

**PROPOSITION 65 SETTLEMENT AGREEMENT  
(Susan Davia AG Notices 2021-00185, 2021-00682)**

**1. INTRODUCTION**

**1.1 The Parties**

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Euro Tool, Inc. (hereafter, “Eurotool”), with Davia and Eurotool each referred to as a “Party” and collectively referred to as the “Parties.”

**1.2 Davia**

Davia is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

**1.3 Euro Tool, Inc.**

**1.4** For the sole purpose of this agreement and the resolution of the subject claims, and without admitting any liability, Eurotool is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

**1.5 General Allegations**

Davia alleges that Eurotool is responsible for the design, manufacture, distribution and/or sale, in the State of California, of Eurotool brand and other craft pliers and hand tools made with vinyl components that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive toxin. Davia has also and separately alleged that Eurotool is responsible for the design, manufacture, distribution and/or sale, in the State of California, of sliding brass gauge products made with brass materials that exposed users to Lead without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, Lead is listed as a carcinogen and reproductive toxin.

DEHP and Lead shall be collectively referred to hereinafter as the "Listed Chemical."

#### **1.6 Notices of Violation**

On January 29, 2021, Davia served Eurotool and various public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in craft pliers with vinyl grips sold in California (AG Notice 2021-00185).

On March 19, 2021, Davia served Eurotool and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of Lead, a toxic chemical found in brass craft gauges sold in California (AG Notice 2021-00682).

These January 29, 2021, and March 19, 2021, Notices of Violation from Davia to Eurotool shall hereafter be collectively referred to as "Notices." Eurotool represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP or Lead in the Covered Products (hereafter defined), as identified in the Notices.

#### **1.7 No Admission**

This Agreement resolves claims that are denied and disputed by Eurotool. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Eurotool denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws and regulations, including Proposition 65. Nothing in

this Agreement shall be construed as an admission by Eurotool of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Eurotool of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Eurotool. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Eurotool's obligations, responsibilities, and duties under this Agreement.

### **1.8 Consent to Jurisdiction**

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Eurotool as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin and the Marin County Superior Court shall have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the Agreement.

## **2. DEFINITIONS**

**2.1** "Phthalate Covered Product" shall mean, and be expressly hereby limited to, all Eurotool-distributed craft plier products made with vinyl components.

**2.2** "Phthalate Free" Phthalate Covered Products shall mean any accessible component of any Phthalate Covered Product that contains less than or equal to 1,000 parts per million ("ppm") of DEHP, DINP, DBP, di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

**2.3** "Lead Covered Product" shall mean all sizes of Eurotool distributed or branded brass sliding gauge products including, but not limited to, 80mm Brass Gauge with and without plate.

**2.4** "Lead Free" Lead Covered Products shall mean any brass component of any Lead Covered Product that contains less than 100 ppm Lead when analyzed pursuant to EPA testing

methodologies 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies for the purpose of determining Lead content in a solid substance.

**2.5** “Covered Product,” when used without a “Lead” or “Phthalate” descriptor, shall mean both Lead Covered Product and Phthalate Covered Product, collectively.

**2.6** “Effective Date” shall mean May 1, 2022.

### **3. INJUNCTIVE-TYPE RELIEF**

#### **3.1 Products No Longer in Eurotool’s Control**

No later than the Effective Date, Eurotool shall send a letter, electronic or otherwise, (“Notification Letter”) to the national or California purchasing manager for any retail entity to which Eurotool distributed or sold Covered Products since April 15, 2020, and that Eurotool reasonably understands either maintains an ecommerce retail website or maintains retail outlets in California. For those customers receiving Phthalate Covered Products, the Notification Letter shall advise the recipient that Phthalate Covered Products “have been tested for the presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.” For those customers receiving Lead Covered Products, the Notification Letter shall advise the recipient that Lead Covered Products “have been tested for the presence of lead and found to contain lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.” All Notification Letters shall also request that, to the extent Covered Products in the recipient’s inventory are not already labeled with a warning that complies with Section 3.3, the recipient either pull all Covered Products from store displays and return its entire inventory of Covered Products to Eurotool or label the Covered Products remaining in its inventory for sale in California with a label that complies with Section 3.3. All Notification Letters shall request a response from the recipient within 15 days, confirming that the letter was received. The forms of Notification Letters to be sent by Eurotool for Phthalate Covered Products and Lead Covered Products pursuant to this Section are attached hereto as Exhibits A and B, respectively. Eurotool shall maintain records of all correspondence

or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records, pursuant to the Parties' Confidentiality Agreement, upon Davia's written request.

### **3.2 Product Reformulation Commitment**

**3.2.1** No later than the Effective Date, Eurotool shall provide the Phthalate Free concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Phthalate Covered Product and request such entities not to supply any Phthalate Covered Product to Eurotool that is not Phthalate Free. The form of letter to be sent by Eurotool pursuant to this Section is attached hereto as Exhibit C. Eurotool shall maintain copies of all vendor correspondence generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records, pursuant to the Parties' Confidentiality Agreement, upon written request from Davia.

**3.2.2** No later than the Effective Date, Eurotool shall provide the Lead Free concentration standards of Section 2.4 to its then-current vendors or manufacturers of any Lead Covered Product and advise such entities of Eurotool's preference that they supply any Lead Covered Product to Eurotool that is Lead Free. The form of the letter to be sent by Eurotool pursuant to this Section is attached hereto as Exhibit D. Eurotool shall maintain copies of all vendor correspondence generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records, pursuant to the Parties' Confidentiality Agreement, upon written request from Davia.

**3.2.3** After the Effective Date, Eurotool shall provide the Phthalate Free concentration standards of Section 2.2 to any new vendors or manufacturers of any Phthalate Covered Product and request such entities not to supply any Phthalate Covered Product to Eurotool that is not Phthalate Free. The form of the notice to be issued to any new vendors pursuant to this Section is attached hereto as Exhibit E. Prior to purchase and acquisition of any Phthalate Covered Product from any new vendor, Eurotool shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free concentration standards in all vinyl

components of the Phthalate Covered Product or demonstrating it is not commercially practical or feasible for the vendor to produce the product with materials that are Phthalate Free. For two years after the Effective Date, Eurotool shall maintain copies of all correspondence generated pursuant to this Section, including any test results received from a vendor, and shall, upon Davia's written request, promptly produce copies of such records to Davia.

**3.2.4** After the Effective Date, Eurotool shall provide the Lead Free concentration standards of Section 2.4 to any new vendors or manufacturers of any Lead Covered Product and advise such entities of Eurotool's preference that they supply any Lead Covered Product to Eurotool that is Lead Free. The form of the notice to be issued to any new vendors pursuant to this Section is attached hereto as Exhibit F. Prior to purchase and acquisition of any Lead Covered Product, or any brass component for any Lead Covered Product from any new vendor, that Eurotool contends meets the Lead Free concentration standards and which Eurotool intends to offer for sale without a warning pursuant to Section 3.3 below, Eurotool shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating the Lead concentration in all materials comprising the Lead Covered Product. For two years after the Effective Date, for every Lead Covered Product Eurotool contends meets the Lead Free concentration standards and intends to offer for sale without a warning pursuant to Section 3.3 below, Eurotool shall maintain copies of all vendor correspondence relating to the Lead Free concentration standards, including any test results received from a vendor, and shall promptly produce copies of such records, pursuant to the Parties' Confidentiality Agreement, upon Davia's written request.

**3.2.5** As of July 1, 2022, Eurotool shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Phthalate Covered Product unless such Phthalate Covered Product (1) meets the Phthalate Free concentration standards of Section 2.2; or (2) is not commercially available with materials that Eurotool can be confident are Phthalate Free. For purposes of this Agreement, a product shall be considered "not commercially available with materials that Eurotool can be confident are Phthalate Free" if, despite Eurotool's expressed preference that suppliers provide only Phthalate Free Phthalate Covered

Products as set forth in Sections 3.2.1 and 3.2.3, the supplier of such product cannot or will not provide sufficient information and assurances for Eurotool to be reasonably certain that the product is Phthalate Free - including, but not limited to, duplicate quality controlled test results using EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances, demonstrating that all accessible components of any Phthalate Covered Product contain less than or equal to 1,000 ppm of DEHP, DINP, DBP, DIDP, DnHP and BBP - and the same product is not available at the same or similar price from a supplier that can provide such assurances.

**3.2.6** As of July 1, 2022, Eurotool shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Lead Covered Product unless such Lead Covered Product meets the Lead Free concentration standards of this Agreement or is labelled, either by Eurotool or its supplier, with a warning compliant with Section 3.3 of this Agreement.


### **3.3 Covered Product Warnings**

**3.3.1** For any Phthalate Covered Product obtained by Eurotool prior to July 1, 2022, that is not confirmed to be Phthalate Free, and for any Phthalate Covered Product obtained by Eurotool on or after July 1, 2022, that is not commercially available with materials that Eurotool can be confident are Phthalate Free, Eurotool shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Phthalate Covered Product unless such Phthalate Covered Product is shipped with a warning as set forth hereafter.


Each such warning utilized by Eurotool for any Phthalate Covered Product shall be prominently placed on the product, its labeling or its packaging with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use.

Each warning shall either be printed directly on the Phthalate Covered Product consumer packaging or shall be affixed to the consumer packaging. Each warning shall include a yellow triangle

with an internal exclamation point—or, where the packaging or label on which the warning is incorporated includes other words and symbols that are only printed in black and white, the symbol may also be printed in black and white—and state:

 **WARNING** The vinyl materials of this product can expose you to chemicals, including DEHP, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


or

 **WARNING** Cancer and Reproductive Harm.  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**3.3.2** For any Lead Covered Product that is not confirmed to be Lead Free, Eurotool shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Lead Covered Product unless such Lead Covered Product is shipped with a warning as set forth hereafter.

Each such warning utilized by Eurotool for any Lead Covered Product shall be prominently placed on the product, its labeling or its packaging with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use.

Each warning shall either be printed directly on the Lead Covered Product consumer packaging or shall be affixed to the consumer packaging. Each warning shall include a yellow triangle with an internal exclamation point—or, where the packaging or label on which the warning is incorporated includes other words and symbols that are only printed in black and white, the symbol may also be printed in black and white—and state:

 **WARNING** The brass materials of this product can expose you to chemicals, including Lead, that are known to the State of California to cause cancer and birth defects or other




reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or


 **WARNING** Cancer and Reproductive Harm. -  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

### 3.4 Internet Ecommerce Covered Product Warnings

A warning must be given in conjunction with the sale, or offer of sale, by Eurotool of any Covered Product not confirmed by Eurotool to be Lead Free and/or Phthalate Free, as applicable, via any ecommerce website owned, operated, managed or controlled by Eurotool. A warning will satisfy this requirement if it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. One of the following warning statements shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given, or through a hyperlink using the word “WARNING”, in the same type size or larger than the Covered Product description text:

 **WARNING:** This product can expose you to chemicals, including [DEHP or lead, as applicable], known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Alternatively, the following “short form” warning may be used on the ecommerce website, but only if the same warning language also appears on the product label or consumer packaging of the Covered Product itself.

 **WARNING:** Cancer and Reproductive Harm -  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## **4. MONETARY PAYMENTS**

### **4.1 Civil Penalty**

As a condition of settlement of all the claims referred to in this agreement, Eurotool shall pay a total of \$4,000 in civil penalties in accordance with California Health & Safety Code § 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 Davia.

### **4.2 Augmentation of Penalty Payments**

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Eurotool for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to counsel for Eurotool that Eurotool materially misrepresented its distribution of the Covered Products in California prior to execution of this Agreement, and Eurotool does not provide Davia with competent and credible evidence to dispute this claim, then Eurotool shall be liable for an additional penalty amount of \$10,000.00. Davia agrees to provide counsel for Eurotool with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Eurotool shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by Eurotool and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to such claim.

### **4.3 Reimbursement of Davia’s Fees and Costs**

The Parties acknowledge that Davia and her counsel offered to resolve the non-monetary aspects of this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby

leaving this fee issue to be resolved after the non-monetary terms of the agreement had been settled. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under the principles of California Code of Civil Procedure section 1021.5 and 11 C.C.R. § 3201, for all work performed in this matter. Under these legal principles, Eurotool shall pay Davia's counsel the amount of \$46,000 for fees and costs incurred investigating, litigating and enforcing this matter.

#### **4.4 Payment Procedures**

Eurotool shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2021-00185, 2021-00682"), in the amount of \$3,000 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2021-00185, 2021-00682") in the amount of \$1,000.

Eurotool shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.2 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2021-00185, 2021-00682") in the amount of \$46,000.

All civil penalty and attorney fee/cost payments shall be delivered to counsel for Davia at the following address within 10 business days after execution of this Agreement:

Sheffer Law Firm  
Attn: Proposition 65 Controller  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

Eurotool shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under this Section that are not received by Sheffer Law Firm within five business days of the due date for such payment.

While the obligations of this Agreement are binding upon execution, the Releases in Section 5 shall not become effective until after all monetary payments have been made by Eurotool and all funds have cleared.

Eurotool shall also pay any augmented civil penalties pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by a court pursuant to Section 4.2, with civil penalty checks

payable to "OEHHHA" (Memo line "Prop 65 Penalties, 2021-00185, 2021-00682") and "Susan Davia" (Memo line "Prop 65 Penalties, 2021-00185, 2021-00682") in the amount agreed to by the Parties or ordered by a court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).

Eurotool shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by a court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2021-00185, 2021-00682") in the amount agreed upon by the Parties or ordered by a court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to counsel for Davia at the following address:

Sheffer Law Firm  
Attn: Proposition 65 Controller  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

Eurotool shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten (10) business days of the due date for such payment.

#### **4.5 Issuance of 1099 Forms**

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Eurotool shall issue three separate 1099 forms, as follows:

- (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

## **5. RELEASES**

### **5.1 DAVIA'S RELEASE OF EUROTOOL**

5.1.1 This settlement agreement is a full, final and binding resolution of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Eurotool, its owners, shareholders, directors, officers, employees, attorneys, agents, parents, and subsidiaries, and each entity to which Eurotool distributed any Phthalate or Lead Covered Products, and the owners, shareholders, directors, officers, employees and attorneys of such entities with the exception of Wire and Cable Specialties, Inc. ("Releasees") based on their alleged failure to warn about alleged exposures to DEHP in Phthalate Covered Products and Lead in Lead Covered Products that were manufactured, distributed, sold or offered for sale by Eurotool before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Eurotool with regard to the alleged or actual failure to warn about exposure to Lead or DEHP from Phthalate Covered Products or Lead Covered Products manufactured, sold or distributed for sale by Eurotool after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, Davia, individually and in the public interest in her representative capacity, on behalf of herself, her attorneys, successors and/or assigns hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia may have, 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,-- limited to and arising under Proposition 65 with respect to the Lead and DEHP in the Phthalate Covered Products or Lead Covered Products manufactured, distributed, sold

and/or offered for sale by Eurotool before the Effective Date (collectively "Claims") against Eurotool and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Phthalate Covered Products and Lead Covered Products manufactured, distributed or sold by Eurotool or Releasees before the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

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

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights and benefits under, or which may be conferred by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 Each of the Releasees is an intended beneficiary of the releases in its favor set forth in Sections 5.1.1, 5.1.2, and 5.1.3 above, and on that basis may enforce such releases to the extent he, she, or it is benefited by them. This section 5.1 release shall not extend upstream to any entities, other than Eurotool, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the covered products or any component parts thereof to Eurotool. This section 5.1

release shall not release any claims against Rio Grande regarding Rio Grande craft plier products Flat Nose Plier 111070, German XL Flat Nose Plier 111188, Slim Nylon Flat Nose 111824, Slimline Round Nose Plier 111902, and German Stone Setting Plier 111176.

## **5.2 Eurotool's Release of Davia**

The Release by Davia is mutual. Eurotool, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products. Eurotool acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Eurotool 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 Section 1542 of the California Civil Code 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. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

## **6. ENFORCEMENT**

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition

65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, any citizen enforcer, including Davia, shall provide a Notice of Violation (“NOV”) to Eurotool. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the date of alleged violations(s); place of sale, date and proof of purchase (if relevant); and test data obtained by the citizen enforcer regarding each such Covered Product. Such citizen enforcer shall take no further action regarding any alleged violation nor seek any monetary recovery for the enforcer or the enforcer’s counsel if, within 60 days of receiving such NOV, Eurotool demonstrates: (1) that such Covered Product was manufactured distributed, sold or offered for sale by Eurotool before July 1, 2022; (2) that Eurotool directed the retailer or distributor of the Covered Product to take corrective action by placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the NOV; (3) that the Covered Product is, in fact, Phthalate Free, or (4) the Covered Product qualifies as an Exceptional Covered Product and that Eurotool promptly placed a warning label in compliance with Section 3.3 on all affected inventory of such Covered Product upon receipt of the NOV. The term “Exceptional Covered Product” means any Covered Product that Eurotool determines, either through its own investigation or discovery, or through the investigation of a citizen enforcer of Proposition 65 who shares the results of the investigation with Eurotool, after it has already taken ownership of such Covered Product, does not meet the Phthalate Free standards of Section 2.2 despite Eurotool’s good faith compliance with the commitments of Section 3.3 and that Eurotool determines is commercially impractical to return to the vendor. For purposes of Exceptional Covered Products, “commercially impractical” means the Covered Product cannot be replaced with Phthalate Free Covered Product in a timely manner to meet seasonal needs or such other circumstance as will result in commercial or competitive harm to Eurotool despite its good faith efforts to meet the Phthalate Free Standard.



**7. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely affected, unless a court finds that any unenforceable provision is not severable from the remainder of the Agreement.

**8. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California.

**9. NOTICES**

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail or electronic mail to the following:

For Eurotool:

Peter Murphy, President  
Euro Tool, Inc.  
14101 Botts Road,  
Grandview, MO 64030

With a copy to its counsel:

Kamran Javandel, Esq.  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
Three Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4074  
kjavandel@allenmatkins.com

For Davia to:

Proposition 65 Coordinator  
Sheffer Law Firm  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

**11. MODIFICATION**

This Agreement may be modified only by written agreement of the Parties.

**12. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

**13. ATTORNEY'S FEES**

**13.1** Should either Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, or other proceeding.

**13.2** Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

**13.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

**14. NEUTRAL CONSTRUCTION**

Both Parties and their counsel have participated in the preparation of this Agreement and this

Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


**15. COUNTERPARTS, FACSIMILE SIGNATURES**

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**16. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: March __, 2022</p> <p>_____ Peter Murphy, President Euro Tool, Inc.</p>	<p>Dated: March <u>31</u>, 2022</p> <p> _____ Susan Davia</p>
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Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

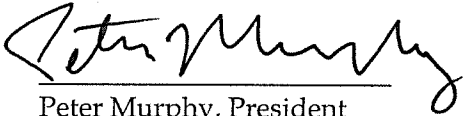
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<p>Dated: March <u>31</u>, 2022</p>  <p>Peter Murphy, President Euro Tool, Inc.</p>	<p>Dated: March __, 2022</p> <p>_____ Susan Davia</p>
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## **Exhibit A**

# **Form Notice to Customers Regarding Phthalate Covered Products**


[Eurotool Letterhead]

Dear Customer,

Our records indicate that, since April 15, 2020, you have purchased one or more craft pliers with vinyl grips from Eurotool. This letter is to notify you that craft pliers with vinyl grips distributed by Eurotool have been tested for the presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. California's Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. Eurotool has been labeling all of its craft pliers with vinyl grips with Proposition 65 exposure warnings, in one of the following formats, for some time:

 **WARNING** The vinyl materials of this product can expose you to chemicals, including DEHP, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

 **WARNING** Cancer and Reproductive Harm.  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

If you have in your inventory any craft pliers with vinyl grips which you purchased from Eurotool that are not labeled with one of the above warnings, you should apply one such warning to any of those products that you intend to sell to customers in California. If you do not have appropriate warning labels, please notify us and we will supply them to you. Alternatively, you may return any remaining, unlabeled inventory of Eurotool-supplied craft pliers with vinyl grips to Eurotool.

Additionally, if you have a website that may sell craft pliers with vinyl grips purchased from Eurotool to customers in California, you should ensure that one of the above warnings is displayed on the product pages so that they are visible to the purchaser prior to purchase. More information about Proposition 65 warning requirements is available at [p65warnings.ca.gov](http://p65warnings.ca.gov).

Finally, for any product you receive that is labeled with a Proposition 65 exposure warning, you should take care to avoid removing or otherwise obscuring the warning labels in any way. Failure to do so may subject you to liability. This letter should not be construed as legal advice. If you have questions about Proposition 65 compliance, you should consult legal counsel.

Please confirm receipt of this notice within 15 days of the date of this letter. If you have any questions, please do not hesitate to contact us.

Sincerely,  
Eurotool, Inc.


## **Exhibit B**

# **Form Notice to Customers Regarding Lead Covered Products**


[Eurotool Letterhead]

Dear Customer,

Our records indicate that, since April 15, 2020, you have purchased one or more brass sliding gauge products from Eurotool. This letter is to notify you that brass sliding gauges distributed by Eurotool have been tested for the presence of lead and found to contain lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. California's Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. Eurotool has been labeling all of its brass sliding gauge products with Proposition 65 exposure warnings, in one of the following formats, for some time:

 **WARNING** The brass materials of this product can expose you to chemicals, including Lead, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

 **WARNING** Cancer and Reproductive Harm. [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

If you have in your inventory any brass sliding gauges which you purchased from Eurotool that are not labeled with one of the above warnings, you should apply one such warning to any of those products that you intend to sell to customers in California. If you do not have appropriate warning labels, please notify us and we will supply them to you. Alternatively, you may return any remaining, unlabeled inventory of Eurotool-supplied brass sliding gauges to Eurotool.

Additionally, if you have a website that may sell brass sliding gauges purchased from Eurotool to customers in California, you should ensure that one of the above warnings is displayed on the product pages so that they are visible to the purchaser prior to purchase. More information about Proposition 65 warning requirements is available at [p65warnings.ca.gov](http://p65warnings.ca.gov).

Finally, for any product you receive that is labeled with a Proposition 65 exposure warning, you should take care to avoid removing or otherwise obscuring the warning labels in any way. Failure to do so may subject you to liability. This letter should not be construed as legal advice. If you have questions about Proposition 65 compliance, you should consult legal counsel.

Please confirm receipt of this notice within 15 days of the date of this letter. If you have any questions, please do not hesitate to contact us.

Sincerely,  
Eurotool, Inc.



## **Exhibit C**

# **Form Notice to Vendors or Manufacturers Regarding Phthalate Free Concentration Standards**

[Eurotool Letterhead]

Dear Vendor or Manufacturer,

Our records indicate that you currently supply Eurotool with craft pliers with vinyl grips. Some of these products have been tested for the presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. California's Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. This means that Eurotool must ensure that any craft pliers with vinyl grips it sells that may reach customers in California are either free of phthalates or sold with an appropriate warning of the potential exposure.

We request that you do not supply Eurotool with any craft pliers with vinyl grips unless all accessible components of the product are "Phthalate Free," meaning they contain less than or equal to 1,000 parts per million of DEHP, DINP, DBP, DIDP, DnHP, and BBP as determined by a minimum duplicate quality controlled test using United States Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by United States federal or state agencies to determine the presence and measure of the quantity of phthalates in solid substances.

To allow Eurotool to be confident that the products we purchase from you are Phthalate Free, for each craft plier with vinyl grips that you supply to us, please confirm, in writing, that the product is Phthalate Free and provide copies of results for duplicate quality controlled tests performed by an appropriately certified laboratory using the methodologies identified above and confirming that all vinyl materials in the products are Phthalate Free. If you cannot or will not provide this confirmation and supporting test results, please let us know that in writing.

Please respond within 15 days of the date of this letter to confirm whether or not you are able to provide these products with Phthalate Free materials.

If you have any questions about this request, please do not hesitate to contact us.

Sincerely,

Eurotool, Inc.

## **Exhibit D**

# **Form Notice to Vendors or Manufacturers Regarding Lead Free Concentration Standard**

[Eurotool Letterhead]

Dear Vendor or Manufacturer,

Our records indicate that you currently supply Eurotool with brass sliding gauge products. Some of these products were tested and found to contain lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. California's Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. This means that Eurotool must ensure that any brass sliding gauges it sells that may reach customers in California are either free of lead or sold with an appropriate warning of the potential exposure.

This letter is to inform you that Eurotool prefers that you only supply it with brass sliding gauges that are "Lead Free," meaning that any brass component of the product contains less than 100 ppm lead when analyzed pursuant to United States Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies to determine the presence and measure of the quantity of lead in solid substances.

If the brass sliding gauges you provide to Eurotool are Lead Free, please confirm, in writing, that the product is Lead Free and provide copies of results for duplicate quality controlled tests performed by an appropriately certified laboratory using the methodologies identified above and confirming that brass materials in the products are Lead Free. If you know that the product is not Lead Free, or if you cannot or will not provide the requested confirmation and supporting test results, please let us know that in writing.

Please respond within 15 days of the date of this letter to confirm whether or not you are able to provide these products with Lead Free materials.

If you have any questions about this request, please do not hesitate to contact us.

Sincerely,

Eurotool, Inc.

## **Exhibit E**

# **Form Notice to Future Vendors or Manufacturers Regarding Phthalate Free Concentration Standard**

[Eurotool Letterhead]

Dear Potential Supplier,

Eurotool is interested in purchasing craft pliers with vinyl grips from you. In the past, certain craft pliers with vinyl grips have been tested for the presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. California's Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. This means that Eurotool must ensure that any craft pliers with vinyl grips it sells that may reach customers in California are either free of phthalates or sold with an appropriate warning of the potential exposure.

We request that you do not supply us with any craft pliers with vinyl grips unless all accessible components of the product are "Phthalate Free," meaning they contain less than or equal to 1,000 parts per million of DEHP, DINP, DBP, DIDP, DnHP, and BBP as determined by a minimum duplicate quality controlled test using United States Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by United States federal or state agencies to determine the presence and measure of the quantity of phthalates in solid substances.

Before providing any plier product with vinyl grips to Eurotool, please confirm, in writing, that the product is Phthalate Free and provide copies of results for duplicate quality controlled tests performed by an appropriately certified laboratory using the methodologies identified above and confirming that all vinyl materials in the product are Phthalate Free. Alternatively, if it is not commercially practical or feasible for you to produce the product with materials that are Phthalate Free, or if you cannot or will not provide confirmation and supporting test results showing that the Product is Phthalate Free, please let us know that, in writing, within 15 days of the date of this letter.

If you have any questions about this request, please do not hesitate to contact us.

Sincerely,  
Eurotool, Inc.

## **Exhibit F**

# **Form Notice to Future Vendors or Manufacturers Regarding Lead Free Concentration Standard**

[Eurotool Letterhead]

Dear Potential Supplier,

Eurotool is interested in purchasing brass sliding gauges from you. In the past, certain brass sliding gauges have been tested and found to contain lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. California's Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. This means that Eurotool must ensure that any brass sliding gauges it sells that may reach customers in California are either free of lead or sold with an appropriate warning of the potential exposure.

This letter is to inform you that Eurotool prefers that you only supply us with brass sliding gauges that are "Lead Free," meaning that any brass component of the product contains less than 100 ppm lead when analyzed pursuant to United States Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies to determine the presence and measure of the quantity of lead in solid substances.

Before providing Eurotool with any brass sliding gauge, please confirm, in writing, whether the product is Lead Free and, if it is, provide copies of results for duplicate quality controlled tests performed by an appropriately certified laboratory using the methodologies identified above and confirming that brass materials in the products are Lead Free. If you know that the product is not Lead Free, or if you cannot or will not provide the requested confirmation and supporting test results, please let us know that, in writing, within 15 days of the date of this letter.

If you have any questions about this request, please do not hesitate to contact us.

Sincerely,  
Eurotool, Inc.