

**EXHIBIT
15**

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Attorneys for Plaintiff
INDEPENDENCE EXCAVATING, INC.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

INDEPENDENCE EXCAVATING, INC., an	) Case No.
Ohio Corporation,	)
	) COMPLAINT FOR BREACH OF
Plaintiff,	) CONTRACT AND UNJUST ENRICHMENT
	) AND DEMAND FOR JURY TRIAL
v.	)
	)
GUNTERT & ZIMMERMAN, CONST. DIV.	)
INC., a California Corporation,	)
	)
Defendant.	)

COMPLAINT

Plaintiff Independence Excavating, Inc., an Ohio Corporation, ("Independence Excavating," the "Plaintiff," or "Buyer") by and through its counsel, Tucker Ellis LLP, and for its Complaint against Defendant Guntert & Zimmerman, Const. Div. Inc., a California Corporation, ("Guntert," the "Defendant," or "Seller"), states as follows:

Nature of the Case

1. Plaintiff Independence Excavating brings this action against Defendant Guntert to recover an amount of \$198,252.00 owed to Plaintiff as and for Plaintiff's cancellation of the MP550 Material Placer ("MP550 Material Placer" or "MP550") portion of the contract relevant to this matter, as evidenced by the mutually agreed upon Change Order No. 105. (Change Order No. 105 is attached hereto as **Exhibit A**).

COMPLAINT FOR BREACH OF CONTRACT AND UNJUST ENRICHMENT AND DEMAND FOR JURY TRIAL

**GOMACO EXHIBIT 1201
GOMACO v. G&Z
PGR2024-00026**

2. On or about May 6, 2020 and May 8, 2020, Plaintiff and Defendant entered into a Conditional Sales Order Contract, wherein Defendant Guntert was the Seller and Plaintiff Independence Excavating was the Buyer. (Conditional Sales Order Contract is attached hereto as **Exhibit B**).

3. On or around April 30, 2020, Plaintiff received a quote from Defendant for, among other equipment, a MP550 Material Placer.

4. On July 23, 2020, the Parties mutually agreed to a Change Order to the MP550 Placer Contract Terms and Conditions. (**Ex. A**). The written Change Order, among other things, stated that Plaintiff wished to cancel the MP550 Placer portion of the contract with Defendant because of its delayed delivery. (**Ex. A**). The final purchase contract price was \$661,949.00; however, Plaintiff only sought to receive a refund for the MP550 portion of its order, consisting of a 30% Payment No. 1 in the amount of \$198,252.00. (**Ex. A**).

5. Plaintiff and Defendant mutually agreed in writing that Plaintiff's MP550 portion of the order was to be cancelled and Defendant was to refund Plaintiff its 30% Payment No. 1 in the amount of \$198,252.00 no later than November 15, 2021. (**Ex. A**).

6. Despite the Plaintiff performing its contractual obligations to Defendant in its entirety, including remitting 30% Payment No. 1 for the MP550 Material Placer, and executing a mutually agreed upon written Change Order, the Defendant has refused to perform its contractual obligations, whether it be timely delivery of the MP550 or providing the refund as represented by the Change Order No. 105.

7. Defendant currently owes Plaintiff \$198,252.00 in principal related to collection of this matter.

8. Plaintiff therefore brings this Complaint, seeking damages for the Defendant's failure to refund Plaintiff's payment as agreed upon in the Change Order No. 105, which was executed as a result of Defendant's failure to timely deliver the MP550 Material Placer.

Parties

9. Plaintiff Independence Excavating is an Ohio Corporation with its principal place of business located at 5720 E. Schaaf Road, Independence, Ohio 44131.

10. Defendant Guntert is a California Corporation, with its principal place of business located at 222 E. Fourth Street in Ripon, California 95366.

Jurisdiction and Venue

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff Independence Excavating and Defendant Guntert, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. Venue in this district is proper under 28 U.S.C. § 1391 in as much as a substantial part of the events or omissions giving rise to the claim occurred in this district. Specifically, the business relationship between Plaintiff Independence Excavating and Defendant Guntert was initiated by virtue of the contract subject to this claim, which was effectuated in this district.

STATEMENT OF FACTS

A. The Conditional Sales Order Contract and Change Order

13. The Plaintiff and the Defendant had a business relationship spanning approximately 16 months.

14. On or about May 6, 2020 and May 8, 2020, Plaintiff and Defendant entered into a Conditional Sales Order Contract, wherein Defendant Guntert was as the Seller of certain equipment and Plaintiff Independence Excavating was the Buyer. (**Ex. B**).

15. The Defendant (referred to therein as “Seller”) signed and acknowledged all of the Terms and Conditions provided for in the Conditional Sales Order Contract. (**Ex. B**).

16. The Plaintiff (referred to therein as “Buyer”) signed and acknowledged all of the Terms and Conditions provided for in the Conditional Sales Order Contract. (**Ex. B**).

17. Several of the Terms and Conditions proposed by and agreed to by the Defendant pertain directly to the claims and causes of action set forth in this Complaint.

18. One of the pertinent Terms and Conditions provided for in the Conditional Sales Order Contract is paragraph (2a), which states the contract is not subject to cancellation without mutual consent of Buyer and Seller or its Assignee. (**Ex. A. ¶2a**).

19. Furthermore, paragraph (18) of the Terms and Conditions states that the instrument (referring to the Conditional Sales Order Contract) evidences the whole agreement of the parties, and it cannot be changed, modified, or supplemented by any agent or other person except in writing, approved

1 in writing by R. M. Guntert, Jr. of Seller or the successor or designated representative of such individuals
2 at its home office at Ripon, CA. (**Ex. A. ¶18**).

3 20. In addition, paragraph (26) of the Terms and Conditions provided for in the Conditional
4 Sales Order Contract states in relevant part, “Contract Schedule of Delivery FOB Freight Collect. The
5 G&Z MP550 ready to ship FOB Ripon, CA U.S.A., on or before July 11, 2020, providing Seller receives
6 Payment No. 1 (by wire transfer) and an executed Conditional Sales Order Contract by Seller no later than
7 by May 6, 2020.” (**Ex. A. ¶26**).

8 21. Both Plaintiff and Defendant expressly agreed to be subject to such Terms and Conditions
9 as provided for in the Conditional Sales Order Contract.

10 **B. Transaction Relevant to this Complaint**

11 22. On May 6, 2020, Plaintiff/Buyer executed the Conditional Sales Order Contract and timely
12 remitted Payment No. 1 by wire transfer in the amount of \$198,252.00, as required under paragraph (26)
13 of the Terms and Conditions.

14 23. Thereafter, despite Defendant/Seller having the same obligations to adhere to paragraph
15 (26) of the Terms and Conditions, specifically with respect to shipping the MP550 to Plaintiff/Buyer on
16 or before July 11, 2020, Defendant/Seller failed to satisfy its obligation under the Contract.

17 24. After nearly one year of delays in shipping the MP550 and in an effort to reach an amicable
18 resolution of the matter, Plaintiff/Buyer requested to cancel the MP550 Placer portion of its order and
19 receive a full refund of Payment No. 1 in the amount of \$198,252.00.

20 25. On August 19, 2021, by and through the Change Order No. 105, Defendant/Seller and
21 Plaintiff/Buyer agreed to the following changes to the MP550 Placer Contract Terms and Conditions:

- 22 • “It is mutually agreed that Independence Excavating shall cancel the MP550 portion of the
23 contract and G&Z shall refund Independence Excavating their 30% Payment No. 1 of
24 \$198,252 on the MP550 by no later than November 15, 2021. This allows G&Z time to
25 sell Independence Excavating’s MP550 production slot to another contractor and receive a
26 down payment.” (**Ex. A**).

27 26. The Change Order No. 105 was approved and signed by President and CEO, Ronald M.
28 Guntert, Jr., as required by paragraph (18) of the Terms and Conditions.

27. As of the date of the filing of this Complaint, and despite numerous demands to do so, Defendant/Seller has not satisfied its obligations to Plaintiff/Buyer with respect to the cancellation and refund of Payment No. 1 in the amount of \$198,252.00.

28. Despite Plaintiff/Buyer having fulfilled, in its entirety, its obligations to the Defendant/Seller, the Defendant/Seller has committed material breaches by failing to remit the refund payment in accordance with the Change Order No. 105 of the Terms and Conditions.

29. Plaintiff/Buyer has sought payment from Defendant/Seller on several occasions before filing this suit, including sending a demand letter on December 6, 2021 to Defendant's President and CEO, Ronald M. Guntert, Jr., the same individual who executed the Conditional Sales Order Contract as well as approved and executed the Change Order No. 105.

30. In addition, the Plaintiff/Buyer has incurred, and will continue to incur, attorneys' fees related to the collection of the refund and the filing and prosecution of this claim. The Plaintiff/Buyer estimates that approximately \$3,000 in attorneys' fees and costs have been incurred to date.

31. The Plaintiff/Buyer estimates the aggregate amounts due from the Defendant/Seller is \$201,252.00, which includes the principal amount of the owned refund and attorneys' fees and costs.

32. The Plaintiff reserves the right to amend this Complaint to include additional accruals of fees and costs incurred as a result of the Defendant/Seller's continuing breaches, or to include a demand for payment of the refund (plus fees and costs) that come due and are unpaid after the filing of this Complaint.

COUNT I

BREACH OF CONTRACT

33. Plaintiff repeats, realleges, and incorporates all allegations contained in Paragraphs 1 through 32 of the Complaint as if fully set forth herein.

34. The Conditional Sales Order Contract and Change Order No. 105 entered into between Plaintiff and Defendant is a valid, legally enforceable contract. The Terms and Conditions were expressly acknowledged and agreed to by the Defendant upon its execution of the Conditional Sales Order Contract and the Change Order No. 105.

35. Plaintiff ordered certain equipment from the Defendant pursuant to the Conditional Sales Order Contract, including a MP550 Material Placer.

36. In reliance upon the Conditional Sales Order Contract, specifically paragraph (26) which provided that Defendant would ship the MP550 on or before July 11, 2020 once Payment No. 1 and an executed Conditional Sales Order Contract was received no later than by May 6, 2020, Plaintiff timely executed the Contract and remitted payment.

37. However, despite Plaintiff fulfilling its obligations under the Conditional Sales Order Contract, Plaintiff never received the MP550.

38. Moreover, even after the agreed upon Change Order was executed, cancelling the MP550 portion of the order and providing Plaintiff with the promise of a refund of Payment No. 1 by November 15, 2021, Plaintiff has yet to receive the refund.

39. The Defendant has breached its obligations under the Conditional Sales Order Contract and the Change Order No. 105 that were incorporated therein, by failing to remit the refund payment to the Plaintiff reflecting the cancellation of the MP550.

40. Accordingly, the Defendant has breached its contractual obligations to the Plaintiff, and the Plaintiff is entitled to a judgment in the amount of not less than \$198,252.00, representing the unpaid refund of Payment No. 1 owned to Plaintiff and assessable against the Defendant, plus costs and fees assessable against the Defendant.

WHEREFORE, the Plaintiff prays that this Court enter an Order:

(a) For judgment in favor of Plaintiff and against Defendant;

(b) Awarding Plaintiff such damages as it is entitled to under the law, including compensatory damages, pre- and post-judgment interest at the maximum rate permitted by law and attorneys' fees and costs; and

(c) Granting Plaintiff such other and further relief as is just and proper.

COUNT II

UNJUST ENRICHMENT

41. Plaintiff repeats, realleges, and incorporates all allegations contained in Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

42. This Count is plead in the alternative, in the event that this Court finds that a valid, enforceable contract did not exist between the Plaintiff and the Defendant.

43. By withholding or causing to have withheld the equipment from the Plaintiff and withholding the owed refund reflecting Plaintiff's Payment No. 1, Plaintiff has conferred a benefit upon the Defendant.

44. The Defendant has knowledge or appreciation of the benefit conferred by the Plaintiff, and has accepted and retained the same under such circumstances that it would be inequitable for the Defendant to retain the benefit without paying the value of the refund thereof to the Plaintiff.

45. The Defendant has been unjustly enriched in an amount not less than \$198,252.00. Therefore, in equity and good conscience, the Plaintiff is entitled to entry of judgment for the Defendant's unjust enrichment in an amount not less than \$198,252.00, representing the unpaid refund of Payment No. 1 owned to Plaintiff and assessable against the Defendant.

WHEREFORE, the Plaintiff prays that this Court enter an Order:

(a) For judgment in favor of Plaintiff and against the Defendant;

(b) Awarding Plaintiff such damages as it is entitled to under the law, including compensatory damages, pre- and post-judgment interest at the maximum rate permitted by law and attorneys' fees and costs; and

(c) Granting Plaintiff such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on all triable issues.

DATED: January 27, 2022

Tucker Ellis LLP

By: /s/ Kaitlyn N. Pangburn
Kaitlyn N. Pangburn
kaitlyn.pangburn@tuckerellis.com
Attorneys for Plaintiff
INDEPENDENCE EXCAVATING, INC.

EXHIBIT A

GUNTERT & ZIMMERMAN CONST. DIV., INC.

222 East Fourth Street
Ripon, California 95366 USA

Ph: (+1) 209.599.0066

Fax: (+1) 209.599.2021

Email: gzf@guntert.com

www.guntert.com



CHANGE ORDER NO. 105

To: Independence Excavating
Attn.: Evan Stephens, Equipment Manager

July 23, 2021
Change Order No: 105

REFERENCE: G&Z Quotation G6979040E

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Item	Quan	Description	Unit Price	Total
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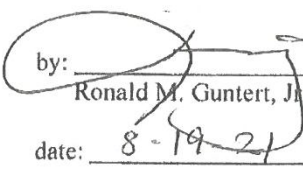
Changes to the MP550 Placer Contract Terms and Conditions:

- 1.0 1 Independence Excavating wishes to cancel the MP550 Placer portion of their referenced contract with G&Z because of the MP550 delayed delivery. The final purchase contract price of the MP550 was \$661,949.00. It is mutually agreed that Independence Excavating shall cancel the MP550 portion of the contract and G&Z shall refund Independence Excavating their 30% Payment No. 1 of \$198,252 on the MP550 by no later than **November 15, 2021**. This allows G&Z time to sell Independence Excavating's MP550 production slot to another contractor and receive a down payment.

Total Amount of this Change Order No 105

US\$ 0

Presented for acceptance by:
GUNTERT & ZIMMERMAN CONST. DIV., INC.

by: 
Ronald M. Guntert, Jr. President & CEO

date: 8-19-21

Acknowledged and accepted by:
INDEPENDENCE EXCAVATING

by: 
Evan Stephens, Equipment Manager

date: Brandon Meyer 8-19-21

EXHIBIT B

Date May 6, 2020

G-6969040E / G-6979040E

CONDITIONAL SALES ORDER CONTRACT

(1) THIS CONDITIONAL SALES ORDER CONTRACT (The "Contract") is made and entered into at Ripon, CA, the 6th day of May, 2020 by GUNTERT & ZIMMERMAN CONST. DIV., INC., Seller, a California Corporation, and Independence Excavating, Buyer, an Ohio Corporation, with principal place of business located at 5720 E Schaaf Rd, Independence, OH 44131, in said State and Country WITNESSETH:

(2) Seller agrees to ship S600 FOB Freight Collect, Ripon, CA, USA, on or before August 17, 2020 and MP550 FOB Freight Collect, Ripon, CA, USA, on or before July 11, 2020 providing Seller receives Payment No. 1 (by wire transfer) and an executed Conditional Sales Order Contract by Seller no later than by May 6th, 2020 unless prevented by force majeure, the following property (hereinafter the "Equipment") to with:

1 Ea. Guntert & Zimmerman S600 Concrete Slipform Paver, with Selected Optional Equipment, in accordance with GUNTERT & ZIMMERMAN CONST. DIV., INC.'s quotation G6969040E dated April 22, 2020 and revised May 6, 2020 pages 1 through 7 (Contract Pages 1-A through 1-G).

Price FOB Freight Collect, Ripon, CA, USA \$ 982,224.00*

1 Ea. Guntert & Zimmerman MP550 Material Placer, with Selected Optional Equipment, in accordance with GUNTERT & ZIMMERMAN CONST. DIV., INC.'s quotation G6979040E dated April 30, 2020 and revised May 6, 2020 pages 1 through 4 (Contract Pages 1-H through 1-M).

Price FOB Freight Collect, Ripon, CA, USA \$ 661,949.00*

Total Price FOB Freight Collect, Ripon, CA, USA \$ 1,644,173.00*
*Add applicable Sales Tax

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**Guntert & Zimmerman Const. Div., Inc.**

222 E. Fourth St. Ripon, CA 95366 U.S.A.
 Phone 209-599-0066 Fax 209-599-2021
 Toll Free 800-733-2912 Email gz@guntert.com
 Web www.guntert.com

Customer Name: **Independence Excavating**
 Attn: **Jeremiah Dauch**

Quote Number: **G-6969040E**
 Quote Date: **April 22, 2020, revised May 6, 2020**

Equipment: **S600 Concrete Slipform Paver**

References: **Detailed Specification TB S600HVT4f 1219**

S600 Features

Tractor Frame Unit

Elevation and Steering Controls	Four proportional elevation sensors and two steering sensors are provided. Off wire alarm is included. Four sensor support arms with plated, precision graduated sensor support columns.
Double Telescopic Tractor Frame	VariWidth single stage telescopic per side, 8' to 22' (2438 to 6705 mm), male tubes are roller supported with camber adjustment and mechanical clamps. Tractor frame is telescoped in and out using 90 degree steering and the crawler track propulsion system. <i>Note: By mounting the paving kit in the provided locations under the bolster and moving swing legs out to clear paving kit you can pave out to 26' (8000mm) wide.</i>
Pivot Bolsters (Swing Legs)	Working in conjunction with AccuSteer , the Swing Legs pivot point equipped with angular transducer and hydraulic cylinders (patented) SmartLeg relocates the crawler track inside or outside edge of pavement while automatically keeping the crawler track straight ahead. Using SmartLeg , the crawler tracks can be walked into the outboard transport position to narrow up the machine for transport.
Jacking Columns	Jacking Column height is mechanically adjustable by rebolting in 9" (229mm) increments up to 36" (915mm) and hydraulically adjustable by 42" (1067mm). Thick wall 9" (229mm) male steadments with AccuSteer slew drives with angular transducers allowing 90 Degree Steering and Counter-Rotation from any swing leg angle.
Crawler Tracks	4 Crawler Tracks: G&Z D2 Size, nom. 14" (350mm) wide Urethane Covered triple grousers, front and rear fenders. Working Speed: approx. 0 – 23 fpm (0 – 7 Mpm) Walking Speed: approx. 0 – 85 fpm (0 – 26 Mpm) Jacking Column Yoke / Crawler Track Locking Pin
Telescopic Aluminum Rear Walkway	Aluminum Rear Walkway with hinge-up supports. <u>Access stairs provided between Power Unit Center module and Rear Walkway. Yellow safety gate to be provided at the top of access stairs</u>

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Independence Excavating
G-6969040E

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Telescopic Hose / Cable Hinge	Tractor Center Module to Bolsters for telescopic range of 8' to 22' (2438 to 6705 mm)
Telescopic Front Access Walkway with Hand Railing / Access Ladder	Provided from one bolster to the tractor center module with 7' telescopic ability with one removable access ladder all relocatable to the other side.
Remote Ground Controls / Emergency Stops Buttons	Emergency stop buttons provided at operator control console and on all jacking columns and remote ground control boxes, all with magnetic attachments so they can be relocated where desired.
High / Low Pressure Water System	Complete with 200-Gal (756 L) Poly water tank (Black) mounted on front jacking column with 24V DC low pressure diaphragm water pump and hydraulic motor driven high pressure water pump rated at 2000 psi (13.8 Mpa) @ 5 gpm (19 Lpm) with Hose Reel
Power Unit	
Diesel Engine / Quiet Power Unit Module	Six-cylinder, CAT® C7.1B ACERT Diesel Engine 302 HP (225 kW) at 2,100 RPM (Intermittent Rating) US EPA tier 4f / EU Stage V with separate engine radiator and heat exchanger each with variable speed hydraulic motor driven fans, noise insulated enclosure, double vibration isolation of power unit module, fuel tank approx. 135 Gallon (511 L), DEF tank approx. 8.5 Gallon (32 L), and hydraulic reservoir (est.) 160 Gal (606 L).
Operator Controls	G&Z "Belly Pack" Operator Control Console with wireless capability complete with docking station with multi-touch display screen, complete with <u>lockable enclosure relocatable along operator platform hand railing</u> . Machine controlled by EGON (Equipment Guidance and Operation Network) G&Z proprietary software with fault / self-diagnostic capability and steering modes: String Line, Coordinated Steer, Crab Steer, Front Steer only, Rear Steer, 90 Degree Steering and Counter-Rotation. <i>Telematics option (to enable REMOTE diagnostics) not included and available upon request.</i>
Paving Kit	
Paving Kit	Heavy Duty truss frame with bolt-on pan skins sectionalized per detail below to 16 ft. including 2 ea. 3 ft. Term ends, 1 ea 6. ft., 1 ea. 2 ft. and 2 ea. 1 ft. sections. Relocatable Paving Kit Hangers that clamp to the Tractor Frame Male Telescopic Members (1 RH / 1 LH) and truss kicker. Also includes adjustable mechanical ties to tie paving kit to tractor frame.
Slipform Terminal Frame/Pans	Quick removable with Edge Overbuild Devices manual screw adjustment found on Paving Kit terminal ends
Guillotine Sideforms	Sideforms hydraulically raise, lower and retract flush with bottom of conforming pan for concrete thicknesses from 0 to 18 in. (0 to 457 mm) and include front wing extensions with kickers. Sideforms have hydraulic assist to open for cleaning.
Vibrator Support Rack	Support pipe sectionalized to match the paving kit with pipe supports and hydraulic raise lower.
Grout Baffles	For Paving Kit liquification hopper (2 ea.)

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Other Standard Features

Concrete Spreader Plow System	Cart track mounted off the front of the tractor frame sectionalized to match the Paving Kit complete with plow cart with spreading blade which hydraulically raises / lowers, hose reel and powerful hydraulic motor driven winch, shock dampeners and proportional electronic joystick control. Plow cart blades fold in for transport.
Hyd. Vibrators / Manifolds	12 ea. Minnich Hydraulic Poker Vibrators, 3 ea. 8 port vibrator manifolds, and Auxiliary Vibrator pump allowing up to maximum 24 vibrators.
Option Mount Prep Kit	Attachment points, remote switches and <u>plumbing receptacles provided for future mounting of common options such as Trailing Finishing Pan, Final Finisher, Side Tie Bar Inserter, and Front Tie Bar Inserter.</u>
O&M Manuals / Parts Books	Provided in USB Drive
Price S600 FOB Ripon, CA Freight Collect	
US\$ 725,801.00	

Width Dependent Options

6' Paving Kit Crown Section with feedback transducer and hydraulic cylinder ties in lieu of standard 6' Section and mechanical ties in Paving Kit. – US\$ 26,478.00	Not Included	
2' Paving Kit Crown Section in with feedback transducer and hydraulic cylinder ties in lieu of standard 2' Section and mechanical ties in Paving Kit. – US\$ 23,500.00	Not Included	
2 ea. 30" (0.75m) Bolt-in Tractor Frame, Hose Hinge and Access Walkway Extension and support and spreader plow track supports to extend tractor frame from 22' to 27' (2438 to 8205mm). <i>Note: By mounting paving kit toward the outside of each bolster and moving swing legs out you can pave out to 31' – US\$ 18,650.00</i>	Included	US\$ 18,650.00
2 ea. 60" (1.5m) Special Bolt-in Tractor Frame, Hose Hinge and Access Walkway Extensions and support to extend tractor frame from 22' to 32' (2438 to 9753mm). Extensions are reinforced with welded cross bracing. By mounting paving kit toward the outside of each bolster and moving swing legs out you can pave out to 34'. – US\$ 33,465.00	Not Included	
Paving Kit Extension from 16' to 28' including 3 ea. 4' Paving Kit Sections, vibrator rack and add'l supports, and spreader plow track. Also includes 10 ea. additional non-sensed hydraulic vibrators – US\$ 71,478.	Included	US\$ 71,478.00
Metering Gate / Strike-off sectionalized to match the 16' paving kit, complete with support arms and independent terminal hydraulic raise / lower cylinder supports and remote elevation control – US\$ 15,310.00	Included	US\$ 15,310.00
Metering Gate / Strike-off Extensions from 16' to 28' and 2ea Additional Supports – US\$ 9,065.00	Included	US\$ 9,065.00
Trailing Finishing Pan (TFP) 16' with 2 ea. tow arms, hydraulic raise / lower 24VDC electric lifting winches for transport and	Not Included	

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Fixed Edger Pans with adjustable side plates and hydraulic
raise lower – US\$ 42,975.00Trailing Finishing Pan (TFP) Extensions from 16' to 28' with 2ea
additional supports – US\$ 10,840.00 **Not Included**Water Spray Bar (28') mounted off TFP with plumbing including
water supply bib for finishers. – US\$ 4,100.00 **Not Included**Final Finisher (FF) (16') with hinge-up supports – US\$
45,922.00 **Not Included**Final Finisher (FF) Extensions from 16' to 28' – US\$ 9,915.00 **Not Included**Paving Kit Telescopic End Sections (**TeleEnds**) (1 LH / 1 RH) **Included** **US\$ 82,850.00**
– US\$ 82,850.00TeleEnd Spacers Provided – **Total per Side 3'**

1 Ea.	3" Spacer(s)
2 Ea.	6" Spacer(s)
1 Ea.	9" Spacer(s)
1 Ea.	12" Spacer(s)

In lieu of Standard 3' wide Paving Kit terminal ends.

1 ea. Paving Kit Telescopic End Sections (**TeleEndXL**) (1RH or **Not Included**
1LH) – US\$ 46,425.00TeleEnd Spacers Provided – **Total per Side 4'**

1 Ea.	3" Section(s)
2 Ea.	6" Section(s)
1 Ea.	9" Section(s)
2 Ea.	12" Section(s)

In lieu of Standard 3' wide Paving Kit terminal ends and
specified sectionalization above**Price \$600 FOB Ripon, CA Freight Collect** **US\$ 923,154.00****Paving Kit Sectionalization**

Quantity	Description	Total (Feet)
	3' (nom.) Terminal Sections	
2	5' to 8' TeleEnd Terminal Section(s)	16
	7' to 11' TeleEnd Telescopic End Section(s)	
	6' Crown Section	
	2' Crown Section	
	6' Section(s)	
2	4' Section(s)	8
1	2' Section(s)	2
2	1' Section(s)	2
Total:		28

G&Z Productivity Options

Enhanced Split Guillotine Sideforms / Fine Width Adjustment Package

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• Front and Rear Sideforms are split and operate independently	Included	US\$ 23,492.00
• Rear Half of Sideform with powerful hydraulic Open / Close Cylinders		
• Fine Width Adjustment compensates for Concrete Swell		
– US\$ 23,492.00		

Wide Width / Dowel Bar Inserter Preparation Package

• Increase size OL pump plus add aux. OL pump circuit	Included	US\$ 35,200.00
• Hydraulic & Electrical Circuit Prep. Kit		
• Structural Mounting Flanges for future DBI		
• Upgrade to larger G&Z D-3 Size Crawlers 14" (356mm) grousers		
– US\$ 35,200.00		

Enhanced Tractor Width Change Kit (patented)

• Hydraulic Clamping Pucks (8 ea) on Tractor Frame in lieu of mechanical clamping plates to speed width change	Included	US\$ 18,822.00
– US\$ 18,822.00		

"Triple" Cross Slope / "Anti-torsion" Control (patented)

• Allows Grade and Steer reference off a single stringline at narrower paving widths	Not Included	
• Prevents undesirable frame torsion when walking over uneven ground within limits of jacking columns.		
– US\$ 11,040.00		

Price S600 FOB Ripon, CA Freight Collect	US\$ 1,000,668.00
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Other S600 Optional Equipment

Computer controlled hydraulic valving system for Final Finisher that slows the ski down as it nears slab edge and cushions direction change plus allows ski to stop at different locations on each pass across the slab. – US\$ 8,516.00	Not Included	
Set Astroturf / Burlap Towing Arms and Tow Bar (all removable) mounted off of final finisher. Buyer to furnish Astroturf / Burlap. – US\$ 2,852.00	Not Included	
Hydraulic raise-lower hydraulic cylinders on the Final Finisher support arms in lieu of turnbuckles – US\$ 4,726.00	Not Included	
Front Tie Bar Inserter with chain feeder, control box for up to 3 FTBI's and tie bar rack for inserting #4 or #5 x 24" to 36" (12 or 15 mm x 610 to 914 mm) long bars – US\$ 28,583.00	Not Included	
Additional Front Tie Bar Inserter with chain feeder, valving, and tie bar rack mount and accumulator circuit for inserting #4 or #5 x 24" to 36" (12 or 15 mm x 610 to 914 mm) long bars – US\$ 23,625.00 ea.	Not Included	
Hydraulic Cylinders for Edge Overbuilds – US\$ 4,989.00	Included	US\$ 4,989.00
Telescopic Masts (2 ea.) with DC Electric Winches / Computer Mounting Kit for Leica, <u>Trimble</u> , or TopCon 3D System – US\$ 8,500.00	Included	US\$ 8,500.00

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NoLine Software allows G&Z EGON system to communicate with Leica, Trimble , or TopCon 3D Stringless Systems – US\$ 5,000.00	Included	US\$ 5,000.00
4" Drop Kit includes 1" spacers to lower paving kit, a spreader plow blade extension and mudguard extensions. – US\$ 2,500.00	Included	No Charge
Sideform Extensions for up to 24" (610mm) Airport Paving – US\$ 3,135.00	Not Included	
Extra Sensor Support Arm for companion lane steering – US\$ 2,433.00	Included	No Charge
Extra Cost for High Pressure Washdown System with max. pressure of 3000 psi (20.7 MPa) in lieu of 2000 psi (13.8 MPa). – US\$ 2,950.00	Not Included	
DC Night Lighting System with 4 ea. LED Lamps with telescopic support pipes – US\$ 7,950.00	Not Included	
4 ea. Powermoon Balloon Night Lighting System and plug-in / breaker box with telescopic support pipes and hydraulic motor driven 110V AC generator with plug-in breaker box – US\$ 24,263.00	Included	US\$ 24,263.00
4 ea. Powermoon Balloon Night Lighting System and plug-in / breaker box with telescopic support pipes and without hydraulic motor driven 110V AC generator – US\$ 19,698.00	Not Included	
Extra cost to for diesel engine powered light generator in lieu of hydraulic motor driven generator – <i>to be advised</i>	Not Included	
Aluminum Width Change Boxes (2 ea.) – US\$ 3,972.00	Included	No Charge
Manual Side Tie Bar Inserters (1LH/1RH) for bent bars – US\$ 5,250.00	Not Included	
Narrow Profile Side Tie Bar Inserters (1LH/1RH). Size of ties bars TBD . – US\$ 21,290.00	Not Included	
Crowning / Transition Control program with feedback transducer and controls for one paving kit crown section . – US\$ 29,480.00	Not Included	
Vibrator Monitoring System (Minnich AutoVib II CC) 24 channel and additional cost for 12 sensed vibrators – US\$ 32,159.00	Not Included	
Vibrator Monitoring System (Minnich AutoVib III CC) 24 channel and additional cost for 12 sensed vibrators including the increase in cost for 3 ea. 8-port proportional manifolds – US\$ 40,534.00	Not Included	
Additional cost for each additional sensed Minnich HV2PE vibrator – <i>Unit US\$ 395.00 x 7 extra vib = \$2,765.00</i>	Not Included	
Offset Paving Kit using Paving Kit and vibrators already quoted (max. 14' wide in paving configuration and without TeleEnd on outboard side) but including A-Frame, bolster support, false wing, mounting brackets between paving kit and tractor frame – US\$ 41,160.00 <i>Note: Can be ordered as a kit at a later date.</i>	Not Included	
Variable Offset Paving Kit using Paving Kit and vibrators already quoted but including A-Frame, bolster support, false wing, roller sub-frame hydraulic telescopic 7 ft. for offset paving between 5'	Not Included	

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to 12' or 7' to 14 ft wide (max. 14' wide in paving configuration and without TeleEnd on outboard side in reference to a stringline) – US\$ 58,750.00

Note: Can be ordered as a kit at a later date.

Additional 200 Gal (756L) Poly Water Tank (Black) and Mount with 24DC Diaphragm water pump – US\$ 5,989.00

Not Included

Additional access ladder and telescopic walkway with hand railing from one bolster to tractor center module. Yellow safety gate to be provided at the top of each access ladder. – US\$ 21,235.00

Not Included

In addition to the standard Telescopic Aluminum Rear Walkway supply an additional telescopic aluminum walkway located 12-18" off the top of slab for checking grade with Rover – US\$ 12,008.00

Included

US\$ 12,008.00

LH & RH Curb Molds – *Customer to provide cross-section of Curb Mold* – US\$ 9,980.00

Not Included

9" urethane covered grousers pads complete with rails and split master links for 4 ea. crawler tracks for narrow profile configuration on one side – US\$ 15,930.00

Not Included

20" (508mm) urethane covered grousers pads for crawler tracks in lieu of 14" (356mm) – US\$ 6,510.00

Not Included

Paving Kit Hinged Mudguard with Extensions (1 RH / 1 LH) in lieu of standard mudguards – US\$ 3,645.00

Included

US\$ 3,645.00

Hydraulic Filtration and Monitoring Upgrade – Includes motor case drain filtration system and pressure transducers on all hydraulic filters to enable EGON "Telematics" to monitor. – US\$ 8,800.00

Included

No Charge

1-Year "EGON Telematics Subscription" – Custom username and password for access to web portal. Remote diagnostics support over phone or internet using "EGON Telematics". Receive machine notifications (i.e., faults, maintenance reminders) via email or SMS. – US\$ 950.00

Included

No Charge

**Total Price S600 with selected options FOB Ripon, CA
Freight Collect**

US\$ 1,059,073.00

Less: Factory Direct Discount – 3%

<\$ 31,772.00>

Less: Multiple Machine Discount – 2%

<\$ 21,181.00>

Less: First Time Customer Discount

<\$ 23,896.00>

**Total Price S600 with selected options FOB Ripon, CA
Freight Collect**

US\$ 982,224.00

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**Guntert & Zimmerman Const. Div., Inc.**

222 E. Fourth St. Ripon, CA 95366 U.S.A.
 Phone 209-599-0066 Fax 209-599-2021
 Toll Free 800-733-2912 Email gz@guntert.com
 Web www.guntert.com

Customer Name: **Independence Excavating**
 Attn: **Jeremiah Dauch**

Quote Number: **G-6979040E**
 Quote Date: **April 30, 2020, revised May 6, 2020**

Equipment: **MP550 Material Placer**

References:

MP550 Features

Main Carrier

Carrier Dimensions (approx.)

Machine designed with elevated support structure / power unit package and operator platform for optimum visibility and to allow ease of access to the transfer conveyor for cleaning. Wheel base 12'-5" (3785 mm) c to c, fixed wheel gauge 8'-6" (2591 mm) c to c, width 11'-4" (3454 mm), height 10'-10" (3302 mm) with conveyor unfolded, height 11'-11" (3632 mm) with conveyor folded for transport, overall length with conveyor unfolded 63'-1 3/4" (19247 mm), length with conveyor folded 48'-10 3/4" (14903 mm). *Note: Dimensions with optional high production / enhanced hopper: overall length with conveyor unfolded 64'-1" (19533 mm), length with conveyor folded 49'-10" (15189 mm).*

Wheel / Tires

High floatation tires with four-wheel drive. Each wheel provided with planetary gearbox and variable displacement hydraulic motor. Two wheels provided with parking/emergency brakes. Working Speed: variable approx. 0 – 110 fpm (0 – 33.5 mpm) Walking Speed: variable approx. 0 – 7 mph (0 – 11.3 km/hr)

Steering Capability

Steering yoke provided on each wheel. Max. steering angle is 30° on front tires and rear tires using tie rods and smart steering cylinders allowing inside turning radius of 12'-4 1/2" (3750mm.) at centerline of tire. Steering modes possible are front only, coordinated, crab and Ackermann steering.

E-Stops (w/ resets) / Safety

Located at operator control console and on all four corners of the machine.

Power Unit

Diesel Engine

Six cylinder CAT® C7.1, U.S. EPA Tier 4f / EU Stage V, 302 HP (225 kW) IOPU Diesel Engine, engine cooling package with variable speed fan and separate hydraulic heat exchanger with variable speed, microprocessor-controlled fan. DEF tank approx. 14 Gallon (53 L), fuel tank approx. 100 Gallon (378 L)

ECO-Mode

ECO-Mode control allows the engine speed to adjust down to idle when no power is needed like your vehicle. Because the

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	engine does not have to run at full speed constantly, ECO-mode reduces fuel consumption by up to 35% . Additional benefits include reduced noise and exhaust emissions.
Pumps	High quality, hydrostatic pumps are mounted on a transfer gearbox for ease of access and service. Hydrostatic pump for propel system with traction control / 4-wheel drive. Closed loop hydraulic pumps for each conveyor and auger. Auxiliary open loop, load sense hydraulic pump for all other machine functions.
Hydraulics	Hydraulic reservoir 140 Gal. (529 L) provided with low oil level / high temperature switch. All hydraulic filters easily accessible for servicing. Reservoir arranged for ease of oil change.
Controls / Operator Platform	
Operator Control Console	Belly Pack type operator console (with wireless capability), toggle switches and control knobs in intuitive groups identified with universal ISO symbols. Individual speed control and master potentiometer provided to speed up-down both conveyors and auger by the same amount. Machine includes Networked Microcontroller System and Belly Pack docking station with large operator LCD display which mounts on operator seat or operator platform handrailing. LCD graphical display uses G&Z proprietary software for monitoring vital machine functions on various screens including engine functions and hydraulic circuit pressures. Software is complete with fault / self-diagnostic capability and safety interlocks between travel and conveyor control for a safe and smooth operation.
Operator Seat	Swiveling operator seat is mounted on an elevated platform which optimizes operator's view of swing conveyor discharge end, dump man and truck dumping operation. Platform with seat can be relocated to the right or left side of the machine. Belly Pack docking station mounts on seat railing. Belly Pack console provided with joystick which controls swing conveyor left-right, up-down.
Operator Platform	Operator platform with hand railing designed for optimized workspace and safety. Access ladder provided on both side of the carrier.
Hopper	
Receiving Hopper	Hopper overall outside width approx. 11'-4" (3454 mm). Flop gate elevation is approx. 37 3/4" (959 mm) from ground level. • Small fold-down step for the dump man to stand on and hand hold provided on both sides. • Fold over rubber belting seal provided on front of hopper. • Heavy duty truck wheel, pivoting pusher rollers or push plate, mounted off front of hopper. • Urethane covered steel wheels (2) provided under hopper to protect concrete sawn joints.
Hopper Height Adjustment	Hopper can be hydraulically lifted above grade +14" (610mm) in relationship to main carrier. In normal working position, tail pulley of transfer conveyor is 2.5" (64mm) from grade and tail pulley of swing conveyor is 9.5" (24mm).

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Auger	Single 14" (356 mm) auger with hyd. motor driven, offset drive, variable speed to insure rapid, homogenous conveyance of material to the transfer conveyor. Hardox steel flighting (LH and RH) and heavy wall auger shaft to bring material to center. Center of auger provided with paddle to enhance belt loading. Auger trough lined with replaceable Hardox steel trough liners. Guard over auger provided to protect from truck tail gate. Auger powerful enough to move RCC and aggregates.
Vibration	External hydraulic vibrators (2) provided on the back wall of hopper.
Dump man Remote Controls	Dump man remote control box provided at the hopper with hopper wall vibrators on-off, hopper elevation up-down, vibration on-off, auger on-off and auger speed pot.
Conveyors	
Transfer Conveyor	36" (914 mm) wide vulcanized 3 ply belt, variable speed 0-600 fpm, hyd. motor, direct drive designed not to slip under load. Frame provided with support feet to support frame level when conveyor is on the ground. • Trough shape catenary rollers allowing high volume / clean transfer of material. Rubber disk return rollers provided. Steel rollers with sealed bearings provided in the impact area. • Drive pulley with telescopic belt take-up system to ensure good belt alignment, tension and for ease of removing and replacing endless conveyor belt. • Tail pulley with rubber cover to minimize grout build-up. Bolt adjustment provided for training belt. • Conveyor designed for ease of cleaning from the side and includes full length skirting and belt scrapers / cleaners. • Conveyor quickly lowers from bottom of hopper for ease of cleaning and removal with hydraulic cylinders. Discharge end of conveyor lowers to ground via a winch for quick removal. Both ends of conveyor secured mechanically. • Discharge Chute - quick removable for ease of lowering transfer belt and belt change.
Swing Conveyor	36" (914 mm) wide vulcanized 3 ply belt, variable speed 0-600 fpm, hyd. motor, direct drive and approx. 35' (10668 mm) long designed not to slip underload. • Latticework conveyor frame is hinged near tail pulley mechanically providing up to 36 3/4" (933mm) for clearing string line and barrier walls. Frame hinged at approx. mid-span hydraulically for folding for transport. • Trough shape catenary rollers allowing high volume / clean transfer of material. Rubber disk return rollers provided. Steel rollers with sealed bearings provided in the impact area

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- Drive pulley with telescopic belt take-up system to ensure good belt alignment, tension and for ease of removing and replacing conveyor belt.
- Tail pulley with rubber cover to minimize grout build-up. Bolt adjustment provided for training belt.
- Quick removable receiving hopper with flashing to minimize spillage when belt is at extreme swing angle. Skirting provided from receiving hopper up to conveyor hinge point near tail pulley.
- Conveyor designed for **ease of cleaning** from the side and includes belt scrapers / cleaners.
- Quick removable Discharge Chute for quick belt change with fore – aft adjustment and ability to pivot out of the way.
- Sides of Swing Conveyor provided with removable "screens" for safety and to allow access for cleaning.

Swing Conveyor Support

Pivoting Conveyor support structure mounts off the rear of main carrier.

- Hyd. swing capability of 170° remotely controllable by operator with valving to smoothly accelerate and decelerate conveyor.
- Hyd. raise – lower cylinder remotely controllable by operator. Clearance under head pulley belt cleaner with conveyor at 20° incline angle approx. 12' (3657mm).
- Conveyor tail end supported by pivoting yoke and pin connection for maintaining angle to clear string line, barrier wall or other obstacles.

Other Standard Features**Other Safety Features**

- Trimming beeper when the machine is moving fwd-rev
- Lockable access doors to transfer conveyor
- Warning labels
- Flashing light on end of swing conveyor and conspicuity tape

O&M Manuals / Parts Books

Provided on thumb drive

Price MP550 FOB Ripon, CA Freight Collect**US\$ 558,865.00****MP550 Productivity Options****High Production / Enhanced Hopper Package (Patent Pending)**

Enhanced hopper design to handle a wider variety of trucks, reduce material spillage and speed material dumping including:

- Increase material holding capacity of hopper / conveyor belts from approx. 5.75 cyds to 8.75 cyds (4.6 to 6.7 m3).
- "Flop gate" hydraulically raises / lowers up to 60° angle to seal up against the bottom of truck bed and to transfer loose material to auger. **Flop gate has unique, hydraulic material transfer / sliding plate with two vibrators.** Flop gate elevation is approx. 22 3/4" (578 mm) from ground level to allow it to accommodate a wider variety of trucks.

Included**US\$ 49,924.00**

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- Fold over rubber belting seal provided on front of flop gate with rubber corner seals to minimize spillage.
- Truck pusher rollers provided with 12" (305 mm) of telescopic hydraulic adjustment in / out with cushion / shock valving.
- Hopper provided with quick disconnect feature and hydraulically actuated tapered securing pins. Hydraulic quick couplers and electrical disconnects included.
- Vibrators (2) on back side of the hopper and the vibrators (2) the underside of the flop gate each can be controlled independently.
- Remote control box enhancement to include hopper flop gate vibrators on-off, flop gate up-down, and sliding plate in-out.— US\$ 49,924.00

Enhanced Transport / Maneuverability Package

Four Jacking Columns provided for machine manual elevation control in lieu of hydraulically adjustable hopper height, for better / safer clearance for walking or maneuvering on site with uneven ground conditions or walking up slopes, enhanced access for cleaning transfer belt, loading hopper on a truck trailer and increased clearance for truck unloading and conveying over higher obstructions with a level belt including:

- Jacking column smart cylinders let operator know where the machine is in relationship to grade. Machine can be lifted above grade +24" (610mm) and -3" (76mm) below grade.
- Dual Axis Slope Control – Machine can be held level with the world when walking over uneven ground within the limits of the stroke of the jacking columns.— US\$ 63,125.00

Included**US\$ 63,125.00****Price MP550 FOB Ripon, CA Freight Collect****US\$ 671,914.00****Other MP550 Optional Equipment**

High Pressure Water System complete with approx. 120 Gal (453 L) water tank, supported in machine frame, with 24V DC diaphragm water pump and hydraulic motor driven, high pressure water pump rated at 3 gpm @ 2,000 psi (19 Lpm @ 13.8 MPa), hose reel and spray wand.— US\$ 7,950.00

Included**US\$ 7,950.00**

Extra Cost for High Pressure Washdown System with max. pressure of 3000 psi (20.7 MPa) in lieu of 2000 psi (13.8 MPa).— US\$ 2,950.00 *NOTE: High Pressure Water System must be selected in conjunction with this option*

Not Included

DC Night Lighting System with 8 ea. 24 DC LED Lamps (approx. 2450 lumens) with magnetic mounts.— US\$ 6,750.00

Included**US\$ 6,750.00**

Upgrade DC Night Lighting System LED Lamps from approx. 2450 lumens to approx. 5400 lumens.— US\$ 2,550.00

Included**US\$ 2,550.00**

AC Night Lighting System with hyd. motor driven generator and 2 ea. Powermoon LED Lamps with telescopic support pipes. Each lamp puts out approx. 65,000 lumens.— US\$ 13,550.00

Not Included

Plated auger flighting with wear resistant carbide plating material in lieu of standard Hardox auger.— US\$ 6,278.00

Not Included

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Bolt-on cast auger flighting in lieu of standard auger.– US\$ 9,680.00	Not Included	
Five video cams with magnetic mounts with split screen monitor for up to five cameras located at the operator console for viewing in the inside of hopper, directly in front of the machine, and back of the machine.– US\$ 4,750.00	Included	US\$ 4,750.00
RFID (radio frequency identification) to alert the MP550 operator that someone wearing a hard hat or safety vest with RFID tags is being sensed either in the hopper. This input immediately stops all operation of the machine via the e-stop.– US\$ 8,720.00 <i>Note: This option can be installed at a later date and Seller is happy to demonstrate during final testing in the factory.</i>	Not Included	
Automatic Steering including two sensor support arms (with mounts on both sides provided) and two steering sensors with vertical adjusters.– US\$ 10,450.00	Included	US\$ 10,450.00
Swing Conveyor Frame hinged section vs. straight section near head pulley, by re-pinning to accommodate to reduce drop height.– US\$ 8,680.00	Not Included	
Quick change belt skirting all the way up to the head pulley on the Swing Conveyor.– US\$ 4,876.00	Included	US\$ 4,876.00
Extra Cost to Foam Fill Tires.– US\$ 4,500.00	Included	US\$ 4,500.00
Hydraulic Filtration and Monitoring Upgrade – Includes motor case drain filtration system and pressure transducers on all hydraulic filters to enable EGON "Telematics" to monitor.– US\$ 8,800.00	Included	No Charge
1-Year "EGON Telematics Subscription" – Custom username and password for access to web portal. Remote diagnostics support over phone or internet using "EGON Telematics". Receive machine notifications (i.e., faults, maintenance reminders) via email or SMS.– US\$ 950.00	Included	No Charge
Total Price FOB Ripon, CA Freight Collect		US\$ 713,740.00
Factory Direct Discount – 3%		(US\$ 21,412.00)
Less: Multiple Machine Discount – 2%		(US\$ 14,275.00)
Less: First Time Customer Discount		(US\$ 16,104.00)
Total Price FOB Ripon, CA Freight Collect		US\$ 661,949.00

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Buyer agrees to accept delivery and purchase from Seller said Equipment above described upon the terms and conditions herein provided

(2a) This contract is not subject to cancellation without mutual consent of Buyer and Seller or its Assignee.

(2b) It is expressly understood that the manufacture, shipment and delivery of said Equipment is subject to force majeure, which under this contract is to be considered compliance with law and with any regulations or directives issued by duly constituted governmental authorities, and/or any event or occurrence or the effects thereof which cannot be reasonably anticipated or controlled by Seller and prevents Seller from performing its obligations under this contract such as but not limited to war, war measures, strikes, fires, and other unforeseen contingencies or unavoidable occurrences, which cannot be reasonably substituted or remedied with due diligence by Seller. Upon the cessation of a Force Majeure event which impairs Seller's ability to perform, Seller shall re-commence performance and thereafter diligently complete Seller's obligations under this Contract.

(2c) (a) Following delivery and acceptance of the Equipment, Seller, except for California State and United States Federal Income Tax, will not be responsible for any local, state or federal taxes (all such being herein called "Impositions") now or hereafter levied or imposed upon or in connection with or measured by this sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. Following delivery and acceptance, Buyer shall also pay promptly all Impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom (except California State and United States Federal Income Tax) or upon Seller solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of Seller or result in a lien thereupon. If any Impositions for which Buyer is responsible shall have been charged or levied against and paid by Seller directly, Buyer shall reimburse Seller therefor upon demand.

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(b) Following delivery and acceptance of the Equipment, in the event any tax returns or reports are required to be made with respect to Impositions, Buyer shall make such tax returns or reports as required.

(c) In the event that, during the continuance of this sale, Buyer becomes liable pursuant to this paragraph 2(c) for the payment or reimbursement of any Imposition, such liability shall continue until all such Impositions are paid or reimbursed by Buyer, notwithstanding the consummation of this sale.

(d) The party having custody or control of the Equipment shall be responsible to ensure that the Equipment is in compliance with applicable federal, state, and municipal law and any applicable regulations or orders of any governmental agency having jurisdiction over any matter related thereto. Without limiting the generality of the foregoing, during the period of manufacture of the Equipment, prior to delivery and acceptance by Buyer and shipment, Seller shall be responsible for compliance with all applicable federal, state, and municipal law and any regulations or orders of any governmental agency having jurisdiction over any matter related thereto.

(e) Buyer shall not operate the Equipment or suffer or permit the Equipment to be operated in an unsafe manner or in any manner after delivery which would void, vitiate, or impair any provision of this sale. Seller, at its sole cost and expense, shall provide to Buyer at time of inspection as required under Para. (4c) and other provisions of this Contract complete and thorough instruction, training and written documentation regarding the safe operation of the Equipment in a manner which will not void, vitiate or impair any provision of this sale. Buyer shall, at its sole cost and expense, subsequent to delivery, make any changes or additions to the Equipment necessary for safe operation of the Equipment.

(f) After delivery and acceptance of the Equipment, Buyer shall comply with all laws, ordinances and regulations relating to possession, use or maintenance of the Equipment.

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(g) If any portion of this sale is invalid under applicable law, it shall not invalidate any remaining provisions of this sale and the provision shall be amended in good faith to effectuate the parties' intention in a manner which conforms to law. Payments due under this Contract from Buyer to Seller shall not be withheld during any period of time in which Buyer and Seller are contesting the invalidity, illegality or enforceability of this Contract, or any part thereof.

(3) Shipping directions: to be advised

(3a) Lettering directions: to be advised

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(4) Buyer agrees to pay all freight and insurance charges on said Equipment and to pay Seller for said Equipment the sum of One Million Six Hundred Forty Four Thousand One Hundred Seventy Three and 00/100 United States Dollars (US\$ 1,644,173.00) as set forth below:

Payment No. 1	30%	On signing contract against Sellers invoice	\$ 493,252.00
Payment No. 3	70%	When equipment is ready to ship against Seller's invoice and Seller's Certificate that Goods are per Contract, tested per Seller's Test Schedule, and and ready to ship	\$ 1,150,921.00

Total Price FOB Freight Collect, Ripon, CA, U.S.A. \$ 1,644,173.00*

*Add any applicable Sales Tax

Note: To be free of California State Sales Tax, Equipment must be shipped on common carrier.

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(4a) The date when said Equipment is ready to ship shall, for the purposes of this Contract, be the delivery date thereof, whether or not accepted on said date by Buyer, and failure to accept said Equipment when ready to ship shall not affect or change the Buyer's obligation in any way. Unless the failure to accept the equipment is a result of the Seller's failure to deliver the Equipment in compliance with the terms of this Contract. A written certification of inspection and that the Equipment conforms with the requirements of this Contract shall be required in order to determine the date when the Equipment is ready to ship.

(4b) Omitted

(4c) The Equipment sold hereunder is subject to final acceptance at Seller's plant, Ripon, California, prior to shipment, for which Seller is to certify that goods furnished (including the Equipment) conform to the requirements and specifications of this Contract, complete, tested per Seller's schedules, and ready to ship. Such inspection and certification shall be a precondition to the determination that the Equipment is ready to ship. Buyer has the right to inspect and approve the Equipment for compliance with the terms hereof and safety requirements for a period of time beginning 30 days prior to shipment. Seller shall notify Buyer of any intended tests 10 days prior thereto and of the shipment date 15 days prior thereto and shall thereupon afford Buyer's representatives access to the Equipment for purposes of such inspection. Buyer shall notify Seller of any asserted non-compliance within 3 days after Seller's tests. If Seller and Buyer are unable to resolve any dispute as to compliance of the Equipment with the terms hereof prior to shipment, such dispute shall be first referred to Bureau Veritas or another mutually agreed inspection service for resolution by mediation. If such dispute is not so resolved to the satisfaction of Buyer or Seller, then at the election of either Buyer or Seller, the dispute will be resolved by binding arbitration in accordance with the construction industry rules of the American Arbitration Association. Each party shall bear its own expenses in connection with dispute resolution and each shall bear one-half (1/2) of

CONDITIONAL SALES ORDER CONTRACT

the cost of the independent service or arbiter used in connection with dispute resolution. Nothing herein shall limit Seller's right to make changes in the course of manufacture of the Equipment which do not materially adversely affect Buyer's performance requirements for the Equipment and which, in Seller's opinion, improve or do not detrimentally affect design or workability, and Seller shall disclose such changes to Buyer. If Seller and Buyer mutually agree, prior to delivery, to incorporate said changes into the Equipment, Buyer agrees to accept any such changed Equipment.

(4d) The purchase price herein agreed to be paid by Buyer to Seller under Para. (4) hereof for the Equipment described in Para. (2) hereof is the present price thereof. In view of the length of time which will elapse between the date of this contract and the delivery or return date specified herein for the Equipment hereinbefore described, it is mutually agreed that said purchase price shall be fixed.

(5) Buyer agrees if shipping directions are not given herein, to furnish same in writing to Seller at its home office not less than three days before the delivery date herein provided. Failure on Buyer's part to furnish said shipping directions shall not affect or change any of said payments or the time fixed for the same, and the Equipment herein purchased may at the option of Seller be held in storage at Buyer's risk, or Seller may exercise any of the rights of an unpaid seller of goods under the applicable laws or under this contract.

(6) Seller agrees after the arrival at destination of said Equipment, to supply the required personnel to provide set-up and calibration services for the new S600 and TC1500 for a period of five (5) consecutive days at no charge. Seller's serviceman shall work whatever hours or workdays worked by Buyer's paving personnel as directed by Buyer. Any additional services of G&Z Chief Service Technician Marco Cantu to supervise (the execution by Buyer's forces and equipment) the erecting and starting of said Equipment are to be at Buyer's expense on a basis of \$ 1,700.00 per calendar day for the

CONDITIONAL SALES ORDER CONTRACT

services of Guntert & Zimmerman's Chief Service Technician and \$ 1,350.00 per calendar day for all other serviceman's services from the date of departure from Ripon, CA to date of return to Ripon, CA plus ordinary and necessary travel expenses and travel costs; and all ordinary and necessary expenses, food, and accommodations; and independent transportation at and to and from site; all acceptable to the serviceman.

The erecting and starting of said Equipment without the services of said skilled man shall constitute an acceptance by Buyer of said Equipment, and a waiver of any warranty expressed or implied with reference thereto.

Buyer will use best efforts to help facilitate immediate first quality medical care in case of illness or accident to Seller's employees. Seller will bear all expenditures incurred to take care of Seller's employees

Buyer will not be free to have Seller's personnel work under dangerous working conditions and/or remain in places and under conditions of war, riots, work disturbances, etc., and/or where for any reasons or conditions their safety may be endangered.

Seller's personnel have no authority to bind Seller except where, by Seller's express written authorization, grants specific authority to its personnel for a particular purpose, and Seller's personnel has no authority to change specifications, or operation and performance criteria of Equipment without written approval of Seller.

(6a) Except as provided herein or as shown on Contract Drawings, Operating Notes, Specifications, and Quotation, Seller makes no guarantee or warranty, expressed or implied, as to the performance of the Equipment furnished, it being acknowledged that the Equipment is special and non-standard in design, and except as provided herein or as shown on Contract Drawings, Operating Notes, Specifications, and Quotation, upon delivery and acceptance of the Equipment, Buyer takes the Equipment as furnished at his own risk except also as provided under guarantee of parts under

CONDITIONAL SALES ORDER CONTRACT

paragraph (8) following of this Contract. All representations contained herein or shown on the Contract Drawings, Operating Notes, Specifications, and Quotation are stated in terms of theoretical in maximum capacities under optimum conditions. The ability of the Buyer to achieve such capacities or performance may be limited by numerous factors beyond the control of Seller.

Accordingly, consistent with what is stated above, no representations contained herein shall be construed to create a warranty as to the future performance, operation or output capacity of the Equipment, and Buyer has satisfied itself of the suitability of the Equipment (represented in the Contract Drawings, Operating Notes, Specification, and Quotation) for Buyer's intended purposes.

(7) Seller reserves the right to change the design and specification of the Equipment, accessories, or parts at any time and shall disclose such change to Buyer. If Seller and Buyer mutually agree, prior to delivery, to incorporate said changes into the Equipment covered by this Contract, Buyer agrees to accept any such changed Equipment, accessories, or parts in full settlement of Seller's obligations under this Contract.

Buyer acknowledges that the specially manufactured Equipment is non-standard and complex in design and that field-design changes may be necessary to make it functional in conformity with the requirements of this Contract. Accordingly, Buyer grants to Seller the right to make field changes in the design of the Equipment when, with the mutual agreement of Buyer and Seller, such changes will improve its overall operation or performance. These changes shall be at no additional cost to Buyer, and in consideration of this, Buyer agrees to furnish the tools, equipment and labor necessary to implement any such changes. Buyer may charge Seller, at a reasonable rate for supplying tools, equipment and labor.

(8) Subject to the provisions of paragraphs (6), (6a) and (7) next preceding, Seller guarantees, to the original Buyer only, the parts of the within-described Equipment per the attached Warranty (see paragraph 32 below) which forms an integral part of this Contract.

CONDITIONAL SALES ORDER CONTRACT

The terms of the attached Warranty are being expressly in lieu of all other warranties expressed or implied, and all other obligations or liabilities on Seller's part except as may be provided to the contrary in this Contract. Employees and agents of Seller (other than R. M. Guntert, Jr.) are without authority to make any other warranties or representations except upon written authorization of Seller.

(9) It is agreed that this Contract cannot be assigned by Buyer or given in any manner in the hands of others for use, or used on other work, except with consent of Seller in writing endorsed hereon (which consent shall not be unreasonably withheld or delayed), unless the Equipment is fully paid for.

(10) It is agreed that neither Seller nor Buyer shall be held responsible or liable in any event to the other for special, incidental, punitive, or consequential damages related to a default or breach of this Contract and further that Buyer shall indemnify, save and hold Seller harmless (excluding Seller's negligence) from any and all liability, damage, loss, expense for injury or damage of any kind to Seller caused by Buyer's breach of this Contract. Seller shall indemnify, save and hold Buyer harmless (excluding Buyer's negligence) from any and all liability, damage, loss, expense or injury of any kind to Buyer caused by Seller's breach of this Contract

CONDITIONAL SALES ORDER CONTRACT

(11) Buyer authorizes Seller to insert in this contract Seller's sales order number, sales factory number and date of shipment when the same has been ascertained by Seller and to insert herein anything required to complete this Contract consistent with the offer of Buyer to purchase said Equipment hereinbefore described subject to acceptance thereof by Seller at its home office.

(12) It is agreed that the title to the Equipment shall be and remain in Seller until all payments herein provided for are made. As security for the due and punctual payment of the purchase price and performance of any and all of the obligations of Buyer to Seller pursuant to this Contract, Buyer hereby grants to Seller a first priority continuing security interest in all of the Equipment, including all present and future additions, attachments and accessories thereto, all substitutions thereof and replacements thereof and all proceeds from the sale thereof, and including all proceeds of insurance regarding the Equipment. Such Equipment and property are herein collectively called "Collateral". The security interest in the Collateral granted herein shall secure the payment and performance of all of Buyer's liabilities and obligations to Seller hereunder. The occurrence of an event of default under this Contract shall be deemed to also be an event of default under the security interest granted above. Except for the security interest granted hereby, Buyer shall keep the Collateral free and clear of any security interest, lien or encumbrance of every kind. At the request of Seller, Buyer will join Seller in executing one or more financing statements pursuant to the Uniform Commercial Code and to perfect the security interest herein granted in accordance with the requirements of all states in which any item of the Collateral maybe located from time to time. If so requested by Seller in writing, Buyer will affix tags supplied by Seller to the Equipment which reflect Seller's security interest in the Equipment. Buyer agrees to pay all ordinary and necessary costs and expenses, in reasonable amounts, including reasonable attorney's fees, incurred by Seller in the perfection, preservation, realization, enforcement and exercise of its rights, powers and remedies hereunder; to execute and deliver such documents as Seller reasonably deems necessary to create,

CONDITIONAL SALES ORDER CONTRACT

perfected continue the security interest contemplated hereby; and not to change its chief place of business or the place where the collateral or any part thereof is permanently kept without first giving Seller written notice of each such change. Upon the occurrence of any event of default under this Contract, Seller shall have all of the rights, powers, privileges and remedies granted to a secured party under the Uniform Commercial Code or otherwise provided by any other applicable law. It is agreed that any and all notes given hereunder or any renewals of the same, shall be considered as evidence of the sum due on this Contract, and not payments until paid, and shall be collateral to this Contract and the giving of the same, or the renewal of the same, or any part payment thereof, shall not divest any title of Seller until the purchase money is paid in full; nor shall any payment on account, and the receipt thereof, divest any title until the whole purchase price is paid in full.

Until the purchase price is paid in full, Buyer, at its own cost and expense, shall keep the Equipment CLEAN and in good repair, condition and working order and shall not remove, alter, disfigure, or cover up any numbering, lettering, or insignia displayed upon the Equipment, and shall use the Equipment in a normal manner.

(12a) Omitted

(12b) Omitted.

(12c) Omitted.

(12d) Omitted.

(12e) Omitted

CONDITIONAL SALES ORDER CONTRACT

(13) It is agreed that any repairs, accessories, or equipment placed upon or added to said Equipment by either party after delivery thereof, as in this Contract provided for, shall become part and parcel of said Equipment and subject to all of the terms and provisions of this Contract and all rights of Seller as conditional vendor of said Equipment, including the repossession thereof or seizure and foreclosure sale as herein provided, in the event of default on the part of Buyer in the performance of any of the terms and provisions of this Contract. See exceptions Para. (28).

(13a) Buyer shall disclose to Seller, upon Seller's request, all improvements to the equipment furnished under this contract discovered or invented by Buyer, its employees, or agents during Buyer's use, whether or not patentable, and, so far as Buyer may lawfully do so, shall grant or cause to be granted to Seller a non-exclusive royalty-free unlimited license with the right to grant sublicenses, under improvements, and/or all patents of the United States or foreign countries, owned or controlled by Buyer which may issue thereon, for the duration of such patents.

(14) It is further agreed that if the payments provided for herein are not made at the time and in the manner provided herein; or if any note, notes, or renewal notes evidencing the same and as collateral to this Contract, as aforesaid, are not paid when due or if the Equipment is transferred to any person or seized upon execution or taken possession or by virtue of any order of process of court or through a proceeding in bankruptcy; or if default be made in the performance of any of the material agreements, covenants, and conditions herein to be kept and performed by Buyer which is not cured within 10 days following written notice thereof from Seller to Buyer; then, and in either event, all of the purchase price so remaining unpaid and any note or notes or renewal notes, given as aforesaid, shall at once become due and payable at the option of Seller, and Seller may, with demand and 30 days written notice and opportunity to cure, (a) sue for all or any part of the sums then owing and unpaid hereunder; (b) pursue and take possession of said property, wherever found, and may, for that purpose and without hindrance, enter upon the premises, wherever the said property is located, and remove and hold the

CONDITIONAL SALES ORDER CONTRACT

same; (c) or Seller may at its option with demand and 30 days written notice resell the Equipment, or any part thereof, at a public or private sale for the account of Buyer and after deducting all expenses and attorney's fees incurred in connection therewith, credit the net proceeds thereof to the unpaid balance owing, and said Buyer agrees to pay to Seller any deficiency remaining under this Contract after such sale is completed and the net proceeds applied as aforesaid; (d) pursue any other remedies provided by law.

(14a) No delay or omission to exercise any right, power, or remedy of Seller shall impair any such right, power, or remedy of Seller, nor shall it be construed to be a waiver of any breach or default of Buyer or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of Buyer must be in writing and shall be effective only to the extent specifically set forth in such writing.

(14b) In the event of any arbitration or action filed in relation to this sale, the unsuccessful party in said action will pay to the successful party, in addition to all other sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees.

(15) Risk of loss by damage or destruction by fire, or any other cause, shall transfer to Buyer (or Buyer's hauler) upon the Equipment being fully loaded upon hauler's trailer.

(16) Buyer agrees that until there shall have been complete performance of this Contract by Buyer, including full payments of all sums herein provided to be paid by Buyer to Seller, the Equipment hereinbefore described shall not be mortgaged or otherwise encumbered by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

(17) This agreement, when accepted as hereinafter provided, shall be binding upon the parties hereto, their executors, administrators, successors and assigns.

CONDITIONAL SALES ORDER CONTRACT

(18) IT IS FURTHER AGREED THAT THIS INSTRUMENT EVIDENCES the whole agreement of said parties, and it cannot be changed, modified, or supplemented by any agent or other person except in writing, approved in writing by R. M. Guntert, Jr. of Seller or the successor or designated representative of such individuals at its home office at Ripon, CA.

(19) To render this Contract binding upon Seller, it must be executed at its home office at Ripon, California by R. M. Guntert, Jr. of Seller and its execution by any other agent of Seller is subject to the approval of R. M. Guntert, Jr.

(20) Should the Buyer become indebted to the Seller, or any assignee of the Seller, on any account or obligation or for any service not within the terms of this agreement, the Buyer shall not be entitled to a bill of sale of said Equipment, nor shall title to said Equipment pass to Buyer from Seller until such other indebtedness has been fully paid; and if the buyer be in default at any time as to any of the terms or conditions hereof, all unpaid amounts of such other indebtedness shall at the option of Seller or its assigns become due and payable immediately, irrespective of the due date thereof.

(21) All notices required to be given hereunder may be transmitted by facsimile, and confirmed by airmail with postage thereon prepaid addressed to the Buyer at the address herein below set forth and to the Seller at the place where payments are being made hereunder.

(22) Time is of the essence of this Contract.

(23) The term "Seller" and "Buyer" herein shall be construed as singular or plural accordingly as one or more persons act as Seller or Buyer. The masculine shall be construed as feminine or neuter as occasion may require, and if more than one person execute this instrument as either Buyer or Seller, the obligation of each shall be joint and several.

(23a) The Buyer does warrant and state that there does not now exist and, until fully paid for, there will not exist any other extension of credit to Buyer which is intended to be secured by the Equipment described in this Contract. Buyer acknowledges receipt of a copy of this Contract. The

CONDITIONAL SALES ORDER CONTRACT

Seller hereby accepts in good faith the foregoing statement of Buyer and because of his reliance thereon, agrees to extend the credit on the terms and conditions as set forth in the Contract.

(24) On shipment Seller will furnish certification that goods are complete as specified, tested as required per Seller's test schedules, and ready to ship at plant.

(25) Buyer may designate any one of their representatives to come to Seller's factory, at no cost to Buyer, for training in the maintenance and operation of the Equipment for a period not to exceed 20 calendar days in the period of final assembly and testing, dismantling and shipping. All travel and living expenses of engineer(s) are of the account of Buyer. Seller shall give reasonable advance written notice to Buyer of the appropriate date for the arrival of Buyer's engineer(s) or technician(s).

(26) Contract Schedule of Delivery FOB Freight Collect, Ripon, CA, USA. The G&Z S600 ready to ship FOB Plant Ripon, CA U.S.A., on or before August 22, 2020 and the G&Z MP550 read to ship FOB Ripon, CA U.S.A., on or before July 11, 2020, providing Seller receives Payment No. 1 (by wire transfer) and an executed Conditional Sales Order Contract by Seller no later than by May 6th, 2020.

(27) It is mutually agreed that this Contract shall be governed by and construed under the laws of the State of California; and if any suit is brought thereunder, it is to be brought in the courts of the State of California.

Any provision of this Contract prohibited by the laws governing it shall be ineffective to the extent of the prohibition without invalidating the remaining provisions of the Contract.

(28) Omitted

(29) Omitted

(30) Price Adjustment.

1. Within 30 days after receipt of order, Seller will provide Buyer with a complete recommended Spare Parts List with prices. Any spare parts may be ordered by Buyer on

CONDITIONAL SALES ORDER CONTRACT

open account with Guntert & Zimmerman. Buyer shall be free to order spare parts from Guntert & Zimmerman or directly from others.

(31) Currency - Escalation - Increase.

All sums to be paid hereunder shall be paid in lawful money of the United States of America.

(32) List of Attachments.

S600 Contract Drawing G-27833 and D-27834

S600 G&Z Specification TB S600HVT4f 1219

MP550 G&Z Drawing G29376

Warranty

Service Conditions

CONDITIONAL SALES ORDER CONTRACT

IN WITNESS WHEREOF, the parties hereto have executed this Contract in duplicate

this 6th day of May 2020.

NOTE:

Signature form to conform to the
legal entity of all principals involved.

Independence Excavating
Buyer

By Vic [Signature], CEO
Title

Address 5720 East Schaaf Road, Independence, OH 44131

By _____
Title

Address _____

I, _____, certify that I am Secretary of the Corporation named
herein; that _____, who signed this contract on behalf of
was then _____ of said Corporation by authority of its governing body and is
within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereto affixed my hand and seal of said Corporation this
day of _____ 2020.

CORPORATE SEAL

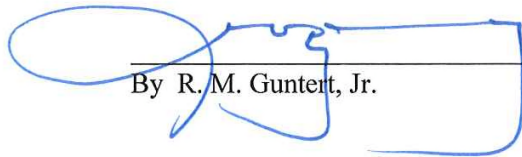
CONDITIONAL SALES ORDER CONTRACT

IN WITNESS WHEREOF, the parties hereto have executed this Contract in duplicate
this 8th day of May 2020.

NOTE:

Signature form to conform to the
legal entity of all principals involved.

GUNTERT & ZIMMERMAN CONST. DIV., INC.
Seller


By R. M. Guntert, Jr. President & CEO
Title

Address 222 East Fourth Street, Ripon, CA 95366

I, Rolf C. Guntert, certify that I am Secretary of the Corporation
named herein; that R. M. Guntert, Jr., who signed this contract on behalf
of GUNTERT & ZIMMERMAN CONST. DIV., INC was then CEO of
said Corporation by authority of its governing body and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereto affixed my hand and seal of said Corporation this 8th
day of May 2020.

CORPORATE SEAL





TUCKER ELLIS LLP
Kaitlyn N. Pangburn SBN 336346
kaitlyn.pangburn@tuckerellis.com
515 South Flower Street
Forty-Second Floor
Los Angeles, CA 90071
Telephone: 213.430.3400
Facsimile: 213.430.3409
Attorneys for Plaintiff
INDEPENDENCE EXCAVATING, INC.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

INDEPENDENCE EXCAVATING, INC., an	)	Case No.
Ohio Corporation,	)	
	)	PLAINTIFF INDEPENDENCE
Plaintiff,	)	EXCAVATING, INC.'S FEDERAL RULE OF
	)	CIVIL PROCEDURE 7.1 DISCLOSURE
v.	)	STATEMENT
	)	
GUNTERT & ZIMMERMAN, CONST. DIV.	)	
INC., a California Corporation,	)	
	)	
Defendant.	)	

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel of record for Plaintiff Independence Excavating, Inc. certifies the following:

1. Independence Excavating, Inc. has no parent corporation.
2. There is no publicly-held corporation that owns 10% or more of Independence Excavating, Inc.'s stock.

These representations are made to enable the Court to evaluate possible disqualification or recusal. Plaintiff reserves the right to supplement this certification as needed.

PLAINTIFF INDEPENDENCE EXCAVATING, INC.'S CORPORATE DISCLOSURE STATEMENT

DATED: January 27, 2022

Tucker Ellis LLP

By: /s/ Kaitlyn N. Pangburn

Kaitlyn N. Pangburn

kaitlyn.pangburn@tuckerellis.com

Attorneys for Plaintiff

INDEPENDENCE EXCAVATING, INC.

TUCKER ELLIS LLP
Chicago ♦ Cleveland ♦ Columbus ♦ Los Angeles ♦ San Francisco ♦ St. Louis

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

INDEPENDENCE EXCAVATING, INC., an Ohio Corporation

(b) County of Residence of First Listed Plaintiff Cuyahoga County, OH
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tucker Ellis LLP, Kaitlyn N. Pangburn; 515 S. Flower St.,
42nd Floor, Los Angeles, CA 90071; (213) 430-3400

DEFENDANTS

GUNTERT & ZIMMERMAN, CONST. DIV. INC., a California Corporation

County of Residence of First Listed Defendant San Joaquin County, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☒ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☒ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☒ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:
Plaintiff brings a cause of action for breach of contract against Defendant.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$201,252.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Jan 27, 2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Kaitlyn N. Pangburn

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 04/21)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.