

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Jointly Administered)

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN
ORDER AGAINST APPLI-TEC (I) ENFORCING
THE AUTOMATIC STAY, (II) COMPELLING
PERFORMANCE OF CERTAIN PURCHASE
ORDERS, AND (III) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 10:00 a.m. (Central Time) on July 21, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on July 21, 2023 at 10:00 a.m. (Central Time) in Courtroom 400, 4th Floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

¹ The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



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Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 1 (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones’s conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones’s home page. The meeting code “Judge Jones”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Jones’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors and debtors in possession (the “*Debtors*” and, together with their non-Debtor subsidiaries, “*Incora*”) respectfully state as follows.²

PRELIMINARY STATEMENT

1. Timely deliveries from vendors are the lifeblood of Incora’s business. Incora’s fundamental business proposition to its customers is that Incora can manage logistics to deliver supplies to customers on time and at cost. Refusal by vendors to deliver products to Incora could have a catastrophic effect on Incora’s reputation with customers, its market share, and ultimately its ability to emerge from these chapter 11 cases (the “*Chapter 11 Cases*”) as a going concern.

2. Prior to the commencement of these cases, in the ordinary course of business, Incora placed numerous purchase orders with Appli-Tec, Inc. (“*Appli-Tec*”), a developer and manufacturer of mixed adhesive products and a long-term supplier to Incora. These products are critical to the operations of Incora’s customers, including a number of major defense contractors. Appli-Tec accepted each of those purchase orders and promised delivery by specific dates, thus creating a series of executory sales contracts between Incora entities and Appli-Tec. Incora continued to place purchase orders with Appli-Tec after the commencement of these Chapter 11 Cases, but Appli-Tec has declined to formally accept those orders in light of the Chapter 11 Cases.

3. Now, in apparent continuing retaliation for Incora’s unwillingness to be levered to grant Appli-Tec critical vendor status, Appli-Tec has declared that it will continue to withhold all pending and future contractually required deliveries to Incora, including open purchase orders that Appli-Tec has already accepted, until each of Incora’s outstanding invoices is paid in full. Aside from the coercive nature of this refusal which itself may comprise a repudiation of contractual obligations due by Appli-Tec to the Debtors, these intentional shipment delays will materially disrupt the Debtors’ business and create a chain reaction effect on other contracts and operations. More pointedly, the refusal to perform on the agreements violates the automatic stay in two ways.

² Capitalized terms used but not immediately defined in this Motion shall have the meanings ascribed to them elsewhere in this Motion or in the Order (each as defined herein), as applicable.

First, the delays comprise a continuing effort to coerce the Debtors into paying prepetition claims that result from unpaid prepetition shipments, which is specifically barred. *See* 11 U.S.C. § 362(a)(6). Second, the delays directly interfere with Incora’s right to continue to receive performance under purchase contracts that are property of the Debtors’ estates. *See* 11 U.S.C. § 362(a)(3).

4. Although Appli-Tec has not been identified as a critical vendor with respect to *future* orders (and therefore is not entitled to payment on its prepetition claims), Incora is counting on Appli-Tec’s *existing, accepted* sales agreements to fulfill Incora’s own commitments to its customers. Appli-Tec has assurance from Incora that postpetition deliveries will be paid in accordance with their terms. Moreover, the DIP financing orders entered by the Court on an interim and final basis (the “*DIP Orders*”) ensure that payments on postpetition deliveries will be made. As such, this is nothing more than a coercive attempt to exact payment on prepetition unpaid deliveries, in contravention of the automatic stay. Time is of the essence, as any further delay in receipt of shipments would impede Incora’s ability to meet customer requirements in what has been shown to be a “just in time” industry, needing prompt performance of service and supply demands. It is imperative to the continued operations and success of Incora’s business to receive prompt delivery from Appli-Tec of the outstanding purchase orders. This is the case for a number of Incora’s other suppliers as well. The Debtors therefore respectfully ask the Court to enter an order that specifically enforces the automatic stay with regard to this wrongful conduct and compels Appli-Tec to perform and satisfy Incora’s outstanding purchase orders before further damage can be dealt.

RELIEF REQUESTED

5. By this motion (the “*Motion*”), the Debtors seek entry of an order (the “*Order*”) pursuant to sections 105, 362, and 365 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rules 2002 and 9013 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rules 2002-1 and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “*Local Rules*”), (i) enforcing the

automatic stay of section 362 of the Bankruptcy Code with respect to purchase orders that have been accepted by Appli-Tec, (ii) compelling performance with those contracts in accordance with their terms, and (iii) granting related relief, including the right to pursue recovery for actual damages caused by any delay in the performance already incurred or resulting, as well as suitable sanctions for what comprises contempt of the automatic stay. A proposed form of order is attached to this Motion as **Exhibit A**.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Motion is a core proceeding under 28 U.S.C. § 157(b). Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

I. GENERAL BACKGROUND

7. On June 1, 2023 (the “**Petition Date**”), the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Debtors have been granted joint administration of their Chapter 11 Cases for procedural purposes. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. On the Petition Date, the Court entered an order authorizing the Debtors to pay all undisputed amounts related to outstanding prepetition purchase orders “in the ordinary course of business consistent with the customary practices in effect as of the Petition Date.” *See Final Order (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Foreign Claimants, (II) Authorizing the Payment of Outstanding Orders, and (III) Granting Related Relief* [Dkt. No. 128] ¶ 2 (the “**Vendor Payment Order**”). Since the Petition Date, the Debtors have been paying suppliers in the ordinary course of business for their postpetition deliveries. The Debtors have routinely acknowledged in writing, to any supplier that requests comfort, that postpetition deliveries are beneficial to the Debtors’ estates—a necessary qualification for the suppliers’ payment

claims on those deliveries to enjoy administrative status. Further, the DIP Orders provide the Debtors with liquidity and assurances that postpetition deliveries by vendors will be paid.

II. OUTSTANDING PURCHASE ORDERS

9. For more than 25 years, Incora has, in the ordinary course of business, ordered inventory from Appli-Tec. Incora is not party to a long-term contract with Appli-Tec. Rather, Incora places ad hoc purchase orders using its own standard form; Appli-Tec, in turn, accepts those orders by email and provides Incora with estimated shipping and delivery dates. That offer and acceptance creates a sale agreement. In the ordinary course, Appli-Tec then ships the product and sends Incora an invoice for payment.

10. Leading up to the Petition Date, Appli-Tec had accepted approximately 158 purchase orders from Incora that it had not fulfilled. Each of these constituted a separate executory contract. On May 25, 2023, prompted by news of Incora's financial distress, Appli-Tec informed Incora via email that it intended to stop shipping *all* of Incora's outstanding and future purchase orders until Incora made full payment of all outstanding invoices. Appli-Tec's email did not purport to cancel the purchase orders or terminate the contracts that had been created through Appli-Tec's acceptance of the purchase orders. As a result, all of the approximately 158 purchase orders currently remain accepted but unfulfilled by Appli-Tec (the "**Outstanding Orders**").³

11. The relief sought to enforce the stay and to bring the contempt of the stay to this Court's attention is not done lightly or without prior efforts to obtain compliance with the law. On June 13, 2023, the Debtors advised Appli-Tec by letter of (a) Appli-Tec's obligations under the relevant contracts and the Bankruptcy Code to honor the outstanding purchase orders and (b) Incora's ability, authority, and commitment to pay for all of the outstanding purchase orders when due and in full, including pursuant to the Vendor Payment Order. *See* June 13, 2023 letter,

³ A table listing the Outstanding Orders is attached to this Motion as **Schedule 1**. The Debtors expect that the testimony of Kenneth Brech, Vice President of Operations at Incora, will show that the Outstanding Orders were placed, accepted, and scheduled for shipping, but have not been shipped. The Debtors request that the relief requested by the Motion be extended to any outstanding purchase order that has inadvertently been omitted from **Schedule 1**.

attached to this Motion as **Exhibit B**. Appli-Tec did not respond to the letter. On June 23, 2023, the Debtors again sought to have Appli-Tec ship critical Outstanding Orders and explained that such shipment was necessary to Incora’s customers’ production lines and employees. Again, Appli-Tec refused to perform. Appli-Tec has continued to withhold performance and delivery in violation of the automatic stay. The Debtors can wait no longer to take action.

12. The inventory to be delivered pursuant to the Outstanding Orders is crucial to the Debtors’ ongoing business operations. Non-shipment of the Outstanding Orders would disrupt Incora’s ability to satisfy its ongoing obligations to customers and would in fact lead to an eventual shut-down of Incora’s customers’ production lines. At least 120 of the Outstanding Orders are past due on the deliveries called for, creating a chain reaction of supply chain difficulties that could lead to such eventual shut-down. This, in turn, may result in further claims against the Debtors—all because Appli-Tec seeks to leverage its advantage and disregard the automatic stay and the requirements of the Bankruptcy Code.

III. FUTURE “RATED” PURCHASE ORDERS

13. In addition to the Outstanding Orders, Incora intends to continue to place certain orders (the “*Rated Orders*”) that qualify as “rated orders” under the Defense Property Accountability System (“*DPAS*”), which Appli-Tec is required to accept under federal law. *See generally* 15 C.F.R. §§ 700.10–700.18. To the extent that Appli-Tec is refusing to accept those Rated Orders as a means to exact payment of prepetition debts, Appli-Tec is in violation of the automatic stay and should be required to accept Rated Orders.

14. Pursuant to its authority under the Defense Production Act of 1950, the federal government has promulgated strict regulations to ensure that defense agencies and contractors can obtain important products on time. In general, DPAS requires that a supplier “shall accept every rated order received,” § 700.13(a)(1), “must fill such orders,” *id.*, “shall not discriminate against rated orders,” § 700.13(a)(2), and must “schedule [its] operations . . . in a timely manner to satisfy the delivery requirements of each rated order.” § 700.14(a). *See Sterling Millwrights, Inc. v. United States*, 26 Cl. Ct. 49, 73–74 (1992) (describing DPAS framework); *cf.* 50 U.S.C. App. § 2071(a)

(“The President is . . . authorized . . . to require that performance under . . . orders . . . which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and . . . to require acceptance and performance of such . . . orders . . . by any person he finds to be capable of their performance . . .”). These requirements are subject to limited exceptions. *See* § 700.13(b)–(c). For instance, a supplier need not accept orders for products it does not supply, or for products that the purchaser itself makes. *See* § 700.13(c)(2), (4).

15. Many of Incora’s and Appli-Tec’s shared customers are defense contractors whose requirements qualify for “rated” status. Accordingly, Incora regularly places Rated Orders with Appli-Tec and expects to do so in the future. Since June, Appli-Tec has refused to accept Rated Orders from Incora. Incora believes that Appli-Tec has rejected Incora’s Rated Orders⁴ in an effort to exact payments on Incora’s prepetition debts. Tellingly, Appli-Tec has not cited any exception under section 700.13(b)–(c) that would justify rejecting the Rated Orders under federal regulations.⁵

BASIS FOR RELIEF

I. THE AUTOMATIC STAY SHOULD BE ENFORCED

16. As a result of the commencement of these Chapter 11 Cases, and by operation of section 362 of the Bankruptcy Code, the automatic stay enjoins all persons from, among other things, taking any action to obtain possession of the property of the Debtors’ estates or to exercise control over property of the Debtors’ estates. *See* 11 U.S.C. § 362(a)(3). The injunction contained in Bankruptcy Code section 362 is a core debtor protection, providing the debtor with a “breathing spell from [its] creditors” that is essential to its ability to reorganize successfully. *See S.I.*

⁴ At least nine Rated Orders have been placed by Incora but rejected by Appli-Tec since June. Those Rated Orders bear the following invoices: 4198173-1000, 4198175-1000, 4207132-1000, 4215481-1000, 4216091-1000, 4216188-1000, 4216190-1000, 4203386-1000, and 4200831-1000.

⁵ In particular, Appli-Tec cannot plausibly contend that Incora is presently “unwilling or unable to meet regularly established terms of sale or payment.” § 700.13(c)(1). Incora has obtained \$300 million in post-petition financing and is therefore willing and able to pay vendors in full, in cash, on time for post-petition orders.

Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.), 817 F.2d 1142, 1146 (5th Cir. 1987) (quoting H.R. Rep. No. 95–595, 95th Cong., 2d Sess. 340 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6297–98).

17. Given the fundamental importance of the automatic stay to a debtor’s reorganization, courts broadly construe the Bankruptcy Code’s automatic stay provisions. *See In re S.I. Acquisition, Inc.*, 817 F.2d at 1149; *Brown v. Chesnut (In re Chesnut)*, 422 F.3d 298, 303 (5th Cir. 2005). The automatic stay has been held to preclude unilateral actions by non-debtor parties to terminate contracts, create or perfect liens on a debtor’s property, or take possession of a debtor’s property without a court order, protecting a debtor’s property and contracts wherever located and by whomever held. *See, e.g., Bonneville Power Admin. v. Mirant Corp. (In re Mirant Corp.)*, 440 F.3d 238, 252 (5th Cir. 2006) (holding that the automatic stay prohibited a creditor from unilaterally terminating an executory contract); *In re Chesnut*, 422 F.3d at 300 (noting that a “willful violation” of the automatic stay occurs when a creditor unilaterally seizes the debtors’ property without permission of the bankruptcy court).

18. The Bankruptcy Code also prohibits *any* act—even if otherwise lawful—if done for the purpose of recovering a claim that arose prior to the Petition Date, such as payment for goods that were delivered before the Petition Date. *See* 11 U.S.C. § 362(a)(6); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 494 (Bankr. N.D. Tex. 2002) (noting that a general unsecured prepetition creditor’s attempt to “force payment of a prepetition debt” may violate section 362(a)(6) and constitutes “economic blackmail”). Violation of the automatic stay may also occur where a non-debtor party breaches its postpetition obligations to a debtor. *See, e.g., Jahn v. Bacon (In re E. Tech Co.)*, 528 B.R. 743, 754 (Bankr. E.D. Tenn. 2015) (holding that a non-debtor counterparty’s breach of a postpetition contract may violate the automatic stay provisions of section 362).

19. Here, Appli-Tec’s refusal to deliver the inventory provided for in the Outstanding Orders and the Rated Orders—particularly in the face of (i) the Debtors’ assurance of full payment for outstanding purchase orders and (ii) Incora’s reminders that the stay comprises an order of the Court that prohibits Appli-Tec’s conduct—wrongfully interferes with Incora’s rights to enjoy the

benefit of the accepted purchase orders and to obtain goods under the DPAS framework. That deprivation is a clear violation of the automatic stay. The Debtors therefore seek enforcement of the automatic stay to (a) enjoin Appli-Tec from withholding delivery of the Outstanding Orders and Rated Orders and (b) enjoin Appli-Tec from violating DPAS regulations with respect to Rated Orders.

II. THE OUTSTANDING ORDERS ARE EXECUTORY CONTRACTS THAT MUST BE PERFORMED

20. Section 365(e)(1) of the Bankruptcy Code prohibits counterparties to executory contracts with a debtor from terminating or modifying such contracts, including rights or obligations thereunder, solely on account of a debtor's bankruptcy filing. *See* 11 U.S.C. § 365(e)(1)(B). Section 365(e)(1)(B) of the Bankruptcy Code provides, subject to certain limited exceptions, that “[n]otwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on . . . the commencement of a case under this title.” *Id.*

21. As such, counterparties to prepetition executory contracts with a debtor are required to continue to perform under such contracts until they are assumed or rejected by the debtor. *See Lifemark Hosps. v. Liljeberg Enters., Inc. (In re Liljeberg Enters., Inc.)*, 304 F.3d 410, 438 (5th Cir. 2002); *Century Indem. Co. v. Nat'l Gypsum Co. Settlement Tr. (In re Nat'l Gypsum Co.)*, 208 F.3d 498, 505 (5th Cir. 2000); *see also Skeen v. Denver Coca-Cola Bottling Co. (In re Feyline Presents, Inc.)*, 81 B.R. 623, 626 (Bankr. D. Colo. 1988) (“In the Court's view, an executory contract under Chapter 11 is not enforceable against the debtor party, but is enforceable against the nondebtor party prior to the debtor's assumption or rejection of the contract. It is the clear policy of the Bankruptcy Code that a debtor is to have a ‘breathing space’ following a filing of a petition, continuing until confirmation of the plan, in which to choose to assume or reject an executory contract. In that interim period, as in fact occurred here, the parties to the contract may continue to perform their respective roles. Without question, the breathing spell afforded by 11 U.S.C.

§ 365(d) can impose a penalty on the other party to the contract. However, that party has a remedy and that remedy is to move, pursuant to Section 365(d)(2), for an order requiring the debtor to make an early election.”); *United States ex rel. U.S. Postal Serv. v. Dewey Freight Sys., Inc.*, 31 F.3d 620, 624 (8th Cir. 1994) (“After a debtor commences a Chapter 11 proceeding, but before executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, *enforceable by the debtor but not against the debtor.*”) (emphasis in original).

22. Here, the Outstanding Orders are undoubtedly executory contracts; each one is a separate agreement that resulted from (a) Incora extending an offer to purchase specific goods at a specific price and (b) Appli-Tec accepting that offer without materially varying the offer’s terms. The Outstanding Orders are also executory contracts in that Appli-Tec has not performed its promise of delivering goods and Incora has not performed its promise of payment. *See, e.g., In re Harnischfeger Indus., Inc.*, 293 B.R. 650, 659 (Bankr. D. Del. 2003) (treating prepetition purchase order as executory contract); *In re APF Indus., Inc.*, 118 B.R. 122, 125 (Bankr. M.D. Fla. 1990) (granting motion to assume purchase order as an executory contract). This much is black-letter law, and Debtors in this district routinely treat open purchase orders as executory contracts under chapter 11 plans or section 363 asset purchase agreements. *See, e.g., Amended Notice of Cure Amounts and Potential Assumption of Executory Contracts and Unexpired Leases in Connection with the Plan, In re Brazos Elec. Power Coop., Inc.*, Case No. 21-30725 (Bankr. S.D. Tex.) (Dkt. No. 2387, Oct. 12, 2022); Order (I) Authorizing an Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; (III) Authorizing the Sale Transaction; and (IV) Granting Related Relief, *In re Strike, LLC*, Case No. 21-90054 (Bankr. S.D. Tex.) (Dkt. No. 588, Jan. 28, 2022).

23. The Debtors have the right under the Bankruptcy Code to elect to assume, reject, or assume and assign executory contracts; Appli-Tec has never sought to induce any election to date. Instead, it has deployed raw coercion to attempt to force payment of prepetition invoices by, in effect, defying the automatic stay, which prohibits this type of conduct. It is undisputable that the

Debtors have not rejected those contracts.⁶ Regardless, the assumption of the purchase orders here would not accomplish anything given Appli-Tec’s coercive goal here—the payment of prepetition invoices. Each of the purchase orders stand alone, and the assumption of new purchase orders postpetition would not require payment on prepetition invoices. Accordingly, Appli-Tec must continue to perform by delivering goods in accordance with the terms of its Outstanding Orders.

III. SECTION 105 OF THE BANKRUPTCY CODE EMPOWERS ENFORCEMENT OF THE AUTOMATIC STAY

24. Pursuant to Bankruptcy Code section 105(a), this Court may issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) therefore authorizes a bankruptcy court to issue injunctions, make determinations of civil contempt, and take other necessary steps in aid of its jurisdiction. *See, e.g., United States v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986).

25. Such orders are appropriate where, as here, they are essential to a debtor’s reorganization efforts and do not unduly burden creditors. *See FDIC v. Jones (In re Jones)*, 966 F.2d 169, 173 (5th Cir. 1992) (discussing the bankruptcy court’s “duty to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in the administration of the bankrupt estate”) (internal quotations omitted); *Momentum Mfg. Corp. v. Emp. Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) (holding that, as courts of equity, bankruptcy courts are “empowered to invoke equitable principles to achieve fairness and justice in the reorganization process”).

26. The protections afforded by a debtor by Bankruptcy Code sections 362 and 365 are automatic and self-executing upon the filing of a chapter 11 petition. *See* 11 U.S.C. § 362(a)(3) (“[A] petition filed under section 301 . . . of this title . . . operates as a stay, applicable to all entities, of, [among other things,] any act to obtain possession of property of the estate or of property from

⁶ If put to the choice, the Debtors would assume each of the Outstanding Orders, each with a cure amount of \$0. The Debtors have declined to file separate motions to assume their thousands of suppliers’ outstanding purchase orders only because it would be unduly costly to the estates to do so—especially when the vast majority of suppliers are willing to deliver their outstanding orders.

the estate or to exercise control over property of the estate[.]”); 11 U.S.C. § 365(e)(1) (“[A]ny right or obligation under [an executory contract or unexpired lease of the debtor] may not be terminated or modified, at any time after the commencement of the case solely because [of an *ipso facto* provision].”). But, despite the automatic effect of these statutes, Appli-Tec has attempted to proceed against the Debtors and their contract rights. The testimony of Kenneth Brech, Vice President of Operations at Incora, will show that Appli-Tec has consistently—including after the Debtors’ June 13, 2023 letter—attempted to coercively link performance and delivery of all of the Outstanding Orders and future orders to payment of prepetition invoices. Unilateral self-help is improper and must be stopped before the Debtors’ reorganization efforts are further jeopardized and the Debtors’ estates are irreparably harmed. *See Sportfame of Ohio, Inc. v. Wilson Sporting Goods Co. (In re Sportfame of Ohio, Inc.)*, 40 B.R. 47, 50, 56 (Bankr. N.D. Ohio 1984) (entering an injunction requiring supplier to ship goods to debtor “on a normal basis consistent with their dealings for the past 10 years,” after supplier violated automatic stay by “refusing to ship goods to [the] debtor for cash” out of a “desire to coerce debtor’s repayment of its prepetition indebtedness”).

27. Appli-Tec’s tactics are especially dangerous at this stage of the Debtors’ reorganization. If Appli-Tec can exact a critical vendor payment by withholding outstanding orders, many other suppliers would surely follow suit. This rush for prepetition payments could dramatically increase the Debtors’ need for critical vendor relief and might even require the Debtors to seek additional debtor-in-possession financing, to the detriment of creditors at large. *Cf. In re Kmart Corp.*, 359 F.3d 866, 873 (7th Cir. 2004) (disapproving of critical vendor payments to vendors who bear independent legal obligations to continue supplying products, such as where “the automatic stay prevents . . . vendors from walking away as long as the debtor pays for new deliveries”).

28. The Court has granted similar relief to that requested by this Motion in complex cases involving substantial business operations. *See, e.g.*, Order Granting Enforcement of the Automatic Stay and Compelling Performance of Obligations Under the Agreement, *In re Diamond Sports Grp., LLC*, Case No. 23-90116 (CML) (Bankr. S.D. Tex.) (Dkt. No. 579, May 10, 2023)

(granting Debtors' emergency motion to enforce the automatic stay and compel performance of obligations under agreement).

29. For these reasons, the Debtors request entry of an order substantially in the form attached as **Exhibit A** (i) enforcing the automatic stay of section 362 of the Bankruptcy Code with respect to purchase orders that have been accepted by Appli-Tec, (ii) compelling performance with those contracts in accordance with their terms, and (iii) granting related relief, including the right to pursue recovery for actual damages caused by any delay in the performance already incurred or resulting, as well as suitable sanctions for what comprises contempt of the automatic stay. Granting the relief requested herein will ensure the orderly continuation of the Debtors' ordinary course operations and prevent disruption to their businesses.

EMERGENCY CONSIDERATION

30. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 9013 and Local Rule 9013-1(i). As described above, prompt delivery of the Outstanding Orders is critical and necessary to maintain the Debtors' operations, preserve the Debtors' business relationships with current customers, and advance the interests of national security. The Debtors have repeatedly reminded Appli-Tec of its obligations to honor its agreements, to not withhold deliveries called for, and to stop efforts to exact payment on prepetition deliveries and invoices. These efforts have failed to induce lawful conduct, such that at this juncture intervention of the Court is needed. Accordingly, the Debtors would suffer immediate and irreparable harm absent the relief sought herein.

RESERVATION OF RIGHTS

31. Nothing in this Motion is intended or should be construed as (a) an implication, admission, or concession as to the validity, amount or priority of, or basis for, any claim against any Debtor; (b) waiver of any Debtor's or any other party in interest's right to dispute any claim on any ground; (c) a promise or requirement to pay any claim; (d) a waiver of any claim or cause of action that any Debtor or other party in interest may have against any entity; (e) a ratification,

adoption, rejection or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (f) a waiver or limitation of any Debtor's or other party in interest's rights under any agreement, the Bankruptcy Code or other applicable law; or (g) an implication, admission, or concession (i) that any particular claim is of a type specified or defined in the Motion or (ii) any lien, security interest, other encumbrance on property of any Debtor or (ii) that any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable or perfected (and the Debtors and all other parties in interest expressly reserve and preserve their rights to contest or to seek avoidance of the same). If the Court grants the relief sought herein, any payment made in connection with the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim. The Debtors reserve their rights to seek other remedies in connection with matters in dispute in this Motion, including remedies that may be available under the common law of contracts and torts.

NOTICE AND SERVICE

32. Notice of this Motion will be provided to (a) all parties in interest listed on the master service list maintained by the Debtors pursuant to paragraph 11 of the Procedures for Complex Cases in the Southern District of Texas, and (b) Appli-Tec and its counsel. Appli-Tec will be served a copy of this Motion by overnight delivery and first-class mail to 7 Industrial Way, Unit 1, Salem, NH 03079, Attn: Timothy Walsh, President. *Cf.* Fed. R. Bankr. P. 7004(b)(3), 9014(b). The Debtors respectfully submit that no further notice is required under the circumstances.

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Upon the foregoing Motion, the Debtors respectfully request that the Court (i) enter an order, substantially in the attached form, granting this Motion and (ii) grant such other relief as is just and proper.

Dated: July 17, 2023

Respectfully submitted,

/s/ Charles A. Beckham, Jr.

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Washington, DC 20006
Telephone: 1 (202) 835-7544
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*Proposed Counsel to the
Debtors and Debtors in Possession*

CERTIFICATE OF ACCURACY

I certify, pursuant to Local Rule 9013-1(i), that the foregoing statements regarding the nature of the emergency set forth in the foregoing Motion are true and accurate to the best of my knowledge.

Dated: July 17, 2023

/s/ Charles A. Beckham, Jr.

CERTIFICATE OF SERVICE

I certify that, on July 17, 2023, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' noticing agent.

/s/ Charles A. Beckham, Jr.

SCHEDULE 1 TO MOTION
OUTSTANDING ORDERS

PO #	Description of Goods	Date Accepted	Scheduled Date of Delivery
3901754-1000	Adhesive Film	4/13/2022	6/23/2023
4004449-1000	Potting Material	9/2/2022	5/12/2023
4023525-3000	Sealant	9/29/2022	6/12/2023
4059935-3000	Thread Compound	11/16/2022	6/12/2023
4103962-1000	Adhesive	1/24/2023	5/26/2023
4106759-1000	Adhesive	1/26/2023	6/26/2023
4112719-1000	Adhesive	2/3/2023	6/30/2023
4114045-1000	Sealant	2/6/2023	6/30/2023
4116179-4000	Adhesive Film	2/8/2023	6/16/2023
4116945-1000	Epoxy Resin	2/9/2023	6/16/2023
4116941-1000	Sealant	2/9/2023	6/29/2023
4122119-1000	Heat Sink	2/16/2023	6/12/2023
4125804-1000	Sealant	2/21/2023	6/19/2023
4127510-1000	Urathane Adhesive	2/23/2023	7/7/2023
4132433-1000	Adhesive/Sealant	3/2/2023	6/9/2023
4132433-3000	Adhesive/Sealant	3/2/2023	6/9/2023
4132414-1000	Epoxy Encapsulant	3/2/2023	6/30/2023
4132649-1000	Mask	3/2/2023	7/13/2023
4139030-5000	Urethane	3/10/2023	6/19/2023
4139693-1000	Frozen Syringe	3/13/2023	8/7/2023
4139695-1000	Adhesive	3/13/2023	6/30/2023
4139737-1000	Frozen Syringe	3/13/2023	7/12/2023
4139752-1000	Frozen Syringe	3/13/2023	7/12/2023
4139767-1000	Frozen Syringe	3/13/2023	7/12/2023
4139696-1000	Epoxy	3/13/2023	7/3/2023
4139773-1000	Frozen Syringe	3/13/2023	7/12/2023
4139783-1000	Frozen Syringe	3/13/2023	7/18/2023
4139793-1000	Frozen Syringe	3/13/2023	8/1/2023
4139798-1000	Adhesive	3/13/2023	8/15/2023
4139809-1000	Frozen Syringe	3/13/2023	8/29/2023
4139816-1000	Frozen Syringe	3/13/2023	9/12/2023
4139878-1000	Frozen Syringe	3/13/2023	9/26/2023

PO #	Description of Goods	Date Accepted	Scheduled Date of Delivery
4139881-1000	Frozen Syringe	3/13/2023	10/10/2023
4139898-1000	Frozen Syringe	3/13/2023	10/24/2023
4139903-1000	Frozen Syringe	3/13/2023	11/7/2023
4139909-1000	Frozen Syringe	3/13/2023	11/21/2023
4139911-1000	Frozen Syringe	3/13/2023	12/5/2023
4139945-1000	Frozen Syringe	3/13/2023	12/19/2023
4139948-1000	Frozen Syringe	3/13/2023	12/28/2023
4139958-1000	Frozen Syringe	3/13/2023	1/16/2024
4139976-1000	Frozen Syringe	3/13/2023	1/30/2024
4139985-1000	Frozen Syringe	3/13/2023	2/13/2024
4139996-1000	Frozen Syringe	3/13/2023	2/27/2024
4140002-1000	Frozen Syringe	3/13/2023	3/12/2024
4143550-1000	Epoxy	3/16/2023	6/16/2023
4149134-1000	Paste Adhesive	3/24/2023	7/13/2023
4149975-1000	Paste Adhesive	3/27/2023	6/19/2023
4152375-1000	Adhesive	3/29/2023	7/3/2023
4153537-1000	Polyurethane	3/30/2023	6/19/2023
4155151-1000	Epoxy Encapsulant	4/3/2023	7/21/2023
4156158-1000	Acrylic Adhesive	4/4/2023	6/23/2023
4158932-1000	Epoxy	4/6/2023	8/8/2023
4159690-4000	Thread Compound	4/7/2023	6/30/2023
4159690-1000	Silicone Rubber Compound	4/7/2023	6/27/2023
4113124-13000	Polyol	4/10/2023	7/31/2023
4160127-1000	Paste Adhesive	4/10/2023	6/26/2023
4163143-1000	Polyurethane	4/13/2023	6/30/2023
4163093-1000	Silicone	4/13/2023	6/6/2023
4163146-1000	Adhesive / Sealant	4/13/2023	6/29/2023
4164088-3000	Urethane	4/14/2023	6/21/2023
4165537-1000	Adhesive	4/17/2023	9/6/2023
4166118-1000	Epoxy	4/18/2023	8/15/2023
4169322-1000	Epoxy	4/21/2023	6/30/2023
4169322-3000	Frozen Epoxy	4/21/2023	6/30/2023
4169328-1000	Encapsulant	4/21/2023	8/14/2023
4140224-1000	Adhesive	4/25/2023	7/4/2023
4172711-1000	Adhesive	4/26/2023	6/16/2023
4172758-1000	Adhesive	4/26/2023	7/11/2023

PO #	Description of Goods	Date Accepted	Scheduled Date of Delivery
4172761-1000	Adhesive	4/26/2023	8/9/2023
4172756-1000	Adhesive	4/26/2023	9/7/2023
4173558-1000	Epoxy Adhesive	4/27/2023	7/4/2023
4173213-1000	Adhesive	4/27/2023	6/30/2023
4175264-1000	Polyol	5/1/2023	6/19/2023
4175276-1000	Polyurethane	5/1/2023	8/14/2023
4176087-1000	Epoxy Resin	5/2/2023	6/30/2023
4176003-1000	Epoxy	5/2/2023	7/17/2023
4176078-1000	Silicone Compound	5/2/2023	6/13/2023
4177060-1000	Encapsulating Resin	5/3/2023	6/7/2023
4176957-1000	Lacquer	5/3/2023	6/19/2023
4177977-1000	Polyurethane	5/4/2023	6/30/2023
4177874-1000	Urethane	5/4/2023	6/7/2023
4178153-1000	Adhesive	5/4/2023	6/30/2023
4178331-1000	Sealant	5/4/2023	6/30/2023
4177945-1000	Epoxy	5/4/2023	8/8/2023
4177925-1000	Epoxy Encapsulant	5/4/2023	8/23/2023
4179008-1000	Petrolatum	5/5/2023	6/23/2023
4179377-5000	Silicone	5/5/2023	7/24/2023
4176928-1000	Thermal Interface	5/5/2023	6/30/2023
4179434-1000	Adhesive	5/5/2023	6/30/2023
4179377-3000	Epoxy	5/5/2023	6/30/2023
4179377-1000	Epoxy	5/5/2023	6/30/2023
4180414-1000	Urethane Prepolymer	5/8/2023	6/30/2023
4180161-3000	Silicone Resin	5/8/2023	6/30/2023
4180161-4000	Epoxy Resin	5/8/2023	6/30/2023
4180161-6000	Thread Compound	5/8/2023	6/30/2023
4179739-1000	Adhesive	5/8/2023	6/12/2023
4181173-4000	Adhesive	5/9/2023	6/16/2023
4181173-1000	Polyurethane	5/9/2023	6/19/2023
4181217-1000	Polyurethane Film	5/9/2023	7/26/2023
4182061-1000	Adhesive	5/10/2023	6/30/2023
4181743-1000	Paste Adhesive	5/10/2023	7/12/2023
4182062-1000	Elastomer	5/10/2023	10/4/2023
4183247-1000	Filler	5/11/2023	6/30/2023
4183250-1000	Thermal Interface	5/11/2023	6/30/2023

PO #	Description of Goods	Date Accepted	Scheduled Date of Delivery
4184082-3000	Adhesive	5/12/2023	6/30/2023
4183710-1000	Epoxy Adhesive	5/12/2023	6/16/2023
4184082-1000	Adhesive	5/12/2023	6/30/2023
4184115-1000	Adhesive	5/15/2023	6/30/2023
4184706-1000	Filler	5/15/2023	6/19/2023
4184805-1000	Polyurethane	5/15/2023	6/29/2023
4184771-1000	Epoxy	5/15/2023	6/30/2023
4184904-1000	Frozen Syringe	5/15/2023	6/30/2023
4185100-1000	Polyurethane	5/15/2023	6/30/2023
4185145-1000	Potting Material	5/15/2023	6/29/2023
4186005-3000	Epoxy Resin	5/16/2023	7/24/2023
4186012-1000	Coating	5/16/2023	6/30/2023
4186005-1000	Encapsulating Compound	5/16/2023	6/30/2023
4186246-1000	Polyurethane	5/16/2023	6/30/2023
4186139-1000	Thermal Interface	5/17/2023	6/23/2023
4186547-1000	Adhesive	5/17/2023	6/19/2023
4187241-1000	Adhesive	5/17/2023	6/19/2023
4186900-1000	Adhesive	5/17/2023	6/27/2023
4186900-3000	Adhesive	5/17/2023	7/19/2023
4188099-1000	Epoxy	5/18/2023	6/30/2023
4188099-2000	Adhesive	5/18/2023	6/30/2023
4188110-1000	Coating Urethane	5/18/2023	6/30/2023
4187958-1000	Epoxy Resin	5/18/2023	6/19/2023
4188416-1000	Epoxy Resin	5/18/2023	6/26/2023
4187928-1000	Adhesive	5/18/2023	6/14/2023
4187629-2000	Epoxy Adhesive	5/18/2023	6/23/2023
4187629-1000	Epoxy	5/18/2023	7/14/2023
4188998-3000	Adhesive	5/19/2023	6/30/2023
4188998-1000	Epoxy	5/19/2023	6/30/2023
4189437-1000	Polyurethane	5/22/2023	6/20/2023
4189820-1000	Adhesive	5/22/2023	6/26/2023
4189843-1000	Polyurathane Adhesive	5/22/2023	6/26/2023
4189994-1000	Adhesive/Sealant	5/22/2023	7/26/2023
4190435-1000	Urethane	5/23/2023	6/21/2023
4186900-5000	Adhesive	5/23/2023	8/16/2023
4192042-1000	Sealant	5/24/2023	6/19/2023

PO #	Description of Goods	Date Accepted	Scheduled Date of Delivery
4192313-1000	Encapsulating Resin	5/24/2023	6/30/2023
4191892-1000	Sealant	5/24/2023	6/30/2023
4192314-1000	Latex Rubber	5/24/2023	6/22/2023
4192013-1000	Filler	5/24/2023	6/26/2023
4191607-1000	Adhesive	5/24/2023	6/27/2023
4192311-1000	Polysulfide Sealant	5/24/2023	6/21/2023
4193385-1000	Epoxy Resin	5/25/2023	6/30/2023
4192643-1000	Epoxy Resin	5/25/2023	6/30/2023
4193397-1000	Adhesive	5/25/2023	6/30/2023
4193766-1000	Encapsulating Resin	5/26/2023	6/16/2023
4193766-2000	Urethane Prepolymer	5/26/2023	6/16/2023
4196333-1000	Epoxy Encapsulant	5/30/2023	6/30/2023
4196331-1000	Silicone Resin	5/30/2023	6/19/2023
4195981-1000	Fuel Tank Sealant	5/30/2023	7/7/2023
4197496-1000	Coating	5/31/2023	6/14/2023
4197613-1000	Potting Material	5/31/2023	6/30/2023
4197541-1000	Silicone Compound	5/31/2023	6/12/2023
4197209-1000	Epoxy Adhesive	5/31/2023	6/28/2023

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹**

Debtors.

Case No. 23-23-90611 (DRJ)

Chapter 11

(Jointly Administered)

**PROPOSED ORDER (I) ENFORCING THE
AUTOMATIC STAY, (II) COMPELLING PERFORMANCE
OF CERTAIN PURCHASE ORDERS, AND (III) GRANTING
RELATED RELIEF AGAINST APPLI-TEC**

¹ The Debtors operate under the trade name Incoira and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

Upon the motion (the “*Motion*”)² of the above-captioned debtors (collectively, the “*Debtors*”), for entry of this Order pursuant to sections 105(a), 362, and 365 of the Bankruptcy Code and Bankruptcy Rule 2002, (i) enforcing the automatic stay with respect to the Outstanding Orders and Rated Orders; (ii) compelling performance of the Outstanding Orders and Rated Orders by Appli-Tec in circumstances where the refusals are premised upon exacting payment of prepetition invoices; and (iii) granting related relief; and the Court having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, such notice being adequate and appropriate under the circumstances; and after notice and a hearing, as defined in section 102 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and in the record establish just cause for entry of this Order; and it appearing that entry of this Order on an emergency basis is in the best interests of the Debtors’ estates; it is hereby **ORDERED** that:

1. Notice of the Motion and the relief requested as well as the setting of an initial hearing has been previously provided to Appli-Tec in a manner and on such terms as is proper and sufficient under the circumstances.

2. The automatic stay provisions of section 362(a) of the Bankruptcy Code are applicable to the wrongful conduct established to have been committed by Appli-Tec in refusing to perform on pending contractual obligations intended as a coercive effort to obtain payment on prepetition unpaid invoices, and therefore shall be enforced, and shall remain in full force and effect, with respect to the Outstanding Orders.

3. Appli-Tec is directed to immediately terminate all acts which relate to the refusal to perform on the contracts in circumstances where the cessation of performance was done to coerce payment of prepetition invoices and is to immediately perform under the Outstanding

² Capitalized terms used but not defined in this Order have the meanings ascribed to them in the Motion.

Orders and to immediately tender timely delivery of the goods subject to the existing and pending orders as described in the Motion on the terms and conditions set forth in the Outstanding Orders.

4. Absent such prompt delivery to the Debtors of the subject goods within twenty-four (24) hours of entry of this Order, Appli-Tec shall be required to show cause why it is not in contempt of Court at a further hearing to be scheduled on July 21, 2023 at 10:00 a.m. (Central Time) and otherwise shall be subject to further sanctions including, but not limited to, (i) a monetary award to the Debtors for all actual and consequential damages resulting from the wrongful acts and conduct Appli-Tec is committing, (ii) an award in favor of the Debtors for recovery of all reasonable and necessary attorneys fees, expert fees, and costs on account of the Debtors' having to bring this Motion and resulting proceedings, and (iii) coercive sanctions to induce compliance as the Court may further determine.

5. Appli-Tec is directed to accept, prioritize, and perform Rated Orders placed by the Debtors to the extent required under the Defense Priorities and Allocations System.

6. The Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of Appli-Tec or to seek damages or other remedies with respect to any breach of the Outstanding Orders.

7. The Court finds and determines that the requirements of Bankruptcy Rule 9013 and Local Rule 9013-1(i) are satisfied, and that the relief granted in this Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

8. Notwithstanding any provision of the Bankruptcy Rules or Local Rules, the terms of this Order shall be immediately effective and enforceable upon its entry.

9. The Debtors and their agents are authorized to take all steps necessary or appropriate to carry out this Order.

10. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _____, 2023
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B TO MOTION

June 13, 2023 Letter

From: [Ken Brech](#)
To: [Daniel Gubichuk](#)
Subject: Fwd: Incora
Date: Friday, June 16, 2023 12:03:55 PM
Attachments: [Vendor Individual Letter re Outstanding Purchase Orders - Appli-Tec 20230613-signed.pdf](#)
[Appli Tec Inc Open PO Report 06132023.xlsx](#)

Begin forwarded message:

From: Ken Brech <ken.brech@wescoair.com>
Date: June 14, 2023 at 2:48:00 PM GMT+2
To: Timothy Walsh <twalsh@appli-tec.com>, Steve Pelletier <spellletier@appli-tec.com>
Cc: Jason Daley <Jason.Daley@wescoair.com>, Nicole Hunt <nicole.hunt@wescoair.com>, Christian Mota <christian.mota@wescoair.com>
Subject: Incora

Good Morning Tim,

I appreciate the time you afforded me again yesterday on this topic.
I am respectfully asking that you reconsider your current position to not do business with Incora and fill all open orders consistent with the bankruptcy code.
As discussed, there is a process for reviewing prepetition monies separate from open orders and post-petition continuity of supply.
Please see attached detailed letter and associated open orders.
Our expectation is that you fill all open orders in accordance with the law.

Please confirm receipt of this communication and your intentions.

Respectfully,

Ken Brech
VP Operations – Chemicals NA
Incora
248-841-5652

On Jun 12, 2023, at 6:14 PM, Steve Pelletier <spellletier@appli-tec.com> wrote:

CAUTION:This email originated outside of Incora. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Jason,

Appli-Tec does not currently have a working relationship with Incora post-bankruptcy or any foundation for an agreement, and we cannot predict when we will have a relationship.

Our CEO provided the below communication and Appli-Tec has yet to receive sufficient reply.

"We do not believe this draft agreement protects Appli-Tec's interests. Simply put we want to be paid everything owed us to have a relationship with the Incora entities debtors in possession. Consistent with that goal we want a proposed agreement that: (i) ensures, through a court approved release, the pre-petition payments made by the Incora entities are not later subject to disgorgement under a preferential transfer or other theory; (ii) ensures we get paid what we pre-petition shipped that has yet to be paid for within an agreed to time table; (iii) ensures what we ship post-petition is paid within the 45 days from shipping arrangement we had with the Incora entities pre-bankruptcy; and (iv) if the above terms in (ii) or (iii) are not complied with, time is of the essence, then we have the option to stop further shipments without risk of disgorgement of the previous post-petition payment made on other product that was shipped. If the debtor in

possession are willing to do that please present us a proposed revised agreement."

Please advise on next steps.

Best Regards,
Steve

Steve Pelletier

Technical Sales Lead

Appli-Tec, Inc.

Thermoset Adhesive Solutions

e:

m: 202-630-4850

o: 603-685-0500 ext. 526

w: www.appli-tec.com

ISO-9001 / AS9100 Certified

7 Industrial Way, Unit 1

Salem, NH 03079

****This e-mail and any files transmitted with it are proprietary and intended solely for the use of the individual or entity to whom it is addressed. If you have received this e-mail in error, please notify the sender.**

From: Jason Daley <jason.daley@incora.com>

Sent: Monday, June 12, 2023 4:20:24 PM

To: Steve Pelletier <spelletier@appli-tec.com>; Michael Foster <Michael.Foster@wescoair.com>

Subject: Incora Update

CAUTION: This email originated from outside of the organization.

Mr. Pelletier,

I understand there was additional discussion with Incoras, V.P. of chemicals on Friday. Considering the conversation, has anything changed with regards to allowing cash in advance invoices for critical BAE orders?

I have a 9:00am with BAE executive leadership tomorrow and would like to give them the most recent update.

Respectfully,

Jason

Jason Daley

Director – Customer Operations – North America

jason.daley@incora.com | M: +1 (470) 747-2404

Incora.com

June 13, 2023

VIA EMAIL

Mr. Timothy Walsh
President
Appli-Tec, Inc
Thermoset Adhesive Solutions
7 Industrial Way, Unit 1
Salem, NH 03079

Re: *Outstanding Purchase Orders*

Dear Mr. Walsh:

I write this letter on behalf of Wesco Aircraft Holdings, Inc. and certain of its affiliates (collectively, “*Incora*”), to provide you information concerning your firm’s obligations with respect to certain accepted purchase orders that your company has not yet satisfied.

As you know, *Incora* filed voluntary petitions for protection under chapter 11 of the U.S. Bankruptcy Code (the “*Bankruptcy Code*”) on June 1, 2023 (the “*Petition Date*”) before the U.S. Bankruptcy Court for the Southern District of Texas (the “*Bankruptcy Court*”). Chapter 11 is a reorganization process through which *Incora* will seek to improve its capital structure, address targeted operational issues, and position its business for long-term growth. All of *Incora*’s global operations are open for business, and we expect to maintain normal operations throughout the company’s court-supervised financial reorganization.

During this process, *Incora* has full authority to pay vendors in the ordinary course of business for all goods that are delivered on or after the *Petition Date*, regardless of whether the purchase orders for those goods were placed before or after the *Petition Date*. To eliminate any doubt as to purchase orders that were placed before the *Petition Date*, the Court has entered an order that explicitly authorizes *Incora* to pay vendors for satisfying purchase orders that were outstanding on the *Petition Date*.

Incora also has ample funds to pay for goods that are delivered after the *Petition Date*. On June 2, *Incora* received \$110 million in new-money financing to fund its ongoing business operations. *Incora* has received additional \$190 million of new-money commitments, to be funded in late June or early July, which will further bolster *Incora*’s ability to pay vendors on time and in full. To be clear, ***Incora* has the authority and wherewithal to pay for all future deliveries and intends to do so.**

Vendors may also take comfort that *Incora*’s obligations to pay for goods that are delivered after the *Petition Date* are entitled to priority over other unsecured claims, to the extent that *Incora*’s bankruptcy estate and its creditors benefit from the delivery of goods. *See* 11 U.S.C. § 503(b); *In re H.L.S. Energy Co.*, 151 F.3d 434, 437 (5th Cir. 1998). This priority treatment is

June 13, 2023

Page 2


known as “administrative status.” **Incora hereby acknowledges that your fulfillment of open purchase orders will benefit Incora’s bankruptcy estates, acknowledges that your claim for payment of those goods will be entitled to administrative status, and undertakes to pay for any such orders in full, in the ordinary course of business.**

As explained above, your firm will be paid if it honors the purchase orders that it has already accepted. However, **if your firm refuses to honor accepted purchase orders, the Bankruptcy Court may impose monetary sanctions against it for violation of federal law.**

The Bankruptcy Code governs the rights of debtors and counterparties under contracts that have not been fully performed prior to the Petition Date, such as your company’s outstanding purchase orders. With limited exceptions (not applicable here), such a contract may not be terminated or modified because of Incora’s insolvency or financial condition before the Petition Date or because of the commencement of Incora’s chapter 11 cases. *See* 11 U.S.C. § 365(e)(1). For this reason, a counterparty must continue to perform under an executory contract, such as your outstanding purchase orders, until the debtor determines whether to assume or reject your contract. *See In re Liljeberg Enters., Inc.*, 304 F.3d 410, 438 (5th Cir. 2002); *In re Nat. Gypsum Co.*, 208 F.3d 498, 505 (5th Cir. 2000). Furthermore, Incora believes that any refusal to honor the outstanding purchase orders would be unlawful under section 362 of the Bankruptcy Code, which imposes an automatic stay against any act to exercise control over property of a debtor’s bankruptcy estate. *See* 11 U.S.C. § 362(a)(3). Here, refusal to perform under an accepted purchase order would wrongfully interfere with Incora’s right to enjoy the benefit of that accepted purchase order. *See, e.g.*, 3 Collier on Bankr. ¶ 362.03[a] (16th ed.) (“As property of the estate, the debtor’s interests in [executory] contracts or leases are protected against termination or other interference that would have the effect of removing or hindering the debtor’s rights . . .”). Refusal to honor an accepted purchase order would also violate the Bankruptcy Code’s automatic stay if done for the purpose of recovering a claim that arose prior to the Petition Date, such as payment for goods that were delivered before the Petition Date. *See* 11 U.S.C. § 362(a)(6).

Incora values your partnership, looks forward to maintaining a mutually beneficial long-term relationship, and is committing to paying for all future shipments when due and in full. However, if your firm unlawfully refuses to honor accepted purchase orders, Incora is prepared to pursue all available remedies, including those described above. I am available to discuss this matter.

Sincerely,

/s/ 
Dawn Landry
Chief Administrative Officer

Attachment:
Appli-Tec Open PO Report