

# **THE EVOLVING STANDARDS OF REQUIREMENTS CONTRACTS IN MICHIGAN AFTER *AIRBOSS***

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## I. INTRODUCTION

Issuing a blanket purchase order is a common procurement practice that buyers and suppliers utilize to streamline repeated business.<sup>1</sup> A blanket purchase order is an order that sets forth terms, including pre-determined quantity and price, that are valid for a fixed period of time.<sup>2</sup> Utilizing a blanket purchase order promotes efficiency by shortening purchasing lead time and the procurement process and saves on administrative costs.<sup>3</sup> The use of blanket purchase orders is common in supply agreements in the automotive industry, as it provides certainty for suppliers and safeguards buyers against future price increases.<sup>4</sup> When assessing whether the sale of goods for more than \$1,000 satisfies the statute of frauds of the Uniform Commercial Code (“UCC”), a court must

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1. Kate Vitasek, *Michigan Court Redefines ‘Blanket Orders’ in Supply Chain Contracts*, FORBES (June 14, 2024, 7:00 AM), <https://www.forbes.com/sites/katevitasek/2024/06/14/michigan-court-redefines-blanket-orders-in-supply-chain-contracts/> [<https://perma.cc/UP54-CAVE>].

2. *Blanket Order*, BLACK’S LAW DICTIONARY (12<sup>th</sup> ed. 2024). A blanket purchase order is also referred to as an umbrella agreement. An umbrella agreement sets forth the terms governing items such as price, length of the contract, warranty details, indemnification, and termination. A blanket purchase order that incorporates terms and conditions can create an umbrella agreement, while individual releases create individual purchasing contracts that are governed by umbrella terms. *See* David Engineering Co., LLC v. Morbern Inc., No. 11-12615, 2012 WL 3109919, at \*2, \*3 (E.D. Mich. 2012); *see also* Robert Murkowski et al., *New Michigan Supreme Court Ruling: A Must-Read for All Automotive and Manufacturing Companies*, AUTOMATION ALLEY (July 20, 2023), <https://www.automationalley.com/articles/new-michigan-supreme-court-ruling-a-must-read-for-all-automotive-and-manufacturing-companies> [<https://perma.cc/65RT-USUA>] (“Many ‘blanket’ supply agreements in the automotive and other industries provide that the buyer will specify the quantity to be delivered only by issuing periodic ‘releases.’”).

3. Vitasek, *supra* note 1 (“A key benefit of using a BPO is that it shortens purchasing lead time and improves efficiency. With a BPO in place, the ordering process is streamlined, making repeat purchases a snap. Terms and conditions have already been reviewed and approved, and with repetitive efforts reduced, they can help save on administrative costs.”).

4. *Blanket Purchase Order Guide: What is It, When to Use and Its Pros and Cons*, GEP, <https://www.gep.com/blanket-purchase-guide> [<https://perma.cc/UR5W-NWGP>] (“At the same time, blanket purchase orders are helpful for suppliers as they provide certainty about the future orders that the business will receive as part of the order. A blanket [purchase order] is typically used by businesses that require a consistent supply of a specific product or service for a long period. It is better to sign a blanket purchase order rather than getting into individual [purchase orders] for procuring such products or services regularly”); *id.* (“The biggest advantage of a blanket PO is that you can get a consistent price for all your current and future purchases. As a result, your business can be safeguarded against future price increases.”).

identify whether there is a “quantity term” in the contract to assess whether the contract is valid and enforceable.<sup>5</sup>

Until the Michigan Supreme Court’s decision in *MSSC, Inc. v. Airboss Flexible Products Co.*, courts had consistently interpreted a blanket purchase order to be a requirements contract that would bind a buyer to buy, and a seller to supply, all the goods or services that the buyer may need during a certain period at an agreed upon price.<sup>6</sup> In *Airboss*, both of the parties were automotive suppliers and had contracted together for at least ten years.<sup>7</sup> MSSC, Inc. (“MSSC”) was a Tier-1 automotive supplier and “Airboss Flexible Products Co. (“Airboss”) is a Tier-2 automotive supplier that obtains raw materials from Tier-3 suppliers, makes parts, and supplies the parts to Tier-1 suppliers.”<sup>8</sup> The purchase order the parties entered into included the following pertinent language: “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” and “[a]nnual volume is an estimate based on the forecasts of MSSC’s customers and cannot be guaranteed.”<sup>9</sup> In *Airboss*, the Michigan Supreme Court distinguished blanket purchase orders from requirements contracts and held that blanket purchase orders must include a written definite quantity term to satisfy the statute of frauds of the UCC.<sup>10</sup> The Michigan Supreme Court held that the word “blanket” in a purchase order, without more specificity of a written quantity term, is not a quantity term that satisfies the statute of frauds requirement.<sup>11</sup> Since the purchase order between MSSC and Airboss left both the quantity term and total quantity undefined, and rather established blanket policies governing the sale of parts between the parties, a requirements contract was not created under the UCC.<sup>12</sup> Instead, the Michigan Supreme Court found that MSSC and Airboss entered into multiple independent contracts, which established a release-by-release agreement.<sup>13</sup>

Although the circumstances surrounding the *Airboss* decision addressed requirements contracts in the context of the automotive

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5. *MSSC, Inc. v. Airboss Flexible Products Co.*, 511 Mich. 176, 180–81, 999 N.W.2d 335, 338–39 (Mich. 2023).

6. *Id.*; see also *Requirements Contract*, BLACK’S LAW DICTIONARY (12<sup>th</sup> ed. 2024).

7. *Airboss*, 511 Mich. at 185–86, 999 N.W.2d at 341.

8. See *id.*

9. *Id.*

10. *Id.* at 194–99, 999 N.W.2d at 345–48.

11. *Id.* at 199, 999 N.W.2d at 347.

12. *Id.* at 195, 999 N.W.2d at 345–46.

13. *Airboss*, 511 Mich. at 198, 999 N.W.2d at 347 (stating that release-by-release agreements are “structured so that their overarching terms are ‘only enforceable once a firm quantity is stated,’ which ‘happen only when a release is issued’ and accepted”).

industry, the decision has broader implications for requirements contracts overall. Notably, *Airboss* expressly overruled long-standing precedent established in *Great Northern Packaging, Inc. v. General Tire and Rubber Co.*<sup>14</sup> In *Great Northern*, the Michigan Court of Appeals held that the term “blanket order,” although an imprecise quantity term, does express a quantity term and thus, creates an enforceable contract.<sup>15</sup> However, after the *Airboss* decision, parties can no longer rely on general terms, such as “blanket order” to create a requirements contract.<sup>16</sup> Courts have since analyzed and applied the landmark *Airboss* decision and the landscape of requirements contracts continues to evolve.<sup>17</sup> In considering the implications of *Airboss*, it is important for parties to assess whether their contract language includes sufficient written quantity terms and whether the parties are bound by a requirements contract. Additionally, assessing the parties’ history of prior dealings is not sufficient to determine if a contract is a requirements contract, and it merely demonstrates an implied duty of a party.<sup>18</sup> Pursuant to *Airboss*, requiring an explicit written quantity term in a contract establishes certainty and obligations for the parties and eliminates potential for any ambiguity.<sup>19</sup>

This Article examines the implications of the Michigan Supreme Court’s decision in *Airboss* on requirements contracts. Part II provides background on requirements contracts under the UCC and Michigan law.<sup>20</sup> Part III analyzes *Airboss* and its impact on precedent and subsequent case law.<sup>21</sup> Part III.D offers practical guidance for drafting and negotiating requirements contracts post-*Airboss*.<sup>22</sup> Part IV concludes with a forward-looking perspective on the future of requirements contracts.<sup>23</sup>

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14. *Id.*; *Great Northern Packaging, Inc. v. Gen Tire & Rubber Co.*, 154 Mich. App. 777, 399 N.W.2d 408 (Mich. Ct. App. 1986), *rev’d*, *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176, 999 N.W.2d 335 (Mich. 2023).

15. *Great Northern*, 154 Mich. App. at 787, 399 N.W.2d at 413.

16. *Airboss*, 511 Mich. at 197–98, 999 N.W.2d at 347. Beyond the automotive industry, *Airboss* has implications in contracts for the sale of all goods.

17. *See infra* Part III.

18. *Airboss*, 511 Mich. at 196–97, 999 N.W.2d at 346.

19. *See infra* Part III.

20. *See infra* Part II.

21. *See infra* Part III.

22. *See infra* Part III.D.

23. *See infra* Part IV.

## II. QUANTITY TERMS IN REQUIREMENTS CONTRACTS

### A. UCC Statute of Frauds

Under Michigan law, contracts for the sale of goods are governed by the UCC, including MCL 440.1101 et seq.<sup>24</sup> Section 440.2201(1) includes a statute of frauds provision that governs which type of agreements need to be in writing and states the following:

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.<sup>25</sup>

The primary purpose of the statute of frauds is to safeguard parties from baseless parol assertions of contractual obligation.<sup>26</sup> The first sentence of MCL 440.2201(1) requires that contracts for the sales of goods that are worth \$1,000.00 or more must be in writing.<sup>27</sup> The second sentence provides that a contract is only enforceable up to the quantity that is set forth in writing.<sup>28</sup> Thus, “if an agreement for the sale of goods includes a quantity, then the agreement satisfies the statute of frauds.”<sup>29</sup> This writing requirement was established to “afford a basis for believing that the offered oral evidence rests on a real transaction” and was adopted by the Michigan Court of Appeals in *Ace Concrete Products Co. v. Charles J.*

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24. See MICH. COMP. LAWS §§ 440.2201–440.2210 (2002).

25. § 440.2201 (emphasis added).

26. *Roth Steel Prods v. Sharon Steel Corp.*, 705 F.2d 134, 142 (6th Cir. 1983) (citing *Dehahn v. Innes*, 356 A.2d 711, 717 (Me. 1978)).

27. See § 440.2201 (emphasis added). Under the UCC, contracts for the sales of goods over \$1,000.00 must be in writing to be enforceable. *Id.*

28. See *id.* (specifying that “[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” indicating that a key requirement of this section is the inclusion of a quantity term.).

29. *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176, 181, 999 N.W.2d 335, 338 (Mich. 2023) (explaining generally that for requirements contracts, the quantity term need not be a specific number, but the quantity term must provide a basis for determining the quantity.). See also *In re Frost Estate*, 130 Mich. App. 556, 344 N.W.2d 331 (Mich. Ct. App. 1983) (holding that the only term that must appear in an agreement is a quantity).

*Rogers Construction Co. and West Central Packaging Inc. v. A.F. Murch Co.*<sup>30</sup> The Michigan Court of Appeals in both the preceding cases held that under MCL 440.2201(1), the writing must provide evidence of a contract for the sale of goods and specify a quantity.<sup>31</sup>

If a contract includes a quantity term but does not specifically provide a way to determine the exact quantity, parol evidence may be offered to explain the terms.<sup>32</sup> Parol evidence, which is evidence outside of the contract itself, may be admissible under MCL 440.2202.<sup>33</sup> MCL 440.2202 provides that terms intended by the parties to be a final indication of their written agreement may not be contradicted “by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented” by course of performance, course of dealing, or usage of trade or “evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.”<sup>34</sup> However, conversely, if a contract does not state a quantity term, parol evidence cannot be used to supply one but can be used to clarify ambiguous terms.<sup>35</sup> Therefore, drafters should ensure the quantity term is explicit within the contract itself.

#### *B. Output and Requirements Contracts: Definitions and Distinctions*

A requirements contract obligates a buyer to purchase all of its requirements for a specific good or service from a designated seller during a specified period.<sup>36</sup> An output contract, conversely, obligates a seller to sell all of its output of a specific good or service to a designated buyer during a specified period.<sup>37</sup> Both contract types are governed by UCC § 2-

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30. *Frost*, 130 Mich. App. at 333, 344 N.W.2d at 559; see also *Ace Concrete Prods. Co. v. Charles J. Rogers Const. Co.*, 69 Mich. App. 610, 245 N.W.2d 353 (Mich. Ct. App. 1976) (holding that a written confirmation pursuant to MCL § 440.2201(2) must satisfy the requirements of a writing under MCL § 440.2201(1)) and *W. Cent. Packing Inc. v. A.F. Murch Co.*, 109 Mich. App. 493, 311 N.W.2d 404 (Mich. Ct. App. 1976) (holding that pursuant to the statute of frauds, writing must evidence a contract for the sale of goods and must be “signed” and specify a quantity).

31. See *Ace Concrete Prods.*, 69 Mich. App. at 613, 245 N.W.2d at 355; see also *W. Cent. Packing*, 109 Mich. App. At 500–01, 311 N.W.2d at 408.

32. *Airboss*, 511 Mich. at 181, 999 N.W.2d at 338–39 (citing *Frost*, 130 Mich. App. at 559, 344 N.W.2d at 331).

33. See *id.*

34. See MICH. COMP. LAWS § 440.2202 (1964).

35. *Airboss*, 511 Mich. at 181, 999 N.W.2d at 338.

36. *Id.* at 182, 999 N.W.2d at 339.

37. *Id.*

306.<sup>38</sup> An umbrella agreement sets the general terms and conditions for future transactions, while a blanket purchase order, a type of umbrella agreement, typically covers multiple deliveries over a period, with specific quantities determined by subsequent releases.<sup>39</sup> The distinction lies in the enforceability of the quantity term.

When assessing a contract's quantity, the UCC, under MCL 440.2306(1), allows for a contract's quantity to be measured "by the output of the seller or the requirements of the buyer."<sup>40</sup> MCL 440.2306(1) allows for parties to enter into a contract that includes a quantity term, but lacks specificity regarding the total number of goods agreed upon.<sup>41</sup> There are two contract types that fall within this provision and are commonly used between suppliers: output contracts and requirements contracts.<sup>42</sup> An "output contract" is defined as "[a] contract in which a seller promises to supply and a buyer to buy all the goods or services that a seller produces during a specified period and at a set price."<sup>43</sup> A "requirements contract" is defined 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."<sup>44</sup> A requirements contract is frequently created by what is commonly called a "blanket purchase order," a type of umbrella agreement.<sup>45</sup> Under a blanket purchase order, a supplier is not obligated to manufacture or ship a product until the purchaser issues a subsequent order with a specific quantity.<sup>46</sup> "[U]nlike a requirements contract, [a] blanket purchase order does not set forth the share of the buyer's need to be purchased from the supplier."<sup>47</sup> Rather, a blanket purchase order "governs the terms of future contract offers."<sup>48</sup>

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38. *Id.*

39. *Id.*

40. *See* MICH. COMP. LAWS § 440.2306(1) (West 2002).

41. *See id.* MCL § 440.2306(1) states the following:

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.

42. *Airboss*, 511 Mich. at 182–83, 999 N.W.2d at 339.

43. *Output Contract*, BLACK'S LAW DICTIONARY (12th ed. 2024).

44. BLACK'S LAW DICTIONARY, *supra* note 2.

45. *Airboss*, 511 Mich. at 183, 999 N.W.2d at 339.

46. *See id.*

47. *Id.* at 184, 999 N.W.2d at 340 (citing *Advanced Plastics Corp. v. White Consol. Indus., Inc.*, 47 F.3d 1167 (6th Cir. 1995)) (affirming that the parties' "Blanket Purchase Order Terms and Conditions" did not create a requirements contract since there was no quantity term).

48. *Id.*

*C. Pre-Airboss Case Law in Michigan*

There are only a few cases in Michigan that assess output and requirements contracts.<sup>49</sup> In *In re Frost Estate*, the written output contract at issue provided for the sale of “all wood sawable.”<sup>50</sup> The total quantity of wood was ambiguous since the contract did not identify which parcel of land was included in the agreement.<sup>51</sup> The Michigan Court of Appeals held that the quantity term “all” was specific and referred to a quantity that met the requirements of the statute of frauds.<sup>52</sup> Further, parol evidence was admissible in this instance to determine the relevant parcel that the agreement covered.<sup>53</sup> This analysis also applies to requirement contracts, as requirement contracts can be nonspecific as to the quantity but still must include a quantity term that can be evaluated further by using parol evidence.<sup>54</sup>

In *Lorenz Supply Co. v. American Standard, Inc.*, Lorenz Supply Company (“Lorenz”) and American Standard Inc. (“American Standard”) entered into an oral distributorship agreement, where American Standard agreed to provide Lorenz with \$420,000 worth of “out of the wall” plumbing materials.<sup>55</sup> The only writing that mentioned the existence of the distributorship agreement was a letter from American Standard to Lorenz that welcomed Lorenz to “the family of American Standard distributors.”<sup>56</sup> When there was a breakdown between the parties, Lorenz sued American Standard for breach of the oral distributorship agreement.<sup>57</sup> American Standard argued that the distributorship agreement was a sale-of-goods contract under the UCC and was unenforceable since it lacked a written quantity term.<sup>58</sup> The Michigan Supreme Court held that since the distributorship agreement did not constitute a sale of goods, the UCC did not apply and the oral agreement was enforceable.<sup>59</sup> Notably, the Michigan

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49. See *infra* Part II.C.

50. *In re Frost Estate*, 130 Mich. App. 556, 558, 344 N.W.2d 331, 332 (1983).

51. *Id.* at 561, 344 N.W.2d at 334.

52. *Id.* at 560, 565, 344 N.W.2d at 333, 335 (citing *Port City Constr. Co., Inv. v. Henderson*, 266 So.2d 896 (Ala. Civ. App. 1972), which held that an agreement supplying “all concrete” for a “slab,” which was not further defined in the writing, contained a sufficient quantity term).

53. *Id.* at 565, 344 N.W.2d at 335.

54. *Airboss*, 511 Mich. at 191, 999 N.W.2d at 343.

55. *Lorenz Supply Co. v. Am. Standard Inc.*, 419 Mich. 610, 358 N.W.2d 845 (Mich. 1984).

56. *Id.* at 623, 358 N.W.2d at 851.

57. *Id.* at 620, 358 N.W.2d at 849.

58. *Id.* at 622, 358 N.W.2d at 850.

59. *Id.* at 616–17, 358 N.W.2d at 848.



Supreme Court noted that the quantity term in a UCC contract must be specifically stated and may not be inferred.<sup>60</sup>

Two years after the *Lorenz* decision, the Michigan Court of Appeals decided *Great Northern Packaging*.<sup>61</sup> The seller, Great Northern Packaging, sold a packaging system to General Tire and Rubber Company, which then used the system to ship products to Ford Motor Company.<sup>62</sup> General Tire issued a “change order,” similar to a blanket purchase order, that modified the quantity heading from fifty units to a “blanket order” with no expiration date.<sup>63</sup> A Great Northern employee left Great Northern and began working for a competitor, and General Tire eventually began ordering more units from the competing company.<sup>64</sup> Great Northern sued General Tire to enforce the agreement claiming that the term “blanket order” required that General Tire purchase all of its packaging systems from Great Northern.<sup>65</sup> The Michigan Court of Appeals found for Great Northern and held that “the term ‘blanket order’ express[ed] a quantity term, albeit an imprecise one” that was analogous to the “all wood sawable” quantity term in *In re Frost Estate*.<sup>66</sup> It was the jury’s responsibility to determine what quantity, if any, was meant by the “blanket order” language in the purchase orders.<sup>67</sup>

### III. ANALYSIS: AIRBOSS AND ITS CONSEQUENCES

#### A. The Airboss Decision

In *Airboss*, the Michigan Supreme Court held that a blanket purchase order without a specific quantity term does not satisfy the UCC’s statute of frauds.<sup>68</sup> The court found that the parties had a release-by-release

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60. See *id.* at 614–15, 358 N.W.2d at 856–57. The Michigan Supreme Court held the following:

A writing that satisfies § 2–201 does not prove the terms of a contract; such a writing merely removes the statutory bar to the enforcement of the contract whether its terms—other than the quantity term which alone must be specified in writing—be written, oral, or partly written and partly oral.

61. *Great Northern Packaging, Inc. v. Gen. Tire & Rubber Co.*, 154 Mich. App. 777, 399 N.W.2d 408, 409 (Mich. Ct. App. 1986) *rev’d* *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176, 181, 999 N.W.2d 335, 338 (Mich. 2023).

62. *Id.* at 779, 399 N.W.2d at 409.

63. *Id.* at 780, 399 N.W.2d at 409.

64. *Id.*, 399 N.W.2d at 409–10.

65. *Id.* at 780, 787, 399 N.W.2d at 410, 413.

66. *Great Northern*, 154 Mich. App. at 786–87, 399 N.W.2d at 413 (citing *In re Frost Estate*, 130 Mich. App. 556, 561, 344 N.W.2d 331, 334 (Mich. Ct. App. 1983)).

67. *Id.* at 787, 399 N.W.2d at 413.

68. *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176, 199, 999 N.W.2d 335, 347 (Mich. 2023).

agreement, not a requirements contract, as the buyer had no obligation to purchase any specific quantity.<sup>69</sup> The purchase order at issue incorporated terms and conditions that stated, in pertinent part, the following:

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.”<sup>70</sup>

Pursuant to these terms, MSSC created a “Vendor Release and Shipping Schedule” that included both the longer-term quantity estimates and a non-alterable “firm order.”<sup>71</sup> “MSSC was thus obligated to create and send “releases”, . . . but neither the purchase order nor the terms and conditions obligated MSSC to send any number of firm orders to Airboss.”<sup>72</sup> “Airboss produced parts for MSSC and the parties’ relationship developed through the releases under the terms and conditions set forth by the [blanket] purchase order.”<sup>73</sup> Over approximately a six-year period, the parties occasionally revised the quantities, prices, and certain terms in the blanket purchase order in a way that was mutually beneficial.<sup>74</sup> In 2016, the parties revised the language to state that Airboss “is awarded . . . the value add of MSSC for the life of the . . . program in exchange for continuous improvement and year over year productivity.”<sup>75</sup> However, in mid-2019, Airboss began to experience losses for certain parts that it produced for MSSC and alleged that it eventually had annualized losses over \$1 million.<sup>76</sup> Consequently, “Airboss sought to pass the price increases onto MSSC . . . [which] MSSC agreed to . . . on the condition that [the parties] enter into a letter agreement barring further unilateral price increases for the lifetime of the program.”<sup>77</sup> “Although Airboss agreed, Airboss later . . . sent a letter to MSSC . . . stating that it would

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69. *Id.* at 186, 999 N.W.2d at 347–48.

70. *Id.* at 186, 999 N.W.2d at 341.

71. *Id.* at 186–87, 999 N.W.2d at 341.

72. *Id.* at 187, 999 N.W.2d at 341.

73. *Airboss*, 511 Mich. at 187, 999 N.W.2d at 341.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 187, 999 N.W.2d at 341–42.

cease taking further orders from MSSC.”<sup>78</sup> MSSC responded by filing a suit for anticipatory breach seeking specific performance of the contract against Airboss.<sup>79</sup>

A preliminary injunction was granted for MSSC at the Oakland County Circuit Court after it found that the contract was likely enforceable as a requirements contract.<sup>80</sup> The trial court relied on the Michigan Court of Appeals decision in *Cadillac Rubber & Plastics, Inc. v Tubular Metal Systems, LLC*, which held that requirement contracts do not have to be exclusive and that “a quantity between one part and 100%” constituted a sufficient quantity term.<sup>81</sup> Following the trial court’s decision, Airboss moved for summary disposition and argued, among other things, that the blanket purchase order did not sufficiently require mutuality of obligation pursuant to the statute of frauds since “it did not require MSSC to purchase any quantity of parts from Airboss but instead obligated Airboss to supply any quantity MSSC requested.”<sup>82</sup> MSSC moved summary disposition and argued that the agreement required Airboss to supply MSSC “parts for the life of the program.”<sup>83</sup> The trial court granted MSSC’s motion for summary disposition finding that since the order was expressly defined as a “blanket” purchase order, it provided a sufficient quantity term as required by the statute of frauds.<sup>84</sup>

The Michigan Court of Appeals affirmed holding that the statute of frauds was satisfied by the inclusion of “blanket order” since it “was intended as an imprecise quantity term” and created a requirements contract.<sup>85</sup> The court also held that, as was common in this industry, the blanket purchase order “did not state a specific quantity because [the purchaser’s] need for parts was dependent on [the supplier’s] production schedule.”<sup>86</sup> The Michigan Supreme Court then assessed “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).”<sup>87</sup>

The Michigan Supreme Court held that the blanket purchase order did not satisfy the requirements of the statute of frauds and the terms did not

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78. *Id.*, 999 N.W.2d at 342.

79. *Airboss*, 511 Mich. at 188, 999 N.W.2d at 342.

80. *Id.*

81. *Id.* at 193–94, 999 N.W.2d at 344–45; *see also* *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, 331 Mich. App. 416, 952 N.W.2d 576 (Mich. Ct. App. 2020).

82. *Airboss*, 511 Mich. at 188, 999 N.W.2d at 342.

83. *Id.*

84. *Id.* (interpreting the term “blanket” to be a quantity term).

85. *Id.*

86. *Id.* at 189, 999 N.W.2d at 342.

87. *Id.*

create any obligation for MSSC to purchase any parts from Airboss.<sup>88</sup> MSSC could have, without violating its agreement with Airboss, issued multiple releases stating “zero” in the firm obligations category while contracting with a different supplier for the totality of its production.<sup>89</sup> At no point were either the quantity term or the total quantity sufficiently defined, meaning the blanket purchase order could not satisfy the UCC’s statute of frauds.<sup>90</sup> The Michigan Supreme Court stated that the trial court incorrectly found that the blanket purchase order’s statement that the “[a]nnual volume is an estimate based on the forecasts of MSSC’s customers and cannot be guaranteed” evidenced a quantity term.<sup>91</sup> Further, the Michigan Supreme Court held that the *Great Northern* court erred when concluding that the term “blanket order” alone infers a quantity term in a UCC sale-of-goods contract and created a quantity term when there was none.<sup>92</sup>

MSSC argued that the contractual requirement of “good faith and fair dealing” created a requirements contract even if the quantity term is absent.<sup>93</sup> The Michigan Supreme Court rejected MSSC’s argument and held that regardless of this implied duty of good faith and fair dealing, the quantity term must be explicit.<sup>94</sup> The court held that “good faith alone cannot solve the problem of the missing quantity term.”<sup>95</sup> The court clarified that “good faith and fair dealing” is a requirement for all contracts and not a means to create a requirements contract.<sup>96</sup>

The Michigan Supreme Court found that MSSC and Airboss entered into a release-by-release agreement, which created individual purchasing contracts governed by the umbrella terms and conditions.<sup>97</sup> The agreement allowed either party to no longer enter into releases after the fulfillment of

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88. *Airboss*, 511 Mich. at 190, 999 N.W.2d at 343 (emphasizing that the purchase order at issue only stated that MSSC would issue releases and made no reference anywhere to a quantity term).

89. *Id.* at 195, 999 N.W.2d at 345.

90. *Id.*

91. *Id.*, 999 N.W.2d at 346.

92. *Id.* at 196, 999 N.W.2d at 346; *see also* *Great Northern Packaging, Inc. v. Gen. Tire & Rubber Co.*, 154 Mich. App. 777, 787, 399 N.W.2d 408, 413 (Mich. Ct. App. 1986) *rev’d* MSSC, Inc. v. Airboss Flexible Prods. Co., 511 Mich. 176, 181, 999 N.W.2d 335, 338 (Mich. 2023) (holding that “the term ‘blanket order’ expresses a quantity term, albeit an imprecise one”).

93. *Airboss*, 511 Mich. at 196, 999 N.W.2d at 346.

94. *Id.*

95. *Id.* at 196–97, 999 N.W.2d at 346.

96. *Id.* at 197, 999 N.W.2d at 346.

97. *Id.* at 190, 999 N.W.2d at 343 (noting that the releases only constituted an obligation binding Airboss as to each individual release in the instance that Airboss accepted and were not a promise to fulfill all future release).

a release, so Airboss's decision to do so was not legally actionable.<sup>98</sup> Further, MSSC was allowed to contract for lower prices with other suppliers under the terms of the blanket purchase order without acting in bad faith or engaging in unfair dealing.<sup>99</sup> The Michigan Supreme Court in *Airboss* acknowledged that "Michigan case law has not previously identified a release-by-release contract as a specific contract type" and adopted the term "release-by-release" to describe a contract that has general terms but lacks a quantity term and operates via releases issued by the buyer to the seller.<sup>100</sup>

### *B. Post-Airboss Case Law*

*Airboss* overruled *Great Northern*, clarifying that the term "blanket order" alone is not a sufficient quantity term.<sup>101</sup> It also cast doubt on the validity of *Cadillac Rubber*, which held that a quantity term allowing the buyer to purchase one unit and 100% of its requirements was sufficient.<sup>102</sup> Several courts have assessed the Michigan Supreme Court's *Airboss* decision. The United States District Court for the Eastern District of Michigan was the first court to assess *Airboss* in *Higuchi International Corp. v. Autoliv ASP, Inc.*<sup>103</sup> In *Higuchi*, the parties entered into a series of blanket purchase orders and releases that had the following pertinent language:

*This blanket contract is issued to cover Autoliv ASP, Inc.'s requirements of the parts listed below, for the period beginning 05/01/22 [or a different date, depending on the purchase order] and ending upon the termination of the vehicle platform, including service part requirements, for which the parts listed herein are used. Deliveries shall be made only in the quantities and at the time specified in such requirements.*<sup>104</sup>

After the *Airboss* decision, Higuchi filed a lawsuit against Autoliv alleging that the blanket purchase order did not constitute an enforceable contract under the UCC since it lacked a quantity term and that the parties

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98. *Id.* at 199, 999 N.W.2d at 347.

99. *Airboss*, 511 Mich. at 197, 999 N.W.2d at 346.

100. *Id.* at 184 n.2, 999 N.W.2d at 340 n.2.

101. *Id.* at 199, 999 N.W.2d at 347.

102. *Id.* at 194, 999 N.W.2d at 345.

103. *Higuchi Int'l Corp. v. Autoliv ASP, Inc.*, 688 F. Supp.3d 582 (E.D. Mich. 2023), *rev'd* 103 F.4th 400 (6th Cir. 2024).

104. *Id.* at 584 (emphasis added).

had a release-by-release agreement.<sup>105</sup> Higuchi only asked for declaratory judgment “finding that the ‘blanket’ purchase order between the parties [was] not enforceable . . . and that the only enforceable contracts between [the parties were] the individual purchase contracts formed when Higuchi [accepted] one of Autoliv’s releases.”<sup>106</sup>

The district court found that the blanket purchase order had “enforceable quantity terms that commit[ted] Higuchi to continue selling to Autoliv, and commit[ted] Autoliv to buying” all of its requirements for the parts in the blanket purchase orders from Higuchi.<sup>107</sup> Specifically, the language that the blanket purchase order covers Autoliv’s requirements and that deliveries are to be made only in the quantities and at the time specified in such requirements establishes a sufficient quantity term.<sup>108</sup> The district court interpreted the plain meaning of “requirements” as used in the blanket purchase order to mean “all requirements.”<sup>109</sup> The district court’s decision demonstrates that the term “requirements,” without any additional qualifiers, is enough to create a requirements contract.<sup>110</sup>

However, the Sixth Circuit Court of Appeals reversed and held that the blanket purchase order at issue was not a requirements contract.<sup>111</sup> The language that the blanket purchase order is meant to cover Autoliv’s requirements infers a quantity term and does not satisfy the statute of frauds.<sup>112</sup> The Sixth Circuit held that the manner in which the word “cover” is used can infer “to deal with . . . Autoliv’s subsequent needs, consistent with a release-by-release agreement,” and that Higuchi may reject Autoliv’s request to purchase automotive parts on a release-by-release basis.<sup>113</sup> The Sixth Circuit also relied on the *Airboss* decision in determining that “[t]o establish that the parties have a requirements contract, Autoliv must show that its purchase orders explicitly and precisely specify that ‘[Autoliv] will obtain a set share of its total need from [Higuchi].’”<sup>114</sup> The Sixth Circuit’s decision to reverse the district court exhibits the importance of clearly and precisely establishing the set

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105. *Id.* at 587.

106. *Id.*

107. *Higuchi*, 688 F. Supp.3d at 588.

108. *Id.*

109. *Id.*

110. *Id.*; see also Jason Killips, *MSSC v. Airboss: Clarifications, changes, and questions*, 103 MICH. B.J. 16, 19 (2024).

111. *Higuchi Int’l Corp. v. Autoliv ASP, Inc.*, 103 F.4th 400 (6th Cir. 2024).

112. *Id.* at 407.

113. *Id.* at 407, 409; see also Vanessa L. Miller, et al., *Changing Requirements: Recent Disruptions to the Law of Requirements Contracts*, FOLEY & LARDNER LLP (July 25, 2024), <https://www.foley.com/insights/publications/2024/07/changing-requirements-disruptions-law-requirements-contracts/> [https://perma.cc/3XJA-7297].

114. *Higuchi*, 103 F.4th at 406.

share of requirements to rid of any ambiguity regarding the share of requirements at issue. The decision further emphasizes the significance of upholding the *Airboss* decision and “the pivotal role quantity plays in contract law in being the only written term required for a contract to satisfy the statute of frauds.”<sup>115</sup>

Meanwhile, before the appeal was decided in *Higuchi*, the U.S. District Court for the Eastern District of Michigan decided *Ultra Mfg. (U.S.A.) Inc. v. ER Wagner Manufacturing Company*, assessing whether the following terms constituted a quantity term to satisfy the statute of frauds: “some portion or all of [Mitchell’s] requirements will be obtained from [ER Wagner]. This is a requirements contract.”<sup>116</sup> The district court held that “some portion or all” is an imprecise quantity term under *Airboss* and thus, the blanket purchase order was not an enforceable requirements contract.<sup>117</sup> Mitchell relied on *Cadillac Rubber*, but the district court held that “*Cadillac Rubber* irreconcilably conflicts with *Airboss* . . . and that [the district court] is obligated to follow *Airboss*.”<sup>118</sup> The court cited to *Airboss* such that “[a] contract may leave the final or total quantity ambiguous or unspecified in a requirements contract, but it may not state an imprecise quantity term.”<sup>119</sup> The conflict between *Cadillac Rubber* and *Airboss* remains unresolved. *Cadillac Rubber*’s allowance of a quantity range from one unit to 100% appears inconsistent with *Airboss*’s requirement for a definite quantity term. This discrepancy requires clarification from Michigan courts following *Airboss*.

The Michigan trial courts have not applied *Airboss* as broadly as the federal courts.<sup>120</sup> In *FCA US, LLC v. Kamax, Inc. and Kamax Mexico S de RL de CV*, “FCA US, LLC (“FCA”) produces automobiles and operates under the “just-in-time” delivery model with” Kamax, Inc. and Kamax Mexico S de RL de CV (collectively, “Kamax”).<sup>121</sup> Kamax demanded higher prices to be paid for the parts they were providing or they would stop shipping to FCA.<sup>122</sup> FCA sought a preliminary injunction for specific performance of the supply agreement since it constituted an enforceable

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115. *Id.* at 408.

116. *Ultra Mfg. (U.S.A) Inc. v ER Wagner Manufacturing Co.*, 713 F.Supp.3d 394, 397 (E.D. Mich. 2024); *see also* Miller, *supra* note 113.

117. *Ultra.*, 713 F.Supp.3d at 398.

118. *Id.* (finding that the imprecise quantity term in *Cadillac Rubber* is “essentially committing to ‘whatever [a party] orders and does not satisfy the statute of frauds under the reasoning of *Airboss*”).

119. *Id.*; *see also* MSSC, Inc. v. Airboss Flexible Prods. Co., 511 Mich. 176, 176, 999 N.W.2d 335, 335 (Mich. 2023).

120. Miller, *supra* note 113.

121. *FCA US, LLC v. Kamax, Inc.*, No. 24-205863-CB (Oakland Cnty. Cir. Ct. Mar. 2, 2024) (opinion and order regarding plaintiff’s motion for preliminary injunction at 2).

122. *Id.* at 3–4; *see also* Miller, *supra* note 113.

requirements contract under *Airboss*.<sup>123</sup> Under the purchase agreement at issue, FCA agreed to obtain 65% to 100% of its requirements from Kamax.<sup>124</sup> Kamax argued that such quantity term “is imprecise and not a commitment to obtain a “set share” of FCA’s total need from Kamax” and thus, the parties entered into release-by-release contracts.<sup>125</sup> However, the trial court relied on *Cadillac Rubber* and held that the quantity terms “65% to 100%” of Kamax’s requirements is a quantity term that is sufficient to satisfy the statute of frauds and the contract constitutes a requirements contract.<sup>126</sup>

It is likely that more parties will reevaluate their contracts and courts will have to continue assessing the scope and enforceability of the quantity terms in such contracts. *Airboss* shifts bargaining power towards suppliers, who can now demand more specific quantity commitments from buyers.<sup>127</sup> Further, suppliers may argue that current contracts with buyers lack the necessary quantity commitment, resulting in reopening contract negotiations and leveraging price increases.<sup>128</sup> Buyers must carefully consider the trade-off between flexibility and certainty in their requirements contracts. Buyers may argue that the *Airboss* decision encourages suppliers to be opportunistic and leverage price increases, as a release-by-release agreement allows for suppliers to negotiate on a per-release basis and not account for the long-term effects of the business relationship.<sup>129</sup> If a supplier decides to not accept a release, this may result in potential loss in revenue and disruption in a buyer’s supply chain.

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123. *FCA US, LLC v. Kamax, Inc.*, No. 24-205863-CB (Oakland Cnty. Cir. Ct. Mar. 2, 2024) (opinion and order regarding defendants Kamax Inc.’s motion for summary disposition and to dissolve preliminary injunction at 8).

124. *Id.*

125. *Id.*

126. *Higuchi Int’l Corp. v. Autoliv ASP, Inc.*, 103 F.4th 400, 406 (6th Cir. 2024) (quoting *Airboss*, 511 Mich. at 185, 999 N.W.2d at 340) (“A release-by-release agreement ‘gives both parties the freedom to allow their contractual obligations to expire in short order by either not issuing or not accepting a new release’ for specific quantities of goods without establishing any long-term obligations to buy from or sell parts to one another.”); *See also* Vitasek, *supra* note 1 (“*AirBoss* reflected opportunism — the company was only interested in continuing the agreement, without regard for the long-term effects of the relationship.”); *see also* Nicholas Ellis, et al., *Michigan Supreme Court Overrules Longstanding Interpretation of “Blanket” Purchase Orders for Supply Contracts*, JDSUPRA (July 13, 2023), <https://www.jdsupra.com/legalnews/michigan-supreme-court-overrules-9986760/> [https://perma.cc/G6F7-R2T7] (“Furthermore, any supplier currently supplying under a ‘blanket’ order that lacks any additional written quantity term now likely has additional arguments and leverage to request price increases.”).

127. Ellis, *supra* note 126.

128. *Id.*

129. *Higuchi*, 103 F.4th at 406; *see also* Vitasek, *supra* note 1.



However, suppliers may argue that buyers also have the ability able to walk away from the agreement once a release has been fulfilled.<sup>130</sup> Reducing business relationships to transactional details may prevent parties from collaborating at a deeper level.<sup>131</sup> Conversely, requiring an explicit quantity term establishes clear and specific conditions which allows suppliers to account for their future obligations.<sup>132</sup>

### C. Implications on Precedent

Nearly forty years ago in *Great Northern*, the Michigan Court of Appeals held that “the term ‘blanket order’ expresses a quantity term, albeit an imprecise one” and created an enforceable contract.<sup>133</sup> In *Airboss*, the Michigan Supreme Court explicitly overruled that holding when concluding that “blanket order” is an imprecise quantity term that is not enforceable.<sup>134</sup> This is significant to note for parties that are presently supplying under a blanket purchase order that lacks any quantity term. Any active blanket purchase order that lacks a quantity term will now be unenforceable. Overruling *Great Northern* to this extent helps clarify Michigan’s case law regarding quantity terms in requirements contracts.<sup>135</sup>

Notably, the Michigan Supreme Court in *Airboss* distinguished between “total quantity” and the “quantity term.”<sup>136</sup> In a requirements contract, the final or total quantity may be ambiguous or unspecified, but the quantity term must be precisely stated.<sup>137</sup> This distinction is fundamental to *Airboss* and to resolving future cases surrounding whether the quantity terms satisfy the statute of frauds.<sup>138</sup> A contract will satisfy the statute of frauds if there is a precise quantity.<sup>139</sup>

The *Airboss* court did not overturn *Cadillac Rubber*, since doing so was not necessary to decide *Airboss*, and instead distinguished it since

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130. See *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176, 199–200, 999 N.W.2d 335, 347 (Mich. 2023).

131. See Vitasek, *supra* note 1.

132. Ellis, *supra* note 126.

133. *Great Northern Packaging, Inc. v. Gen Tire & Rubber Co.*, 154 Mich. App. 777, 787, 399 N.W.2d 408, 413 (Mich. Ct. App. 1986), *rev’d*, *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 511 Mich. 176, 999 N.W.2d 335 (Mich. 2023) *see also* *Airboss*, 511 Mich. at 192, 999 N.W.2d at 344.

134. *Airboss*, 511 Mich. at 193, 999 N.W.2d at 344 (holding “to the extent that *Great Northern* stands for the conclusion that the term ‘blanket order’ alone infers a quantity term in an alleged UCC sale-of-goods contract, it is overruled”).

135. Killips, *supra* note 110, at 19.

136. *Airboss*, 511 Mich. at 194 n.4, 999 N.W.2d at 344.

137. *Id.*

138. Killips, *supra* note 110, at 18.

139. *Airboss*, 511 Mich. at 190?, 999 N.W.2d at 343.

there was not a quantity term set forth in the purchase order in question.<sup>140</sup> *Airboss* also did not reconcile *Cadillac Rubber* and *Acemco, Inc. v. Olympic Steel Lafayette, Inc.*<sup>141</sup> In *Acemco*, the Michigan Court of Appeals defined a requirements contract as an agreement “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 . . . from the seller.”<sup>142</sup> This definition demonstrates the importance of mutual consideration in a requirements contract, in which a seller has an obligation to deliver goods or services and a buyer is obligated to buy such goods or services.<sup>143</sup> *Airboss* reiterated the mutuality obligation of a requirements contract that was highlighted in *Acemco* when differentiating between a requirements contract and a release-by-release agreement.<sup>144</sup>

However, *Airboss* did not reconcile *Cadillac Rubber* with the mutuality set forth in *Acemco*. In *Cadillac Rubber*, a buyer, in its sole discretion, may purchase one widget or 100% of its requirements under the blanket purchase order.<sup>145</sup> The seller did not have the same discretion and was obligated to deliver all the parts that the buyer ordered and there was “no mutual obligation to buy and sell the same quantity of parts.”<sup>146</sup> *Airboss* noted that whether *Cadillac Rubber* and *Acemco* can be reconciled is to be decided at a later date.<sup>147</sup> This leaves the opportunity for courts to interpret whether principles of mutuality should be taken into account when evaluating a requirements contract. There is “nothing in the UCC [that] contemplates the buyer and seller having different quantity terms in this way.”<sup>148</sup> However, *Airboss* highlighting the mutuality requirement detailed in *Acemco* suggests that *Cadillac Rubber* should be overruled.<sup>149</sup>

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140. Killips, *supra* note 110.

141. *Airboss*, 511 Mich. at 194 n.4, 999 N.W.2d at 344 n.4.

142. *Acemco, Inc. v. Olympic Steel Lafayette, Inc.*, 2005 WL 2810716 (Mich. Ct. App. Oct. 27, 2005).

143. *Id.*; see also Killips, *supra* note 110, at 18.

144. *Airboss*, 511 Mich. at 194 n.4, 999 N.W.2d at 344 n.4.

145. *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, 331 Mich. App. 416, 429, 952 N.W.2d 576, 583 (Mich. Ct. App. 2020) The terms, in pertinent part, stated the following:

Seller will supply all such Supplies at the price and other terms specified in the Order; provided that the Buyer may purchase no less than a minimum quantity of at least one piece or unit of each of the Supplies and no more than 100% of Buyer's requirements for the Supplies . . . (emphasis added).

146. Killips, *supra* note 110, at 18.

147. *Airboss*, 511 Mich. at 194 n.4, 999 N.W.2d at 344 n.4.

148. Killips, *supra* note 110, at 18.

149. *Id.*

*D. Supply Agreements After the Airboss Decision*

With *Airboss* overruling *Great Northern* and formally recognizing a third type of contract, a release-by-release contract, buyers and sellers should assess whether or not their contract lacks specificity as to the quantity term.<sup>150</sup> *Airboss* undoubtedly affects countless existing supply agreements and whether such agreements are still enforceable. Parties should assess how *Airboss* will apply to their contracts and consider the following factors:

- (1) Whether the contract explicitly states a precise quantity term or if there is language that is merely an estimate;
- (2) If the terms obligate the buyer to purchase a certain set share of its total needs from the supplier;
- (3) If there is an imprecise quantity, whether there is parol evidence that can be used to determine the specific total such imprecise quantity; and
- (4) Whether the terms create individual purchasing contracts rather than a requirements contract under the UCC.

Post-*Airboss*, requirements set forth in a contract must include a clear and specific quantity term. Examples of sufficient quantity terms pursuant to the *Airboss* decision include the following: (1) Buyer shall purchase 100% of its requirements for the product from Seller; and (2) Buyer shall purchase no less than quantity and no more than [quantity] of the product from Seller. Examples of insufficient quantity terms under the *Airboss* decision include the following: “blanket,” “blanket order,” “buyer’s requirement,” and “some portion or all.”<sup>151</sup>

By assessing the aforementioned factors, one can establish whether there is a requirements contract that will obligate a supplier to perform. It is likely that other states will assess *Airboss* in automotive supply disputes, as Michigan has a significant automotive industry and well-established precedence governing automotive supply disputes.<sup>152</sup> Beyond the automotive industry, *Airboss* will have implications in contracts for the sale of goods. For parties that are currently operating under what they believe to be a “blanket purchase order,” which does not contain the

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150. See *Airboss*, 511 Mich. at 183, 999 N.W.2d at 339.

151. *Id.*

152. Miller, *supra* note 113.

necessary, precise written quantity term, suppliers may now have more bargaining power in reopening negotiations and leveraging price increases.<sup>153</sup> Further, to a supplier's advantage, requiring an explicit quantity term allows for suppliers to predict demand in advance.<sup>154</sup> Buyers must consider whether flexibility at the expense of certainty is more important when entering into supply agreements and whether the contract has language requiring the supplier to supply any quantity requested by the buyer. Suppliers and buyers should be cognizant of how their long-term contracts should be structured amongst evolving circumstances and if such contracts have the necessary language as required by the statute of frauds and *Airboss*.

#### IV. CONCLUSION

*Airboss* significantly impacts requirements contracts in Michigan, requiring greater precision in drafting quantity terms. The future of requirements contracts hinges on the resolution of the *Cadillac Rubber* conflict and further interpretation of *Airboss* by the courts. Parties should proactively review and revise existing agreements to ensure compliance with *Airboss*. *Airboss* is a significant case that will influence the scope and enforceability of contracts for the sale of goods. While *Airboss* made it clear that suppliers and buyers need to ensure their agreements include a specific written quantity term to satisfy the statute of frauds, *Airboss* chose not to address the mutuality of obligation in a requirements contract.<sup>155</sup> Specifically, *Airboss* chose not to address the quantity term upheld in *Cadillac Rubber*.<sup>156</sup> When assessing whether a supply agreement has a sufficient quantity term, future case law may explicitly overturn *Cadillac Rubber* when determining whether “a quantity between one part and 100%” is a proper quantity term for a requirements contract.<sup>157</sup> This would also further clarify whether a mutual obligation to buy and sell the same quantity of an item is necessary in a requirements contract. Additional cases interpreting the Michigan Supreme Court's rule set forth in *Airboss* are anticipated. It is the responsibility of parties to ensure whether the scope of their agreements complies with the explicit quantity term requirement set forth in *Airboss*.

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153. *Id.*

154. *Id.*

155. *Airboss*, 511 Mich. at 194 n.4, 999 N.W.2d at 344 n.4.

156. *Id.*; see also *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Sys., LLC*, 331 Mich. App. 416, 429, 952 N.W.2d 576, 583 (Mich. Ct. App. 2020).

157. *Cadillac Rubber*, 331 Mich. App. at 429, 952 N.W.2d at 583.