

CLIENT ALERT

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MICHIGAN SUPREME COURT DECISION – A REMINDER ON REQUIREMENTS CONTRACTS

by John T. Schuring & Patrick J. Masterson

Michigan law requires contracts for the sale of goods worth \$1,000 or more to be in writing and provide a quantity term. On July 11, 2023, the Michigan Supreme Court ruled in *MSSC, Inc. v. Airboss Flexible Products Co.* (Docket No. 163523) that a “blanket” purchase order—setting forth the terms of forthcoming sales—did not constitute a requirements contract because a quantity term was lacking (more simply, the term “blanket” was undefined). As a refresher, a requirements contract is a contract in which a buyer promises to buy, and a seller to supply, a set amount or percentage of the goods that a buyer needs during a specified period (for example, 100% of buyer’s requirements). By contrast, a blanket purchase order lacking an express quantity term is now recognized as a “release-by-release” contract.

The distinction between a requirements contract and a release-by-release contract is critical. A requirements contract binds the parties for the contract term, with the buyer committing to purchase and the seller committing to sell all or some portion of the buyer’s actual requirements. By contrast, the release-by-release contract is merely an umbrella agreement that governs the terms of future contract offers. In a release-by-release contract, there is no obligation for the buyer to make such a future offer nor for the seller to accept such a future offer until a release for a defined quantity is issued and accepted.

The opinion serves as a reminder of the necessity of a stated quantity term in a contract for the sale of goods, albeit that term can still be nonspecific. For example, the court expressly declined to overrule *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, 331 Mich. App. 416 (2020), where the Michigan Court of Appeals found a contract provided for a sufficient quantity term (and created a requirements contract) with the language “a quantity between one part and 100%.” Thus, per *Cadillac Rubber*, parties still have wide flexibility in satisfying the quantity term to form a requirements contract. Once even a nonspecific quantity term is used to form a requirements contract, parol evidence—that is, evidence outside the contract itself—can be used to determine the specific quantity that must be purchased and supplied.

The Michigan Supreme Court has served up a reminder – say what you mean in your contracts and make sure to define your quantity term consistent with your intent. Dickinson Wright stands ready to assist its clients as they evaluate the implications of *MSSC* and navigate the landscape of Michigan contract law.

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