “is nothing more than a framework and price quote for future releases” or “for a spot-buy relationship,” AirBoss Br at 26, 34. *See also* AirBoss Br at 34 (“It was . . . erroneous . . . to enforce a requirements contract . . . where there was no obligation [for MSSC] to purchase even one part.”).

These arguments fail for the simple reason that MSSC was required to issue Schedules specifying parts it was buying from AirBoss. *See* Part I.C, *supra* pp 32-36. MSSC had no discretion to decline to issue Schedules, nor to otherwise restrict its orders from AirBoss beyond what good faith and fair dealing would allow.

Once the Purchase Order’s terms are understood, the arguments built upon AirBoss’s false premise crumble. For example, AirBoss argues that enforcing the Blanket Order or other contracts like it risks “destroy[ing] the freedom to contract on a spot-buy basis.” AirBoss

Br at 34-35. But there is nothing preventing companies like AirBoss from negotiating contract terms that do not obligate buyers to make purchases—unlike here, where language “awarding the value-add” of certain parts to AirBoss was specifically added to the blanket order following AirBoss’s request for clarified exclusivity. V Compl, Ex 1, App 45; V Compl, Ex 3, App App 53a. At a minimum, such companies can negotiate to avoid the use of terms like “blanket order,” which specifically indicates “an alternative to placing a separate order for each transaction.” BLANKET ORDER, *Black’s Law Dictionary* (11th ed. 2019).

Similarly, AirBoss’s repeated the suggestion that MSSC might order “zero” parts, AirBoss Br 34, can be understood for what it is: A risk common to any seller under a requirements contract. *See* UCC § 2-306 official comment 2 (“A shut-down by a requirements buyer for lack of orders might be permissible.”). But this risk is nonetheless subject to the requirement that MSSC “shall issue” schedules to AirBoss and by the covenant of good faith and fair dealing.

So too for the objections regarding the scope of MSSC’s discretion—a buyer is always the “party who will determine quantity” under a requirements contract, *id.*, and AirBoss does not articulate why it is uniquely problematic for this to be expressed through a “blanket order” rather than through other language expressing the same concept.

III. In The Alternative, This Court Should Affirm The Judgment Below On The Grounds That AirBoss's Unilateral Price Increase Breached The Terms Of The July 8, 2019 Letter.

Even if the Purchase Order did not create an enforceable contract—and it did—AirBoss would still have been bound by its promise to “not seek pricing increases except as expressly permitted by the contracts or as otherwise agreed upon between [the parties].” V Compl, Ex 6, App 78a. AirBoss agreed to this restraint in exchange for a \$305,041.26 retroactive reimbursement from MSSC and new pricing going forward. V Compl, Ex 6, App 78a. Its subsequent breach of that agreement provides an alternate basis on which to affirm the Court of Appeals’ affirmance of the trial court’s order. *See People v Vaughn*, 491 Mich 642, 646; 821 NW2d 288, 292 (2012) (this Court may affirm the judgment of the Court of Appeals on an “alternative basis”).

Yet while AirBoss acknowledges that it signed this agreement and received what it bargained for, *see* AirBoss Br at 13, it makes no effort to show how its subsequent pricing demands comported with this agreement. Nothing in the Purchase Order, Terms and Conditions, or any other document “expressly permitted,” V Compl, Ex 6, App 78a, AirBoss to raise its prices unilaterally. Indeed, if AirBoss could identify express language authorizing price increases within these documents, then that language would have resolved this case. And it is axiomatic that MSSC has not “otherwise agreed” to AirBoss’s most recent unilateral price increase, as that increase was what necessitated MSSC bringing this case. *See* V Cmpl, App 27a.

The trial court ruled against AirBoss on the grounds that AirBoss's most recent demand for a price increase "violated the terms of *both* the July 8, 2019 Letter *and* the Purchase Order," and thus AirBoss was in breach of an enforceable contract. App 19a (emphasis added). The Court of Appeals affirmed that result in a published opinion. COA Op 6, App 6a. Accordingly, this Court could affirm the trial court's conclusion that AirBoss breached the July 8, 2019 letter, and thereby affirm the judgment below on that alternative basis.

CONCLUSION AND REQUESTED RELIEF

The courts below correctly applied the statute of frauds, correctly interpreted the contractual language before them, and correctly held that MSSC's Purchase Order was an enforceable requirements contract. AirBoss has failed to show otherwise.

For all of the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted this 2nd day of May, 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify this document complies with the type-volume limit of Administrative Order 2019-16, because it was prepared in a 14-point Times New Roman proportionally-spaced typeface using Microsoft Word, it is 8,338 words, excluding the parts of the document exempted.

Respectfully submitted this 2nd day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2022, this Appellee's Response Brief to Appellant's Brief on Appeal was electronically filed with the Clerk of the Court using the MiFile website and electronically served using the Court's electronic filing system to the attorneys/parties of record who include the following:

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STATE OF MICHIGAN
IN THE SUPREME COURT

MSSC, INC.,
Plaintiff-Appellee,

v

AIRBOSS FLEXIBLE
PRODUCTS CO.,
Defendant-Appellant.

Supreme Court No. 163523

Court of Appeals No. 354533

Oakland County Circuit Court
No. 2020-179620-CB

Hon. James M. Alexander

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**APPELLANT AIRBOSS FLEXIBLE PRODUCTS CO.'S
REPLY BRIEF ON APPEAL (CORRECTED)**

ORAL ARGUMENT REQUESTED

FILED UNDER AO 2019-6

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INTRODUCTION

The whole point of the statute of frauds is to prevent disputes like this one. A purported contract for the sale of \$1,000 or more in goods either shows the quantity contracted for sale in writing, which binds the parties to that quantity, or it does not, in which case it cannot be enforced. Parties and courts alike should be able to tell the difference by looking at the face of the document. Otherwise, the UCC's prohibition against enforcing any contract "beyond the quantity of goods shown in the writing," MCL 440.2201(1), has no significance.

In disagreement, MSSC argues that an "imprecise" quantity term satisfies the statute of frauds if it indicates an agreement to exchange *some* quantity of goods. But that is not what the statute says. It says "the quantity" must be shown, not just any "quantity term." And there is a difference between a term that specifies the quantity as the buyer's requirements, and a term that says the quantity is whatever the buyer may later specify in its releases. The first term *shows* a cognizable quantity, the second one does not. The Court should reverse and make clear that the second does not pass muster under the statute of frauds.

REPLY ARGUMENT

I. MSSC's response ignores the statute's requirement that the quantity be "shown in the writing."

MSSC's argument is based on only half of the governing statute. The statute of frauds contains two sentences. The first focuses on whether there is a "writing sufficient to indicate that a contract for sale has been made." MCL 440.2201(1). If this case concerned a dispute over any contract

term other than quantity (e.g., price, delivery, payment terms), MSSC could focus exclusively on this portion of the statute and rightly argue that the contract is still enforceable even if these other terms are “not contain[ed]” nor “precisely stated” in writing. UCC § 2-201, official comment 1.

But this dispute is over the quantity term, which the statute treats differently. The second sentence of the statute explains that a writing is sufficient even if it omits or incorrectly states certain terms, but calls out one term in particular—quantity—and limits enforcement to the amount “shown in the writing.” MCL 440.2201(1). MSSC notes this language at the beginning of its response, but never returns to it. Only by ignoring this language does MSSC conclude (1) that “[t]he meaning of a quantity term, like any other term, is not what matters for statute of frauds analysis,” (Resp Br 28), and (2) that a term can satisfy the statute as long as it shows that “the parties had an agreement relating to some quantity of goods,” (Resp Br 10). On the contrary, the UCC does not treat the quantity term like any other term, and in determining what quantity is “shown in the writing,” the “meaning” of the quantity term is *all* that matters.

It is actually striking how similar MSSC’s approach to the statute of frauds is to that advocated for by Justice Brickley in his concurring opinion in *Lorenz Supply Co v Am Standard, Inc*, 419 Mich 610; 358 NW2d 845 (1984). Just as Justice Brickley argued that a requirements quantity term could be inferred from the nature of the commercial relationship in *Lorenz, id.* at 635 (Brickley, J., concurring), MSSC contends that the imprecise nature of its “quantity terms” and the nature of the automotive industry allow the court to infer an obligation for AirBoss to sell MSSC its requirements.

The other six Justices of this Court rejected this reasoning in *Lorenz*. The majority made a point to explain that Justice Brickley’s approach ran counter to the plain language of the statute, which required a quantity to “be specifically stated” in writing. *Id.* at 615. This Court also correctly understood that a requirements term, “although general in language, nonetheless is, *if stated in the writing*, specific as to quantity, and in compliance with § 2–201.” *Id.* And unlike the concurring opinion, the majority recognized that it was not the Court’s job to rewrite an agreement to save it from unenforceability. To do so would allow one party to “maintain an action against” the other for the buyer’s “requirements whether the parties agreed thereto or not.” *Id.*

MSSC’s attempt to distinguish *Lorenz* is tellingly shallow. It argues that “*Lorenz* does not address a situation such as this case, where a quantity term exists, but not a precise one.” (Resp Br 28.) But this misstates the issue—the question in this case is not whether some “quantity term” exists. The question is whether a quantity is shown in the writing. For that reason, *Lorenz*’s discussion of the statute of frauds is on point, and MSSC fails to square its argument with the majority’s instruction that a quantity be “specifically stated” in writing. 419 Mich at 615. (See Resp Br 9 (arguing that “it is appropriate for courts to refer to other sources and parol evidence to determine what specific quantity was agreed to”).)¹

¹ The agreement at issue in *Lorenz* was ultimately held to be enforceable because it was a distributorship agreement, not a contract for the sale of goods, and therefore not subject to the UCC’s statute of frauds. 419 Mich at 615. Here, MSSC concedes that it seeks to enforce a contract for the sale of goods that is subject to the UCC’s statute of frauds. (See 07/01/20 MSSC Summ Disp Resp 11-16.)

MSSC instead wraps itself in the Court of Appeals' decision in *Great Northern Packaging, Inc v Gen Tire & Rubber Co*, 154 Mich App 777; 399 NW2d 408 (1986), but that case offers no refuge because it was wrong and should be overturned. In *Great Northern*, the court held that the use of the term "blanket order" satisfied the statute of frauds, but then concluded that "it was properly left for the jury to determine what quantity, if any, was stated by the 'blanket order' language." *Id.* at 787. This reasoning is incompatible with the statutory text and the self-contradiction is obvious: if one cannot tell what quantity "if any" is intended by the term "blanket," then the writing does not show what quantity must be sold, as the UCC requires. This Court should hold that this portion of *Great Northern* was wrong, and can do so without implicating any other case because *Great Northern* had never been approvingly cited by any Michigan appellate court for this portion of its holding prior to the Court of Appeals' decision in this case. There is thus no need to "overrule[] a line of Court of Appeals decisions stretching back at least to *Great Northern*." (Resp Br 37.)

Also contrary to MSSC's suggestion, the Court need not overturn the holding in *Matter of Estate of Frost*, 130 Mich App 556; 344 NW2d 331 (1983). MSSC proposes that *Frost* is a "clear-cut illustration of how an imprecise quantity term still provides the certainty necessary to satisfy the statute of frauds." (Resp Br 28.) But *Frost* actually serves to show the difference between a written term that shows a quantity, like a requirements or outputs term, and a term that does not show a quantity, like in this case. In *Frost*, the parties contracted for the sale of trees and the writing stated that the purchaser would take "all wood sawable." 130 Mich App at 558. The

seller owned several parcels, however, and the contract was silent as to which parcels would be cut. *Id.* at 559. Observing that “all wood sawable” established an “output contract,” the court held that this satisfied the statute of frauds. *Id.* at 560. The court then remanded to allow for parol evidence to show which parcels of land were intended to be the subject of the contract. *Id.* at 564-65 (citing MCL 440.2202).

MSSC asserts that *Frost* held that “all wood sawable” satisfied the statute of frauds despite being “‘ambigu[ous]’ as to *what quantity* was meant.” (Resp Br 28.) Not so. The writing showed the quantity was “all wood sawable”—a permissible outputs term—which is no different than a contract selling “all goods produced.” The *Frost* Court said “the parties’ failure to describe the parcel of land upon which the trees to be cut were located lends ambiguity to the *agreement*”—not the quantity term itself. 130 Mich App at 561 (emphasis added).

II. The word “blanket” and other provisions that do not obligate MSSC to purchase any particular quantity of parts cannot substitute for a quantity “shown in the writing.”

In contrast to *Frost*, MSSC does not point to any provision in writing that specifies MSSC will purchase its requirements, AirBoss’s outputs, or any other particular quantity of parts.

A. The word “blanket” does not specify a quantity.

In the quest to satisfy the statute of frauds, the Court of Appeals and MSSC both start with the word “BLANKET” typed into a box in the top right corner of the first page of the Purchase Order:

Purchase Order No.:	P047819
PO Original Date:	2019/04/03
PO Type:	BLANKET
PO Revision Level:	0
Change Order Effective Date:	1900/00/00

(App 42a.) MSSC latches onto this single word, adds “order” to create “blanket order,” and turns to dictionaries to argue that a “blanket order” is intended to be an “all-embracing” and “open-ended” order for “multiple purchases.” (See Resp Br 30-31.) This argument fails for the simple reason that these definitions do not show that “blanket” refers to a particular quantity; they instead show the opposite.

Furthermore, reliance on dictionaries at all is improper here. When a term is defined in a contract, courts must interpret the term according to that definition. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999). It is only appropriate to turn to a dictionary if a term is not defined within the document itself. *Pugh v Zefi*, 294 Mich App 393, 396; 812 NW2d 789 (2011). Here, the term blanket is defined in the agreement (see Appellant’s Br 26-28), and the definitions state that quantities provided are merely “an estimate” that “cannot be guaranteed.” (App 48a.) This is why MSSC looks elsewhere to define “blanket.”

MSSC's cited case law is no help either. MSSC posits that "[c]ourts have confirmed this straightforward understanding of the term 'blanket order' " and that these "arrangements operate as requirements contracts." (Resp Br 31.) MSSC then cites three cases in support of this seemingly critical conclusion. (Resp Br 31.) But as might be expected, these authorities fall well short of establishing that the word "blanket" is the same as a written promise that the buyer will purchase 100% of its requirements from the seller.

In *Royal Paper Box Co v E R Apt Shoe Co*, 290 Mass 207; 195 NE 96 (1935), a decision that predates Massachusetts' adoption of the UCC, the court concluded that a contract that ordered the buyer's "Requirements for [the] Balance of [the] year" was a requirements contract, and only added as an afterthought that "[t]he words 'Blanket Order' in the column headed 'Quantity' lend further support to this construction." *Id.* at 210. And in *Houston v Miller Centrifugal Casting Co, Inc*, 996 F2d 1219, 1993 WL 170965, p. 1 (CA 7, 1993) (unreported table case), a case interpreting Wisconsin law, it was the *parties* that used "blanket order" to refer to a requirements contract, not any conclusion reached by the court.

Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC, 331 Mich App 416; 952 NW2d 576 (2020) does not help either. In *Cadillac Rubber*, the purchase order documents at issue were labeled "blanket orders," and then also incorporated terms that defined "blanket order" to mean the buyer had to purchase between "one piece or unit" and "one hundred percent (100%) of Buyer's requirements." 331 Mich App at 419-420. This, combined with a provision stating that the buyer would release its "material requirement" weekly, led the Court of

Appeals to conclude that the purchase orders showed a commitment to purchase the buyer's requirements, satisfying the statute of frauds. *Id.* at 430-31. Because this conclusion was based on the way "blanket order" was defined by the parties in that case, it is not helpful to MSSC here, where the Purchase Order contains a different definition.²

One thing is clear from the authority gathered by MSSC: if there were cases establishing that "blanket" universally means an enforceable requirements contract, MSSC would have found them. But not even *Great Northern* went this far. See 154 Mich App at 787 (concluding that it was for the jury to determine what quantity "if any" was meant by "blanket order").

B. An obligation to issue non-binding releases does not "show" an obligation to purchase the buyer's requirements of goods.

In its continued attempt to characterize the Purchase Order as a requirements contract, MSSC next stretches the concept of a requirements contract beyond recognition. MSSC defines a requirements contract as anything that merely imposes an "obligation[] on the buyer to make purchases," without specifying what quantity of goods. (Resp Br 32.) MSSC then cites the provision in its general Terms that

² In terms of establishing what constitutes a requirements contract, the majority in *Cadillac Rubber* went too far. (See Appellant's Br 33.) Judge Shapiro was right when he explained in his partial dissent that "a promise to purchase anywhere from 1 unit to 100% of needs in a non-exclusive contract does not, in and of itself, create a requirements contract consistent with the UCC." 331 Mich App at 435 (Shapiro, J., concurring in part and dissenting in part). It creates an obligation to purchase one part and nothing more, and is therefore not enforceable beyond one part. MCL 440.2201(1).

requires it to issue releases and argues that this provision “impos[es] a requirement to make purchases on MSSC,” and is thus a requirements contract. (Resp Br 33-34 (citing Terms, App 55).)

On the contrary, a requirements contract is not a blank slate upon which a buyer can order whatever quantity it desires from the seller. See MCL 440.2306. Such a writing (like MSSC’s Terms) leaves the buyer untethered to any promise and free to order as many or as few goods as it wishes regardless of its actual requirements.

MSSC labels this a “risk common to any seller under a requirements contract,” and argues that “a buyer is always the ‘party who will determine quantity’ under a requirements contract.” (Resp Br 40.) But this again misunderstands the obligations of a requirements contract. In a requirements contract, the quantity of goods to be sold is fixed at the time of contracting—the parties are mutually bound to the amount of the buyer’s requirements. See MCL 440.2306. There is a big difference to a seller between the risk that the buyer’s good faith requirements will be reduced to zero due to an unforeseen event in the market, and the risk that the buyer will buy less than its requirements or even zero goods because it found another vendor willing to sell at a lower price. Sellers in a requirements contract agree to stomach the former, not the latter.

MSSC is not helped by its last ditch argument that “the parties operated as though bound by a requirements contract.” (Resp Br 35.) First, this has not been established as a factual matter: there is no evidence in the record that MSSC always ordered its requirements from AirBoss. Second, even if it were

true that MSSC had ordered its requirements from AirBoss for years, this does not substitute for a written promise to do so. Cf. *Aleris Aluminum Canada LP v Valeo, Inc*, 718 F Supp 2d 825, 833-834 (ED Mich, June 8, 2010) (“Though . . . [seller] may have, in fact, supplied [buyer’s] requirements, this does not necessarily mean that [seller] had a continuing obligation to do so.”).

If automotive suppliers want to draft a requirements contract, they know how. Such contracts contain terms like:

- “These purchase orders are 100% requirements orders” *Borgwarner PDS (Anderson), LLC v Indus Molding Corp*, No. 20-10607, 2020 WL 1169405, at *5 (ED Mich, Mar 11, 2020).
- “[T]his purchase order is a requirements contract under which Buyer will purchase and Seller will sell Buyer’s requirements” *Cooper-Standard Auto Inc v Daikin Am, Inc*, No. 21-CV-12437, 2021 WL 4975067, at *1 (ED Mich, Oct 26, 2021).
- “[T]he quantity is for Purchaser’s requirements” *Dayco Products, LLC v Thistle Molded Group, LLC*, No. 18-10862, 2019 WL 423523, at *1 (ED Mich, Feb 4, 2019).

Automotive suppliers like MSSC are sophisticated parties and well aware of the law in this area. Had MSSC wanted to draft its Purchase Order and Terms to create a requirements contract, it could have easily done so. It did not.

C. The Purchase Order’s “award” language is not a promise to purchase parts either.

Lastly, MSSC argues that the note in the Purchase Order saying that AirBoss was awarded the “value add of MSSC for the life of the WK74 and WD75 program” somehow created a requirements contract. There are two obvious reasons why even the courts below did not rely on this argument.

First, the note references almost entirely different parts than those at issue here. (Compare the part numbers identified on App 44a with App 32a.) And the “award” was for three years, starting in 2015 (see App 44a), whereas this case only concerns parts ordered after March 31, 2020 (see App 33a).

Second, even if the note language applied, it makes no reference to quantity or any obligation on MSSC’s part. The “value add” was only an “award[]” of *pricing* for certain parts—which is not the same as an award of 100% *sourcing*.

III. The “letter agreement” does not provide an alternative basis to affirm.

The July 8, 2019 letter does not supply an “alternative” basis to affirm, and it is not an issue the Court granted leave to review. AirBoss agreed to honor contractually agreed pricing (existing or future) and not seek price increases except as permitted by those contracts. (App 78a.) Because there is no enforceable requirements contract, the releases issued after this letter were merely offers to purchase that AirBoss was free to accept or reject. AirBoss did not breach the letter agreement by requesting price increases for future quantities that were not governed by an enforceable contract.

CONCLUSION AND REQUESTED RELIEF

The Court below strayed from the text of the statute and this Court's explanation of that text in *Lorenz*. MSSC seeks to distinguish *Lorenz* on the basis that nothing in the writing at issue in that case "so much as alluded to the quantity of goods the buyer was responsible for purchasing." (Resp Br 27.) But the exact point of *Lorenz* was that allusions are insufficient; the quantity must be specifically stated in the writing. Nothing in the Purchase Order or Terms specifically states a quantity to be purchased. For this reason, the Purchase Order is unenforceable under the statute of frauds, and this Court should reverse.

Respectfully submitted,

Dated: May 23, 2022

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply Brief complies with the type-volume limitation pursuant to Administrative Order 2019-6. The brief contains 3,174 words of Century Schoolbook 13.5-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

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IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
(Gadola, P.J., and Jansen and O'Brien, JJ.)

MSSC, Inc.,

MSC No. 163523

Plaintiff-Appellee,

COA No. 354533

v.

Trial Ct. No. 2020-179620-CB

AIRBOSS FLEXIBLE PRODUCTS CO.,

Oakland County Circuit Court

Defendant-Appellant.

Filed under AO 2019-6

**AMICUS CURIAE BRIEF OF
AISIN WORLD CORP. OF AMERICA, INC.; AMERICAN AXLE &
MANUFACTURING, INC.; BOLLHOFF, INC.; DAYCO PRODUCTS
LLC; E&E MANUFACTURING COMPANY, INC.; FISHER &
COMPANY, INC.; MACLEAN-FOGG COMPONENT SOLUTIONS,
L.L.C.; MARTINREA INTERNATIONAL US INC.; NORTH
AMERICAN STAMPING GROUP HOLDINGS, LLC; PUREM NOVI
INC.; SAFETY SOCKET LLC; SEMBLEX CORPORATION;
TRELLEBORG CORPORATION; AND VISTEON CORPORATION**

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QUESTION PRESENTED

A contract for the sale of goods is “not enforceable . . . beyond the quantity of goods shown in the writing.” MCL 440.2201(1). The quantity may be a fixed number or may be measured “by the output of the seller or the requirements of the buyer.” MCL 440.2306(1). Is the inclusion of the word “blanket” in the contract, without more, enough to state a quantity measured by the requirements of the buyer?

The trial court answered:	“Yes.”
The Court of Appeals answered:	“Yes.”
Appellant AirBoss answers:	“No.”
Appellee MSSC answers:	“Yes.”
The Supplier Amici ¹ answer:	“No.”

¹ Under MCR 7.312(H)(5), the Supplier Amici, as defined below, confirm that no counsel for any party authored this brief in whole or in part and that no party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the Supplier Amici made any such monetary contribution.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

“How many parts did you buy?”

Contracts for the sale of goods are enforceable only as far as they answer this question by stating a quantity. Some contracts answer the question completely and unambiguously, such as with “10 parts” or “all I needed.” Others state incomplete answers, like “all” or “100%,” which provide an amount but need more detail to be a complete answer. (“All of what?” is a logical follow-up.) Yet others do not state any amount and so aren’t enforceable until the buyer later places an order for a fixed quantity of goods; the contract is then enforceable for that fixed quantity.

This last contract structure, in which the parties agree on contract provisions that will govern a series of transactions, is often called a “blanket” or “framework” contract. This is consistent with the definition of “blanket order” in *Black’s Law Dictionary* (10th ed): “an order negotiated by a customer with a supplier for multiple purchases and deliveries of specified goods over a stated period, as an alternative to placing a separate order for each transaction.” Such a structure is often called a “blanket” or “framework” because it covers or supports a series of purchases. According to the courts below, the term “blanket” also creates an enforceable requirements contract. That conclusion is profoundly flawed.

A contract for the sale of goods is enforceable only up to the quantity stated in the writing. MCL 440.2201(1). And a requirements contract is one for the sale of goods that, under § 2-306 of the Uniform Commercial Code, “measures the quantity by . . . the requirements of the buyer.” MCL 440.2306(1). So if a contract states that the quantity is “100% of buyer’s requirements for the parts,” it is an enforceable requirements contract under which the buyer must order all the parts it needs from the seller and the seller must deliver all the parts so ordered. Buyers then typically use regularly issued documents called releases to tell sellers what specific quantities are needed on specific days.

But if a contract is a “blanket” contract without any quantity term, then the contract documents (usually a purchase order and an incorporated set of terms and conditions) form a blanket or framework that will cover any transactions between the parties if and when they decide to engage in any. A buyer that wants parts would then issue a release to order a specific quantity of parts from the seller, and if the seller accepts the release, a contract is formed for that specific quantity

of parts. That contract includes the detailed provisions in the blanket contract documents without the parties having to negotiate them each time. Regardless of the buyer's requirements, it is free to issue the releases to the seller or to another supplier, and the seller is free to accept or reject each offered release.

In this case, the seller believes that the contract is enforceable on only a release-by-release basis, and so it stopped accepting new releases offered by the buyer. The buyer wants to force the seller to continue deliveries, so it argues that the contract is one for its requirements. If the buyer is right, the seller cannot reject releases but must deliver all the parts the buyer needs. Neither the purchase order nor the terms contain any explicit quantity term, so the buyer argues that the purchase order's use of the words "PO Type: BLANKET" and "blanket order" are enough to create an enforceable requirements contract. The courts below both agreed with the buyer's position. But that position is wrong, and the Supplier Amici urge this Court to reverse.

The Supplier Amici care very much about how contracts for the sale of goods are structured, interpreted, and enforced. They are all suppliers in the automotive supply chain or similar manufacturing industries and so are parties to many contracts governed by Michigan's Uniform Commercial Code. They routinely evaluate contracts, weighing their risks and benefits, to make decisions that will affect their businesses for years to come.

The Supplier Amici seek the reversal of the decision below, as well as two earlier Court of Appeals cases that the decision below relies on—*Cadillac Rubber* and *Great Northern Packaging*. In *Cadillac Rubber*, the Court of Appeals held that a provision requiring the buyer to "purchase no less than one piece or unit of each of the Supplies and no more than one hundred percent (100%) of Buyer's requirements for the Supplies" obligated the seller to deliver the buyer's requirements even though, by the plain meaning of that language, the buyer had to buy no more than one unit. And in *Great Northern Packaging*, the Court of Appeals held that "blanket" is a quantity akin to "all," even though "blanket" does nothing to explain how many goods a buyer must buy and a seller must sell.

Cadillac Rubber, *Great Northern Packaging*, and the decision below all thwart the parties' intentions by imposing requirements contracts when the plain language of the contracts binds the parties on only a release-by-release basis. This contract reformation has dramatic consequences for manufacturers that, like the Supplier Amici, often form contracts for programs that last for years, even

decades. If the parties chose to form a contract on a release-by-release basis, with all the risks and benefits of such a structure, reforming it years later into a requirements contract upends that risk–benefit analysis and leaves the parties with obligations they never intended to take on. The risk of such reformation destroys the predictability the Supplier Amici and similar companies depend on to run their businesses.

The Supplier Amici thus urge this Court to:

- a. hold that the only types of quantities enforceable under the UCC are those stated as a number or measured by the buyer’s requirements or the seller’s output;
- b. hold that “blanket” is not an enforceable quantity for purposes of the UCC, and that neither is any similar word or phrase that does not refer to the buyer’s requirements or the seller’s output; and
- c. at least partially reverse the decision below and partially overrule the Court of Appeals’ decisions in *Cadillac Rubber* and *Great Northern Packaging* because they conflict with these principles.

STATEMENT OF INTEREST OF AMICI CURIAE

The Supplier Amici—Aisin World Corp. of America, Inc.; American Axle & Manufacturing, Inc.; Bollhoff, Inc.; Dayco Products LLC; E&E Manufacturing Company, Inc.; Fisher & Company, Inc.; MacLean-Fogg Component Solutions, L.L.C.; Martinrea International US Inc.; North American Stamping Group Holdings, LLC; Purem Novi Inc.; Safety Socket LLC; Semblex Corporation; Trelleborg Corporation; and Visteon Corporation—are all manufacturers in the automotive or aerospace supply chains. None of them are vehicle manufacturers (known in the industry as original equipment manufacturers or OEMs) or end customers. Instead, they are suppliers in the middle of the supply chain, which refers to the process through which raw materials are transformed into finished automobiles.

The automotive supply chain consists of hundreds, if not thousands, of companies throughout the world. To efficiently manage the supply chain, automotive companies have established a tiered system of supply. It generally works like this: A raw-material supplier (tier-3) ships raw material, such as steel, to

an automotive part supplier (tier 2), which transforms the raw material into an automotive part. The tier-2 supplier then ships the part to a tier-1 supplier that integrates the part, along with parts from other tier-2 suppliers, into an automotive assembly or system. The tier-1 supplier then ships finished assemblies or systems to the OEMs (Ford Motor Company, Stellantis, General Motors, etc.). Because of their place in the middle of this tiered structure, the Supplier Amici are both buyers (from lower-tiered suppliers) and sellers (to higher-tiered suppliers or OEMs) under contracts for the sale of goods.

This case involves whether, and how far, contracts for the sale of goods are enforceable in Michigan. At issue is what words state a quantity that is measured by the requirements of the buyer, thus forming a requirements contract enforceable under §§ 2-201(1) and 2-306(1) of Michigan's Uniform Commercial Code, codified at MCL 440.2201(1) and MCL 440.2306(1). The Supplier Amici are parties to thousands of such contracts. And they are regularly evaluating new contracts that, if formed, will affect their businesses for years to come. The Supplier Amici must thus be able to trust that the contract terms they evaluate and base business decisions on today will be interpreted in the same way in a few years when a dispute breaks out.

The decisions below—and the Court of Appeals' similar decisions in *Cadillac Rubber* and *Great Northern Packaging*—undermine that trust by enforcing as requirements contracts terms that say nothing about measuring the quantity by the buyer's requirements. In effect, these decisions reform flexible short-term contracts into inflexible long-term contracts, upending the risks and benefits the parties evaluated when they formed the contracts. These decisions are wrong and harm the Supplier Amici's ability to evaluate potential commercial agreements, so the Supplier Amici urge this Court to overturn them.

BACKGROUND

1. Contracting in the automotive supply chain and similar industries.

The automotive supply chain runs on contracts for the sale of goods. And because so much of that supply chain runs through Michigan, most of those contracts are governed by Michigan's Uniform Commercial Code. Manufacturing industries like the automotive supply chain are heavily affected by the Michigan UCC, either because the contracts are governed by Michigan law or because the

courts of other states so often look to Michigan decisions interpreting the UCC for persuasive guidance.

Contracts in the automotive supply chain often involve three primary types of documents. The first is a *purchase order*. (Each of these documents is sometimes called something else; the terms used here are simply the most common.) The purchase order here is typical. PO (App’x 42a–48a). The purchase order is identified by a specific number, lists the date it was issued, and often notes whether the document is the original purchase order or one that has been revised. *Id.*, p 1 (App’x 42a). It then identifies the buyer, seller, and delivery location. *Id.* And it often states the payment terms and delivery term. *Id.* The purchase order then identifies the specific part or parts being ordered with pricing for each. *Id.*, pp 4–7 (App’x 45a–48a). The purchase order also usually incorporates the buyer’s terms and conditions of purchase. *Id.*, p 7 (App’x 48a) (“Acceptance of the offer represented by this order is expressly limited to MSSC Terms and Conditions.”).

The second type of document often involved in automotive contracts is the *terms and conditions*. Such terms vary widely, but at a high level, the terms involved here are also typical. Terms (App’x 55a–62a). Terms usually address topics like contract formation, warranty, quality, price changes, indemnification, and termination. Most terms are not intended to form a binding contract on their own (because, for example, they don’t identify any specific goods to be purchased), but are incorporated by reference in each purchase order so that the resulting contracts may be thorough while the purchase orders remain relatively short documents. See PO, p 7 (App’x 48a); Terms, p 1 (App’x 55a).

The final type of document relevant here is the *release*. Buyers issue releases regularly—often weekly, and sometimes daily—to communicate specific quantities and delivery dates to the seller. A typical release will provide firm quantities for the near term (say, on specific days for the next two weeks) and nonbinding forecasts for the longer term (often as weekly or monthly estimates).

The parties can shape how the purchase order, terms, and releases work together and what sort of contract they form based on the context of each specific purchase. If the parties are dealing with a fixed volume of parts—common for prototype parts or tools—they will often state the quantity in the purchase order itself and not use releases. Such contracts are commonly called *spot buys*.

For production parts, volumes fluctuate as the OEMs respond to market conditions, so the parties often negotiate *requirements contracts* under § 2-306(1) of the UCC. MCL 440.2306(1) (a requirements contract “measures the quantity by . . . the requirements of the buyer”). Purchase orders for such contracts often list the quantity as “100% of buyers requirements” or something similar and use releases to communicate the buyer’s requirements to the seller as they become known. The Court of Appeals has described a requirements contract as one “in which the seller promises to supply all the specific goods or services which the buyer may need during a certain period at an agreed price in exchange for the promise of the buyer to obtain his required goods or services exclusively from the seller.” *Acemco, Inc v Olympic Steel Lafayette, Inc*, 2005 WL 2810716, at *8 (Mich App, 2005) (quoting *Propane Industrial, Inc v General Motors Corp*, 429 F Supp 214, 218 (WD Mo, 1977)). In the automotive supply chain, it is common for requirements contracts to last for the life of the vehicle program for which the parts are used.

Finally, automotive suppliers and other manufacturers sometimes contract on a release-by-release basis. This happens when the parties want to use purchase orders and terms to provide the detailed “blanket” or “framework” contract covering any orders they place, but want to issue and accept orders as they see fit. See, generally, *Advanced Plastics Corp v White Consol Indus, Inc*, 47 F3d 1167, 1995 WL 19379, at *2 (CA 6, 1995) (“the parties intended for White Consolidated to purchase quantities of parts only according to its releases, and not according to its requirements”). In these contracts, neither the purchase order nor the terms state any quantity; a quantity is first stated in writing when the buyer issues a release, which forms a contract for the stated quantity if the seller accepts it. These release-by-release contracts trade the certainty of requirements contracts for flexibility; the buyer may order from the seller or anyone else, and the seller is free to not accept any given release. In fact, release-by-release contracts share much in common with spot buys, except that parties to release-by-release contracts may issue and accept releases for years because it benefits them to do so.

2. The contract provisions here.

This case presents a common question in supply-chain disputes: Is the contract here enforceable as a requirements contract or on only a release-by-release basis?

The purchase order does not contain an explicit quantity term. PO (App’x 42a–48a). It identifies the “PO Type:” as “BLANKET.” *Id.*, p 1 (App’x 42a). And it goes on to explain that it means “blanket” to refer to the contract’s duration:

If this Purchase Order is identified as a “blanket” order, this order is valid and binding on seller for the lifetime of the program or until terminated pursuant to MSSC’s Terms and Conditions. A “blanket” order may be re-issued annually, but that does not change its binding effect for the lifetime of the program or until terminated. Annual volume is an estimate based on the forecasts of MSSC’s customers and cannot be guaranteed. [*Id.*, p 2 (App’x 43a).]

The purchase order also incorporates the buyer’s terms. *Id.*, p 7 (App’x 48a). The terms explain how, in a blanket order, the buyer will communicate quantities to the seller:

2. BLANKET ORDERS: If this order is identified as a “blanket order”, Buyer shall issue a “Vendor Release and Shipping Schedule” to Seller for specific part revisions, quantities and delivery dates for Products. Buyer shall have the right to cancel, adjust or reschedule the quantities of Products shown in such “Vendor Release and Shipping Schedule,” except that it may not cancel, adjust or reschedule the Products shown as “Firm Obligations” on such “Vendor Release and Shipping Schedule.” [Terms § 2 (App’x 55a).]

The trial court and the Court of Appeals both held that this use of “blanket” stated a quantity. Ruling on summary disposition, the trial court found “that the documents, when considered together establish the existence of an enforceable life of the program requirements contract as a matter of law.” Trial Ct Op, p 10 (App’x 19a). Similarly, the Court of Appeals wrote: “Taken together, these provisions demonstrate that ‘blanket’ was intended to be a quantity term or a requirements contract.” MCOA Op, p 5 (App’x 5a). This Court then granted the seller’s application for leave to appeal, ordering the parties to “include among the issues to be briefed whether the purchase order between the parties, together with the relevant written terms and conditions, satisfied the requirements of the Uniform Commercial Code’s statute of frauds, MCL 440.2201(1).” MSC Or, Jan 26, 2022.

LEGAL STANDARD

This Court reviews summary-disposition rulings, as well as questions of contract and statutory interpretation, de novo. *DeRuiter v Twp of Byron*, 505 Mich 130, 139 (2020); *Badeen v PAR, Inc*, 496 Mich 75, 81 (2014); *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463 (2003).

ARGUMENT

1. **The contract here is not a requirements contract; instead, it is enforceable on only a release-by-release basis.**
 - a. **Contracts for the sale of goods must state a quantity to be enforceable under the Uniform Commercial Code, and are enforceable for only that written quantity.**

In Michigan, contracts for the sale of goods are governed by the Uniform Commercial Code. MCL 440.2102. Section 2-201 of the UCC contains the statute of frauds and other formal requirements, and provides in relevant part:

Except as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing. [MCL 440.2201(1).]

This section does two things. In the first sentence, it mandates what a writing must show for a court to conclude that a contract exists. *Id.* In the second sentence, § 2-201(1) limits how far a court may enforce the contract—not “beyond the quantity of goods shown in the writing.” *Id.* A writing thus satisfies § 2-201(1) if it shows that a contract for the sale of goods has been made and specifies a quantity. *Lorenz Supply Co v American Standard, Inc*, 419 Mich 610, 614 (1984).

The comments to § 2-201 reinforce that the quantity is the only essential term in a contract for the sale of goods: “The only term which must appear is the quantity term which need not be accurately stated but recovery is limited to the amount stated.” MCL 440.2201 cmt 1; see also *In re Estate of Frost*, 130 Mich App 556, 559 (1983) (“The only term which must appear in the agreement is the quantity term.”). The lack of a quantity term “does not render the contract void for all purposes, but merely prevents it from being judicially enforced in favor of a party to the contract.” MCL 440.2201 cmt 4. So, for example, a contract might still serve as a defense to an action for trespass even if a court cannot enforce it to compel a seller to deliver goods. *Id.*

b. Courts apply traditional rules of interpretation when construing quantities in contracts for the sale of goods.

To determine whether a written contract states a quantity, courts follow the same rules as when interpreting contracts generally. Unless the contract is ambiguous or internally inconsistent, its “interpretation begins and ends with the actual words” written. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496 (2001). The main purpose of contract interpretation “is to give effect to the parties’ intention at the time they entered into the contract.” *Miller–Davis Co v Ahrens Const, Inc*, 495 Mich 161, 174 (2014). This is done by examining “the language of the contract according to its plain and ordinary meaning.” *Id.* Unambiguous contract language must be interpreted and enforced as written. *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507 (2016).

A contract is not ambiguous simply because it doesn’t define the word in question. *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 354 (1999). Nor is it ambiguous just because the parties disagree about its interpretation. *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich 558, 567 (1999). Instead, a contract is ambiguous only when its provisions are capable of conflicting interpretations. *Id.* at 567.

In sum, a court’s duty when interpreting a contract—and here, a contractual quantity—is to determine what the parties meant *when they wrote the contract*, not what they would like the contract to mean years later when circumstances have changed. This meaning is determined based on the plain and ordinary meaning of the terms used. A contract is ambiguous only if its plain and ordinary meaning lends itself to conflicting interpretations. And if the contract is unambiguous, it must be enforced according to its plain and ordinary meaning.

c. Enforceable contracts for the sale of goods may state quantities only as numbers or as measured by the seller's output or the buyer's requirements; nothing else satisfies § 2-201 of the UCC.

The two sentences of § 2-201(1) of the UCC mean that a court might find that a contract exists (under the first sentence) but is enforceable on only a limited basis or even not at all (under the second sentence). MCL 440.2201(1); see also MCL 440.2201 cmt 4 (“Failure to satisfy the requirements of this section does not render the contract void for all purposes, but merely prevents it from being judicially enforced in favor of a party to the contract.”). How must a contract state a quantity, not just to show that a contract exists, but to be judicially enforceable?

A quantity is “the amount of something measurable; the ascertainable number of countable things.” *Black’s Law Dictionary* (10th ed). There are three ways of stating a quantity in a contract for the sale of goods. The simplest way is with a number—“10 parts.” Or a contract may use a term that measures the quantity “by the output of the seller or the requirements of the buyer . . .” MCL 440.2306(1). An output contract might state the quantity as “all wood sawable,” while a requirements contract might say that “the quantity is for Purchaser’s requirements.” *Frost Estate*, 130 Mich App 556, 558 (1983) (output example); *Dayco Prod, LLC v Thistle Molded Grp, LLC*, 2019 WL 423523, at *1 (ED Mich, 2019) (requirements example).

If a contract doesn’t state a quantity, parol evidence may not be admitted to add one. *Frost Estate*, 130 Mich App at 559. But if a quantity is stated, parol evidence is admissible to explain or supplement that quantity. *Id.* at 560. The Court of Appeals’ decision in *Frost Estate* provides a good example of this. A contract stated that it was for “all wood sawable.” *Id.* at 558. This quantity was ambiguous because it didn’t identify the parcel of land from which “all wood sawable” would be taken. *Id.* at 561. The Court of Appeals thus held that “all” “referred to a quantity and was sufficient to meet the requirements of” § 2-201, and that parol evidence should be considered to determine the relevant parcel of land. *Id.* at 565.

Frost Estate relied on the reasoning in *Port City Construction Co, Inc v Henderson*, 48 Ala App 639 (1972), which provides another good example of an ambiguous yet enforceable quantity term. *Frost Estate*, 130 Mich App at 560. *Port City* involved a quantity of “all concrete for slab.” 48 Ala App at 641. The *Port City* court held that this statement of quantity satisfied § 2-201 because, through parol

evidence, “[t]he slab referred to was capable of being identified with reasonable certainty as was the location and dimensions.” *Id.* at 644.

In contrast, a quantity is not enforceable when it is determined only by the whim of a party. This is perhaps best demonstrated in the oft-cited case *Advanced Plastics Corp v White Consol Indus, Inc*, 828 F Supp 484 (ED Mich, 1993), aff’d, 47 F3d 1167, 1995 WL 19379 (CA 6, 1995). The case involved “blanket purchase orders” that were explained in the contract as follows:

Seller agrees to furnish Buyer’s requirements for the goods or services covered by this Purchase Order to the extent of and in accordance with the delivery schedule set forth therein, or, if no such schedule is set forth, then pursuant to Buyer’s written instructions [*Advanced Plastics (ED Mich)*, 828 F Supp at 486.]

The contracts thus said that they were for “Buyer’s requirements,” but then limited that “to the extent of and in accordance with” releases. *Id.* The parties operated under these blanket purchase orders for years until the buyer decided to change suppliers. *Id.* at 487. The buyer then stopped issuing releases to the seller, ordering the parts it required from its new supplier instead. *Id.*

The seller sued, arguing that the buyer had breached the blanket purchase orders by not buying all the parts it required from the seller. The district court held that, once the buyer stopped issuing releases, “the contractual relationship between [the parties] simply ceased.” *Id.* Under the plain language of the contracts, “whenever defendant no longer desired to order line 1 or line 5 parts from plaintiff, it could simply cease issuing releases against the blanket orders and the obligation of defendant to purchase parts would end.” *Id.*

The Sixth Circuit affirmed, rejecting the seller’s argument that “the contract did not expire because it was a requirements contract and Michigan law requires a buyer subject to a requirements contract to purchase its actual good faith requirements.” *Advanced Plastics (CA 6)*, 1995 WL 19379, at *2. The court recognized that the contract used the word “requirements,” but emphasized that these were limited “*to the extent of and in accordance with*” the releases. *Id.* (emphasis in original). “The language of this document clearly demonstrates that the parties intended for [the buyer] to purchase quantities of parts only according to its releases, and not according to its requirements.” *Id.* The Sixth Circuit explained that, to prove an enforceable requirements contract, the contract would

have to say that the buyer agreed “to purchase a portion of its requirements from the seller and the contract must set forth a specific amount of goods.” *Id.* at *3. Because that wasn’t the case, the Sixth Circuit held that the contract was enforceable “only according to its releases.” *Id.* at *2.

The UCC and these cases thus show that an enforceable quantity is one that answers the question “How much?” or “How many?” A response to these questions of “10 parts” or “100% of buyer’s requirements for the parts” is clear and unambiguous; it answers the question without the need for any more information.² Responses such as “all wood sawable” or “100%,” by their plain meaning, state an amount, but they are ambiguous because they require additional information to become definite answers. These are still enforceable quantities because parol evidence can supplement or explain them to make them definite. But if the contract is silent about quantity or leaves it to a party’s whim, it is not enforceable except on a release-by-release basis.

d. Parties wanting blanket-type contracts can choose between requirements contracts and release-by-release contracts based on the balance of certainty and flexibility that comes with each choice.

Many contracting parties want blanket-type contracts so that they need not negotiate the details of warranty, delivery, indemnification, termination, and the like each time they want parts. In that context, parties forming such blanket-type contracts can choose between forming release-by-release contracts or requirements contracts. These two contract types balance risks and benefits in opposite ways.

The balance turns on the scope of the parties’ obligations to one another. In a release-by-release contract, the seller cannot be obligated to accept future releases offered by the buyer. “A contract to make a subsequent contract is not per se unenforceable; in fact, it may be just as valid as any other contract.” *Opdyke Inv Co*

² All the examples of requirements contracts in this brief are of all or 100% of the buyer’s requirements. This is because it is what the caselaw discusses most often. But there is no reason that a requirements contract could not be for any share of the buyer’s requirements—say “one third” or “60%”—so long as the contract explicitly said so. Such a contract would obligate the buyer to purchase that specific share of its requirements exclusively from the seller, and obligate the seller to deliver that specific share of the buyer’s requirements.

v Norris Grain Co, 413 Mich 354, 359 (1982). But an agreement to agree will fail for indefiniteness if any essential terms are left to be agreed upon. *Id.* In the sale-of-goods context, the quantity is essential. MCL 440.2201 cmt 1; *Frost Estate*, 130 Mich App at 559. So a seller cannot be contractually obligated to accept a future release unless the agreement containing that obligation also states the quantity. In other words, a seller can be bound to “accept a release *for 10 parts* that the buyer will issue next week,” but cannot be bound to “accept a release that the buyer will issue next week, with a quantity yet to be determined.” The first is an enforceable agreement to agree because it contains the essential quantity term; the second is not enforceable. *Opdyke*, 413 Mich at 359 (1982).

It is this principle that creates the key difference between release-by-release contracts and requirements contracts. A requirements contract is enforceable for the stated duration, even though it will be followed by releases with quantities yet to be determined, because the purchase order or terms already state the essential quantity term—“100% of buyer’s requirements.” In a release-by-release contract, on the other hand, the purchase order and terms are silent as to quantity. The first document in which a quantity appears is the release, so each release is an offer that the seller is free to accept or reject. The requirements contract offers the certainty of continuing sales but restricts the buyer’s ability to buy parts elsewhere and the seller’s ability to exit the business. The release-by-release contract flips those features, giving the buyer the ability to shop around and the seller the right to reject offers, but providing neither with the certainty of ongoing sales. Both types of contract structures are enforceable (to different degrees) under the UCC. It is the written quantity that determines what type a particular contract is.

So parties that, at the time of contracting, opt for the flexibility of a release-by-release contract form one by omitting any quantity in the purchase order and terms. And parties that want a requirements contract say so by stating a quantity measured by the buyer’s requirements. The written quantity, or its absence, thus shows what the parties intended.

e. The contract here is not one for the buyer’s requirements.

In this case, it is clear that the buyer wants a requirements contract *now*, because it finds itself needing parts that only one supplier has to offer. But the written contract language shows that, *when the contract was formed*, the buyer intended to maintain its flexibility to obtain parts elsewhere. In short, the contract here is enforceable on only a release-by-release basis.

The purchase order is labeled a “blanket,” which it explains means that “this order is valid and binding on seller for the lifetime of the program” PO, pp 1 & 2 (App’x 42a & 43a). The terms provide that, for such a “blanket order,” the buyer must issue releases “for specific part revisions, quantities and delivery dates for Products.” Terms § 2 (App’x 55a). The buyer may “cancel, adjust or reschedule” the quantities shown in a release except for those identified as “Firm Obligations.” *Id.*

By this plain language, then, “blanket” as defined by the contract is a duration term—“for the lifetime of the program.” PO, p 2 (App’x 43a). Neither the word “blanket” nor its contractual definition contain any obligation on the part of the buyer to buy all the parts it needs from the seller. Instead, according to the contract, quantities will be stated in releases. And nothing in the contract documents ties the quantities stated in releases to the buyer’s requirements. If one were to ask, “How many parts must the buyer purchase,” the only answer offered by the contract here is: “the quantity (if any) identified as a firm obligation in the release.” So each release, once accepted, may be enforceable as a fixed-quantity contract, but the buyer is not obligated to sell and the seller is not obligated to deliver any other quantity of parts.

The definition of “blanket order” from *Black’s Legal Dictionary* (10th ed) reinforces the conclusion that this is not a requirements contract. *Black’s* defines a “blanket order” as “an order negotiated by a customer with a supplier for multiple purchases and deliveries of specified goods over a stated period, as an alternative to placing a separate order for each transaction.” That definition of a type of contract structure contains nothing tying the buyer’s obligation to buy to its requirements for the parts. See *Advanced Plastics (CA 6)*, 1995 WL 19379, at *2 (“The language of this document clearly demonstrates that the parties intended for [the buyer] to purchase quantities of parts only according to its releases, and not according to its requirements.”). In fact, the *Black’s* definition doesn’t refer to quantity at all.

On their face—and even adopting the *Black’s* definition of “blanket order”—the purchase order and terms do not state any quantity, while the releases do as fixed numbers. So the contract made up of these documents includes unambiguous quantities in each release, and are enforceable on that basis alone.

The only way to interpret this contract as one for the buyer’s requirements is to consider parol evidence. But the contract already states quantities in the

releases and those are unambiguous, so parol evidence is inadmissible to change them. *UAW-GM Hum Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 492 (1998). Nor can parol evidence be used to add a requirements term not stated in the writing. *Frost Estate*, 130 Mich App at 559. So there is no proper way to use parol evidence to convert an unambiguous release-by-release contract into one for the buyer's requirements.



Following the principles outlined above, this contract is unambiguous. It states quantities only in each release as they are issued, and so is enforceable only to the extent of each accepted release. The use of “blanket” doesn’t change that, because neither any plain and ordinary meaning of “blanket” nor the specialized meaning of “blanket order” in *Black*’s adds a quantity—let alone a requirements term—to the contract. Parol evidence cannot be considered either to change the plain meaning of the fixed quantities in the releases or to add a new requirements quantity term. The Court is left with the plain meaning of the words of this contract, which may be enforced under § 2-201 on only a release-by-release basis.

2. To clarify Michigan law, this Court should partially overturn three decisions of the Court of Appeals.

The principles outlined above and their application to this case conflict with three decisions by the Court of Appeals. While the most recent—the decision below—is directly implicated in this appeal, the others form part of the foundation for the decision below and, if left standing, will clash with the holdings that the Supplier Amici seek here. To clarify Michigan law in this important area, this Court should partially overturn each of those decisions, which are addressed from oldest to most recent because they build on one another.

a. This Court should partially overrule *Great Northern Packaging*.

First, this Court should overrule *Great Northern Packaging, Inc v General Tire and Rubber Co*, 154 Mich App 777 (1986), at least in part. (The opinion also addressed damages and other issues not implicated here.) In *Great Northern Packaging*, the buyer issued the seller a purchase order for 50 units, but quickly changed the order to a “Blanket Order” (stating no other quantity) with a fixed duration. *Id.* at 780. During the term of the blanket order, the buyer began buying some goods it needed from another seller while still purchasing some of its

requirements from the original seller. *Id.* Within a few months, circumstances changed and the buyer no longer required any more goods; through that point, it had ordered about 25% of its requirements from the blanket-order seller and 75% from the new supplier. *Id.* The blanket-order seller sued the buyer for breach of contract and prevailed at trial. *Id.* at 780–81.

On appeal, the buyer argued that its contract was a “blanket” order that stated no quantity in writing, so it was not enforceable. *Id.* at 786. The Court of Appeals opined that a “blanket” term was “analogous” to the “all wood sawable” quantity in *Frost Estate*. *Id.* at 786–87. After summarizing *Frost Estate* without explaining how it was analogous, the court concluded “that the term ‘blanket order’ expresses a quantity term, albeit an imprecise one.” *Id.* at 787. The court held that the jury was thus right to consider parol evidence to determine that “blanket” indicated a requirements contract. *Id.*

The *Great Northern Packaging* court was wrong when it concluded that “blanket” was analogous to “all wood sawable.” “All wood sawable” states how much sawable wood is being sold—all of it—and requires only some clarification (about the relevant parcel of land) before it can be precisely known. “Blanket” isn’t like that at all because nothing in the contract suggests that “blanket” is intended to state an amount. Contrary to the *Great Northern Packaging* court’s holding, “all wood sawable” and “blanket” are not analogous contract terms.

Great Northern Packaging’s holding that “blanket” states a quantity contradicts the plain language of the contract (which says nothing indicating that “blanket” is a quantity), the definition in *Black’s* (which says nothing about quantity), and the other principles discussed above. This Court should therefore overrule *Great Northern Packaging* to the extent it holds that “blanket” states a quantity in a contract for the sale of goods.

b. This Court should partially overrule *Cadillac Rubber*.

If *Great Northern Packaging*’s determination that “blanket” is a quantity reflects an unstated—and unwarranted—assumption that these sorts of contracts must be enforceable over the long term, then the Court of Appeals’ decision in *Cadillac Rubber & Plastics, Inc v Tubular Metal Systems, LLC*, 331 Mich App 416 (2020), takes that assumption to the extreme, and so should also be partially overruled.

Cadillac Rubber also involved a “blanket order.” *Id.* at 419. The buyer’s incorporated terms explained that, if the contract is a blanket order, the seller grants to the buyer “an irrevocable option . . . to purchase Supplies in such quantities as determined by Buyer and identified as firm orders in” releases. *Id.* The option was conditioned, however, in that the buyer had to “purchase no less than one piece or unit of each of the Supplies and no more than one hundred percent (100%) of Buyer’s requirements for the Supplies.” *Id.* at 420. In the resulting lawsuit, the seller argued that this language “create[d] a series of spot-buy (also called fixed-quantity) contracts, not a requirements contract.” *Id.* So, the seller argued, it was free to accept or reject each release offered by the buyer. *Id.* The trial court rejected that argument and ruled for the buyer. *Id.* at 421.

On appeal, a divided panel of the Court of Appeals held that this options structure was “indisputably” a requirements contract. *Id.* at 429. This holding was based on three main arguments, none of which align with the principles discussed above.

First, the majority noted that the purchase orders stated that the “material requirement will be released weekly,” and that the buyer’s terms provided that the buyer “was obligated to purchase from [the seller] a quantity between one part and 100% of [the buyer’s] requirements.” *Id.* at 430 (text is all-caps in original). But nothing in that language links the quantity the buyer had to order to the buyer’s requirements. Even if the reference to “material requirement” could be interpreted as obligating the buyer to buy all the parts it needs from the seller—and that’s quite the stretch—that interpretation contradicts the plain language that allows the buyer to choose to buy no more than one part.

Second, the majority relied on the Eastern District of Michigan’s decision in *Johnson Controls, Inc v TRW Vehicle Systems, Inc*, 491 F Supp 2d 707 (ED Mich, 2007). *Id.* at 427. That case featured an option term nearly identical to that in *Cadillac Rubber*. *Johnson Controls*, 491 F Supp 2d at 710. The *Johnson Controls* court didn’t hold that it created a requirements contract, though. Instead, it held that the option provision satisfied the statute of frauds but was “ambiguous.” *Id.* at 718. The court held that summary judgment for the seller was inappropriate because “[v]iewing the evidence in the light most favorable to [the buyer], questions of fact remain as to whether the parties intended a requirements contract.” *Id.* at 719. So *Johnson Controls* doesn’t support the *Cadillac Rubber* majority’s conclusion that this option provision clearly creates a requirements

contract. (This was one of Judge Shapiro's main points in dissent. *Cadillac Rubber*, 331 Mich App at 432-33.)

Johnson Controls should be disregarded because of its dependence on *Great Northern Packaging*. The *Johnson Controls* court relied on *Great Northern Packaging*'s conclusion that "a term with no apparent reference to a specific quantity could satisfy the statute of frauds" under Michigan law. *Johnson Controls*, 491 F Supp 2d at 714. The *Johnson Controls* court was persuaded by *Great Northern Packaging* in reaching its conclusion that the options provision stated a quantity term, and that "this may have been a requirements contract . . ." *Id.* at 716 & 718. But as explained above, *Great Northern Packaging* is wrong and should be overruled on this point. *Johnson Controls*' reasoning based on *Great Northern Packaging* is thus similarly wrong.

Third, the *Cadillac Rubber* majority relied on the parties' course of performance. *Id.* at 430-31. The majority agreed with the trial court's findings that "[the buyer] has regularly issued material authorization releases setting forth the quantity of parts needed as well as a reasonable forecast of future requirements, and [the seller] has fulfilled those releases by providing the required parts." *Id.* It held that this course of performance helped "establish[] the existence of a requirements contract as a matter of law." *Id.* at 431. But the course of performance described here, while arguably consistent with a requirements contract, is just as consistent with a series of release-by-release contracts. So this evidence is ambiguous at best.

If the *Cadillac Rubber* majority's reliance on the course of performance in this way remains good law, it creates a perverse incentive for a seller operating under a release-by-release contract to reject the occasional release to avoid converting the contract into a long-term requirements contract. This incentive exists even if buyer needs all the parts listed on each release and the seller can and wants to deliver them all. Courts should avoid creating such incentives.

In addition to the three flawed arguments described above, *Cadillac Rubber* is also wrong because it places Michigan alone among the states interpreting § 2-201 of the UCC. As Judge Shapiro noted in dissent, the *Cadillac Rubber* majority "does not cite any case holding that a promise to buy between 1 unit and 100% of requirements is sufficient to create a requirements contract." *Cadillac Rubber*, 311 Mich App at 434. The Supplier Amici couldn't find support elsewhere, either.

Instead, the few other courts to have considered the question³ have followed Seventh Circuit Judge Richard Posner's analysis in the classic case *Empire Gas Corp v American Bakeries Co*, 840 F2d 1333, 1339 (CA 7, 1988), which held that "a requirements contract was more than a buyer's option." "[A] requirements contract is not just an option to buy." *Agfa-Gevaert, AG v AB Dick Co*, 879 F2d 1518, 1522–23 (CA 7, 1989). So Michigan appears to now stand alone in holding that an option to buy can be a requirements contract.

Moreover, *Cadillac Rubber* reflects harmful policy that is contrary to that shown by the Legislature's enactment of the UCC. As explained above, the UCC provides for three ways to state a quantity: as a number, as measured by the seller's output, or as measured by the buyer's requirements. MCL 440.2201(1); MCL 440.2306(1). But under *Cadillac Rubber*, almost any contract language can be interpreted to be an enforceable requirements contract. The contract in *Cadillac Rubber* refers to 100% of the buyer's requirements only as a *cap* on the buyer's obligations to purchase, yet the court held that it was also the *amount* of the seller's obligation to deliver. Most likely, the *Cadillac Rubber* court would have enforced as a requirements contract even the language in *Advanced Plastics* because it mentioned "Buyer's requirements," no matter that the contract explicitly gave the buyer to discretion to choose whether to issue releases and for what quantities. *Advanced Plastics* (CA 6), 1995 WL 19379, at *2. In effect, *Cadillac Rubber* creates a presumption that a contract for the sale of goods is a requirements contract, despite there being no support for any such presumption in the UCC.

Because of these flaws, the *Cadillac Rubber* majority shouldn't have held that the option provision established a requirements contract as a matter of law. Instead, it should have held that the parties had a release-by-release contract under which the buyer had to order, and the seller had to deliver, only a single part. The unambiguous language of the contract says that the buyer had to "purchase no less than one piece or unit of each of the Supplies and no more than one hundred percent (100%) of Buyer's requirements for the Supplies." *Id.* at 420. Must the buyer purchase one part from the seller? Yes, it must "purchase no less than one piece." Must the buyer purchase two pieces? Nothing in this language says so. The

³ See, e.g., *Merritt-Campbell, Inc v RxP Products, Inc*, 164 F3d 957, 963–64 (CA 5, 1999); *Technical Assistance Intern, Inc v US*, 150 F3d 1369, 1372 (CA Fed, 1998); *BRC Rubber & Plastics, Inc v Continental Carbon Co*, 876 F Supp 2d 1042, 1051 (ND Ind, 2012).

Court of Appeals' majority was wrong to conclude otherwise, so this Court should overrule *Cadillac Rubber* on that point.

c. This Court should at least partially reverse the decision below.

Finally, this Court should at least partially reverse the decision below. That opinion rests heavily on *Great Northern Packaging*, *Johnson Controls* (which in turn relied on *Great Northern Packaging*), and *Cadillac Rubber*, each of which is flawed for the reasons explained above. For those reasons, and for the reasons stated throughout this brief, this Court should hold that the contract here is not one for the buyer's requirements and that it is enforceable, if at all, on a release-by-release basis. This Court should therefore reverse the decision below to the extent it conflicts with this holding.

CONCLUSION AND RELIEF REQUESTED

Parties that opt to contract for the sale of goods on a release-by-release basis do so by omitting a quantity term in the purchase order and terms. Buyers do this when they want the freedom to buy parts elsewhere, or even to make the parts themselves. Sellers do this when they want the freedom to reject offered orders. Both parties obtain these benefits by giving up the certainty that can come with a long-term contract.

Parties that opt for requirements contracts, on the other hand, prefer that certainty in exchange for flexibility. Buyers must order all the parts they require from the seller, and the seller must deliver all the parts ordered. If parties want to make this choice, they need only say so by including in the written contract a quantity measured by the buyer's requirements.

This Court should not allow one party to change its mind and flip the risks and benefits agreed to when the contract was formed. But that is what the decision below—and the Court of Appeals' decisions in *Cadillac Rubber* and *Great Northern Packaging*—permits. Under those decisions, a party to a release-by-release contract who finds itself in trouble—a buyer who needs parts to fill orders, or a seller with idle workers and equipment—can enforce as a requirements contract a set of contract documents that make no mention of quantity outside the releases. This is wrong and contrary to the Uniform Commercial Code, so this outcome and those cases should be overturned.

For all the reasons stated above, the Supplier Amici urge this Court to:

- a. hold that the only types of quantities enforceable under the UCC are those stated as a number or measured by the buyer's requirements or the seller's output;
- b. hold that "blanket" is not an enforceable quantity for purposes of the UCC, and that neither is any similar word or phrase that does not mention the buyer's requirements or the seller's output; and
- c. at least partially reverse the decision below and partially overrule the Court of Appeals' decisions in *Cadillac Rubber* and *Great Northern Packaging* because they conflict with these principles.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in Administrative Order No. 2019-6. I certify that this document contains 8,294 countable words. The document is set in Equity, and most of the text is in 12-point type with 17-point line spacing and 12 points of spacing between paragraphs. Some headings are set with larger type.

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