

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. **Ecological Alliance, LLC and Tramec Sloan, LLC**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Ecological”), on the one hand, and Tramec Sloan, LLC (“Tramec”), on the other hand, with Ecological and Tramec collectively referred to as the “Parties.”

1.2. **General Allegations**

Ecological alleges that Tramec manufactured and distributed and offered for sale in the State of California brass parts containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The items that are covered by this Settlement Agreement are defined as all brass products manufactured, distributed, sold or otherwise marketed for sale or use in California by Tramec which are likely to be touched or mouthed by a user in the foreseeable use of the product, including during its installation (“Brass Products”).

1.4. **Notices of Violation**

On May 12, 2017, Ecological served Tramec and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Tramec and such public enforcers with notice that Tramec was allegedly in violation of

California Health & Safety Code section 25249.6 for failing to warn consumers and customers that brass bulkheads exposed users in California to lead. On July 31, 2017, Ecological further served Tramec and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a Notice that provided Tramec and such public enforcers with notice that Tramec was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that brass fuel caps exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in either Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notices concerning Tramec's compliance with Proposition 65. Specifically, Tramec denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Brass Products specifically identified in either Notice, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Tramec of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Tramec of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Tramec. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Tramec under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date

this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

Tramec shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless such Brass Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Brass Products that were acquired or supplied to third parties by Tramec prior to 90 days after the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.¹

2.1. Reformulation Standards

“Reformulated Products” are defined as those Brass Products in which the brass that is an accessible part of the Brass Product that may be touched or mouthed is made of an alloy that contains no intentionally added lead and no lead content by weight of more than 0.03% (300 parts per million, or “300 ppm”).

As to the lead content of the brass components of the Brass Products, Tramec and any other Releasees may rely upon the representations of their or its respective manufacturers, suppliers, distributors, official product certification organizations (such as International Association of Plumbing and Mechanical Officials) or any other person in the course of doing business that manufactures, supplies or otherwise distributes the Brass Product(s), provided that the reliance is in good faith.



2.2. Warning Language

Where required, Tramec shall provide Proposition 65 warnings for the Brass Products as

¹ Brass Products include, but are not limited to the bulkheads and fuel caps referenced in either Notice issued by Ecological.

follows:

(a) Tramec may use either of the following warning statements in full compliance with this Section:

- (1)  **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive. For more information go to www.P65Warnings.ca.gov.
- (2)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If Tramec elects to use the warning statements identified in either 2.2(a)(1) or (2), it may include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for lead or the Brass Products should no longer be required, Tramec shall have no further obligations pursuant to this Settlement Agreement.

(e) The warning called for by this Section 2.2 shall be placed or affixed on the Brass Product or its package. If the package will not be able to be read and understood by an ordinary individual prior to purchase or use, in addition to the warning statement, the package shall indicate: "Not Packaged for Individual Resale."

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In consideration of this Settlement Agreement and in light of the Proposition 65 warning program Tramec has already implemented for its Brass Products, Tramec shall pay a total of \$2,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties also reached an accord on the compensation due to Ecological and its counsel pursuant to this Settlement Agreement. Specifically, Tramec shall reimburse Ecological's counsel for fees and costs incurred as a result of investigating and bringing this matter to Tramec's attention in the amount of \$18,000 and it shall have no other obligation for fees or costs incurred by Ecological or its counsel in association with this matter or Tramec's Brass Products.

5. PAYMENT INFORMATION

By March 9, 2018, Tramec shall make a total payment of \$20,000 for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325054144600

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Tramec, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to Tramec's Brass Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Tramec, (b) each of Tramec's downstream distributors wholesalers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Jet.com, Inc. and Amazon.com, Inc.), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Tramec's parent companies, corporate affiliates,

subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Ecological also, in its individual capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Tramec and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Ecological, in its individual capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6.2. Tramec's Release of Ecological

Tramec waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been

taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Brass Products, then Tramec shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Tramec: Robert Falk, Esq.
Morrison & Foerster LLP
425 Market St.
32nd Floor
San Francisco, CA 94105

For Ecological: Vincet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 612
Los Angeles, CA 90013

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. **ENTIRE AGREEMENT**


This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>2/26</u>, 2018</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____, 2018</p> <p>By: _____ On Behalf of Tramec Sloan, LLC</p>
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<p style="text-align: center;">AGREED TO:</p> <p>Date: _____, 2018</p> <p>By: _____ On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>3/01</u>, 2018</p> <p>By: <u><i>James K. Landi</i></u> On Behalf of Tramec Sloan, LLC</p>
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