

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

|                                        |   |                        |
|----------------------------------------|---|------------------------|
| ADVANCED FLEXIBLE CIRCUITS, INC.,      | ) |                        |
|                                        | ) | CIVIL NO.              |
| Plaintiff,                             | ) |                        |
|                                        | ) | ACTION FOR:            |
| v.                                     | ) | PRE-CONTRACT VIOLATION |
|                                        | ) | AND DAMAGES            |
| GE SENSING & INSPECTION TECHNOLOGIES   | ) |                        |
| GMBH; GE SENSING, DIVISION OF CARIBE   | ) |                        |
| GE INTERNATIONAL OF PUERTO RICO, INC., | ) |                        |
|                                        | ) |                        |
| Defendants.                            | ) |                        |
| _____                                  | ) |                        |

**COMPLAINT**

COMES NOW plaintiff, represented by the undersigned counsel and respectfully states:

1. This is an action arising out of diversity of citizenship between the parties. Plaintiff is a corporation established in Minnesota and doing business in the State of California and production activity in Taiwan. Defendant GE Sensing & Inspection Technologies GMBH is a foreign entity established and doing business in Germany and GE Sensing, Division of Caribe, GE International of Puerto Rico, Inc. is a corporation established in the Commonwealth of Puerto Rico and doing business in Añasco, Puerto Rico.

2. The amount in controversy exceeds \$75,000.00 exclusive of interests and costs.

3. Plaintiff, Advance Flexible Circuits, Inc. (from hereon referred to as AFC) is a manufacturer and supplier of thermal filaments used in the manufacturing and production of cardiac catheters.

4. Defendant GE Sensing & Inspection Technologies GMBH (from hereon referred to as "GMBH") is the parent company of GE Sensing, Division of Caribe, GE International of Puerto Rico, Inc. which is in the business, among other things, of manufacturing, producing and selling cardiac catheters.

5. Since the beginning of 2009 the parties entertained serious business negotiations for AFC to manufacture and produce a thermal filament component in accordance with GMBH's specifications as described as ELS8022 and drawing number 270361, REVL dedicated to GMBH and produced by AFC.

6. The parties undertook extensive and intensive negotiations which resulted in an agreement whereby AFC manufactured the thermal filament in accordance with the specifications and the prototypes which were approved for production.

7. Plaintiff incurred substantial and expensive cost in the production of the thermal filament.

8. The parties had agreed that any and all upfront cost for equipment and non-recurring engineering cost incurred in the startup of the contract would be re-paid by defendants before December 21, 2009.

9. Plaintiff accepted the offer of purchase from defendant which is certainly the normal procedure to perfect a contract. It is the way of expressing the assent of the parties, essential requirement for the contract's existence. This is the provision in Article 1214 of the Civil Code of Puerto Rico which states: "Consent is shown by the concurrence of the offer and acceptance of the thing and the cost which are to constitute the contract." 31 LPRA § 3401.

10. The parties had reached a meeting of the mind on all of the details of the contract to the point that defendants requested plaintiff to sign and execute the purchase agreement on June 16, 2009. It was specifically agreed that the agreement shall take effect on June 24, 2009 and would remain in effect for a three-year term, thereafter the agreement was to be renewed automatically on each anniversary of the effective date for one-year period.

11. On June 24, 2009 GMBH Senior Manager and Global Commodity Leader requested AFC to sign and return the contract. Notwithstanding the total agreement of the mind between the parties, defendant refused to sign the contract to consummate the same.

12. It is clear that there was a mutual declaration of willingness between the parties for a definite contract and that agreement contain all the elements of a contract that are deemed necessary so that such contract may be perfected by the mere acceptance of the offer. See Diez-Picazo, Fundamento Civil Patrimonial, 193, Editorial

Technos, Madrid (1979); II-I J. PuigBrutan, Fundamentos de Derecho Civil 180, n.14 Ed. Bosch, Barcelona, Second Edition (1978); II-2 JL La Cruz Verdejo, Elementos de Derecho Civil 74-75, Libreria, Barcelona (1977); III J. Castán Tobeñas, Derecho Civil Español, Común y Foral 533, Ed. Reus, Madrid 11th Ed. (1974); III-1 E Vazquez bote, Derecho Civil en Puerto Rico, 481-482, Ed. Jurídicas, Barcelona (1973).

13. The governing rule in the United States is fully in accord with the Spanish doctrine of this area. 1W.H.E. Jaeger, Williston on Contracts, 108, § 37 Baker, Voorhis & Company, Inc. 3.Ed. (1957); IA Corbin Contracts 20C, § 11, West Publishing Company, St. Paul (1963).

14. AFC accepted the offer from GMBH seeking the right to manufacture the thermal filaments consisting in the production of prototype filaments which were approved by defendants. AFC accepted the offer from GMBH to pay all the any and all up front costs for equipment and non-recurring engineering cost incurred in the start up of the production, required GMBH to pay the cost which was invoiced of \$183,232.00.

15. The declaration of intention to accept the terms discussed were clear between the parties. There was no vagueness or insufficiency which should impede the acceptance between the parties. The very acts of the parties discussing the several aspects of the production and cost was collected in the numerous communications between them and the weekly teleconferences held between them.

16. The parties had reached an agreement which defendants refused to abide by it. Assuming that there was no contract, the non-existence of a contractual document however, does not dismiss the issue of GMBH and Division's liabilities arising from the facts outlined above. The issue is as follows: are GMBH and Division legally liable for the damage sustained by AFC due to the formers withdrawal from the final negotiations. It is, what is the nature of the liability. Is it contractual, extracontractual or both? Preliminary negotiations generate a social relationship that imposes on the parties the duty to act in good faith. As Diez-Picazo above has correctly observed, "does not only govern legal relationships already established, but also those derived from a simple social contact." OP.CIT. at 191. Notwithstanding the difficulty posed by the nature of this question, the legal writer fully admits that the existence of liability arising from the unjustified termination of preliminary agreements.

17. Pre-contractual negotiations may be varied. Hence, pre-contractual liability may stem from different grounds, thus, when the conduct of one of the party is, by the very nature, wrongful or dolose, as is the case when one of the parties fails to disclose its lack of capacity to execute the same; or when agreements are pursued without an intent to contract; or to obtain confidential information on the business; or when agreements are begun not with the purpose of coming to term but to obtain some advantage so as to do business with a third party; or when, due to one of the party's fault, the business transaction is ineffective. It is obvious that defendant GMBH and

Division failed to sign the contract agreed by the parties for one or several of the above reasons. Irrespective of the cause, defendants either breached the agreement, requiring that they be ordered to comply or if there was no contract, defendants acted wrongfully, deceitfully or fraudulently with intent to cause serious damages to plaintiff.

18. In view of the above, it is requested from this Court that judgment be entered against defendants for all contractual damages and liquidated damages which are estimated in no less than \$5 million dollars, in addition to all up front cost incurred by plaintiff in the amount of \$183,232.00. In view of defendant's deceitful and wrongful conduct, plaintiff is also entitled to punitive damages in an amount to be determined by a jury.

WHEREFORE, it is requested that judgment be entered in favor of plaintiff after a jury verdict for all damages caused, contractual or extra-contractual, exemplary damages, interest cost and attorney's fees.

Respectfully submitted,

s/ Wilfredo A. Géigel, Esq.

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Dated: January 29, 2010