

# How A Michigan Case Could Upend Auto Part Contracts

By **Alexis Chandler and Sarah Rathke** (November 22, 2022)

Michigan is the car capital of the U.S. Therefore, it is no surprise that Michigan has a robust body of law governing disputes relating to the purchase and sale of automotive parts.

One potentially groundbreaking supply chain case, however, is currently making its way through the Michigan court system and testing the basic Uniform Commercial Code Statute of Frauds principle requiring that order quantity be definite and in writing for a contract for the sale of goods to be enforceable.[1]

The only UCC exception to this rule, before now, has been for requirements and output contracts.[2] In short, pending the outcome of this case, more flexible contracting could benefit component purchasers across the industries.

Generally, courts invalidate contracts for the sale of goods if they lack a defined quantity term in writing. See, for example, *Merritt-Campbell Inc. v. RxP Products Inc.*, decided by the U.S. Court of Appeals for the Fifth Circuit in 1999.[3]

Even quantity estimates or general quantity parameters such as "no fewer than 12,000" items have been held to be insufficiently definite as to quantity to be enforceable.[4]

This was the case in *Warren Industries Inc. v. PMG Indiana Corp.*, where the U.S. District Court for the Eastern District of Michigan held in 2014 that the blanket purchase order was not enforceable, because the quantity of 119,946, despite being specific, was identified as merely an estimate in the blanket purchase order at issue.[5]

Despite this long-standing UCC rule, in July 2021, the Michigan Court of Appeals affirmed a trial court decision in *MSSC Inc. v. Airboss Flexible Products Co.*, holding that a buyer's blanket purchase order was enforceable — even though it did not specify order quantity in writing — because the specification of "blanket" as a "PO Type" was, according to the court, sufficient to satisfy the Michigan Statute of Frauds.[6]

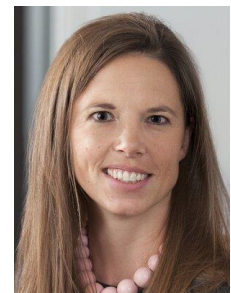
In *MSSC*, the parties entered into a contract whereby the defendant — a tier two automotive supplier of rubber products — would supply components to the plaintiff, a tier one supplier, for ultimate use in the plaintiff's contract with an automaker. The parties' agreement was set forth in a blanket purchase order only, meaning a contract covering multiple purchases of goods over a stated period, with specific quantities and delivery dates to be dictated by the buyer over time.

The blanket purchase order expressly provided, "Annual volume is an estimate based on the forecasts of [plaintiff's] customers and cannot be guaranteed" — thus, articulating no definite order quantity.

Seven years into the parties' relationship, the defendant notified the plaintiff that it would not supply any further product under the blanket purchase order until the parties revised



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pricing. The plaintiff refused the price increase, and attempted to enforce the blanket purchase order at the parties' original price. As a result, the defendant terminated the agreement.

The plaintiff filed suit against the defendant in the Oakland County Circuit Court, alleging the defendant breached the parties' agreement by refusing to supply parts unless the plaintiff paid the price increase. The plaintiff asked for either a declaratory judgment enforcing its rights under the blanket purchase order or a judgment for specific performance to enforce the terms of the blanket purchase order.

Both parties moved for summary judgment. The defendant argued that the purchase order was not enforceable under Michigan's UCC Statute of Frauds because the blanket purchase order did not include a written quantity term.

The plaintiff argued that the blanket purchase order was enforceable because the term "blanket" in the purchase order was itself a quantity term sufficient to satisfy the Statute of Frauds. The trial court granted the plaintiff's motion for summary judgment, holding that the term "blanket" did express a quantity term, and therefore did not violate the Statute of Frauds.

The defendant appealed, and on appeal, again argued that the blanket purchase order was unenforceable because it failed to include a written quantity term as required by the Statute of Frauds. The Court of Appeals also disagreed, reasoning that the use of a blanket order was intended to be imprecise — essentially sidestepping the question of whether it satisfied the Statute of Frauds rule.

However, the court reasoned that the blanket purchase order permissibly did not specifically state a quantity because the plaintiff's need for parts was dependent on its automaker customer's production schedule — common in the automotive industry. This imprecision, of course, is exactly the reasoning used by courts that have struck down contracts for the sale of goods that lack definite quantity terms.

Following this opinion, in September 2021, the defendant filed an application for leave to appeal to the Michigan Supreme Court, which the Court of Appeals granted. The Supreme Court ordered 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 [Michigan] Uniform Commercial Code's statute of frauds, MCL 440.2201(1)."

Michigan Supreme Court oral arguments are set for December. Fifteen suppliers have filed a joint amicus brief, urging the high court to reverse the lower courts' decision.

The industry is now waiting to see if the Michigan Supreme Court agrees with the lower courts' interpretation of the blanket purchase order language, or if it will apply the long-standing general rule that the quantity must be precise and specific for a contract for the sale of goods to be enforceable.

If the Michigan Supreme Court affirms the lower court decisions, however, this may open the door for more flexible contracting that benefits purchasers both in and outside the automotive industry.

It may also preclude a tactic that suppliers have increasingly used during the COVID-19 pandemic era to force negotiations for price increases.

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[1] UCC § 2-201; MCL 440.2201.

[2] UCC § 2-306(1); MCL 440.2306(1).

[3] *Merritt-Campbell Inc. v. RxP Products Inc.*, 164 F.3d 957 (5th Cir. 1999) (signed and fully integrated contract for fuel additive that set forth price, delivery, confidentiality and other commercial terms not an enforceable contract because no quantity term was stated; purchase orders issued pursuant to this contract were invalid).

[4] *Crown Battery Manufacturing Co. v. Club Car Inc.*, 2014 U.S. Dist. LEXIS 18907 (N.D. Ohio Feb. 13, 2014).

[5] *Warren Industries Inc. v. PMG Indiana Corp.*, 2014 U.S. Dist. LEXIS 191428 (E.D. Mich. 2014).

[6] *MSSC Inc. v. Airboss Flexible Prods. Co.*, 354533, 2021 Mich. App. LEXIS 4654 (Ct. App. July 29, 2021).