



<b>QP148</b>	<b>Purchase Order Terms &amp; Conditions</b>		
<b>Issued by: Accounting</b>	<b>Effective Date: 5/6/2015</b>	<b>Rev. C</b>	<b>Pg. 1 of 4</b>
Approved: 5/6/2015 8:49 AM - Jim Parsons			

- Definitions.** The term "PGF" shall refer to PGF Technology Group, Inc., a Michigan corporation, and/or any division or subsidiary identified on the front of this Purchase Order. The term "Supplier" shall refer to the vendor designated on the face hereof and shall also include all persons performing any type of work under this Purchase Order ("PO"). The term "Product(s)" shall refer to the materials, supplies, items and equipment covered by this PO and any pre-existing master agreement between PGF and the Supplier. The term "Services" shall refer to the work and/or Services covered by this PO and any pre-existing master agreement between PGF and the Supplier.
- Acceptance.** This PO must be accepted in writing by Supplier by returning a signed acknowledgment copy of this PO. If Supplier fails to accept in writing, any conduct by Supplier that is in accordance with the existence of this PO shall constitute an acceptance by Supplier of this PO. Any terms proposed in Supplier's acceptance of PGF's offer that add to, vary from, or conflict with these Terms and Conditions are hereby objected to and shall not apply. If this PO has been issued by PGF in response to an offer, and if any of these Terms and Conditions are additional to or different from any terms of such offer, then the issuance of this PO by PGF shall constitute an acceptance of such offer subject to the express condition that Supplier assents to these Terms and Conditions, and Supplier shall be deemed to have so assented unless Supplier notifies PGF to the contrary in writing within ten (10) days of receipt of this PO. Any preprinted terms and conditions provided by Supplier shall be void and of no effect.
- Entire Agreement.** This PO consists of the terms contained herein and on the face as well as the PGF quality requirements (a copy of which is available to Supplier upon request) and any exhibits referred to or attached hereto, including without limitation, the following indicated attachments:

- Exhibit A** – Specifications
- Exhibit B** – Rebate Terms
- Exhibit C** – Blanket Order Terms
- Exhibit D** – Equipment Placement Terms
- Exhibit E** – Other \_\_\_\_\_

This PO sets forth the complete agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written communications relating thereto. If this PO is used as a release for Products or Services under a pre-existing master agreement, then the Terms and Conditions of this PO shall supplement the provisions of such master agreement to the extent they are not inconsistent. In the event of any inconsistency between the terms of any pre-existing master agreement, the terms on the face of this PO or these pre-printed Terms and Conditions, the following shall be the order of precedence: (i) the terms of the master agreement, (ii) the terms on the face of the PO, and (iii) these pre-printed Terms and Conditions. Any reference to a proposal, quotation or other communication by Supplier shall, unless indicated to the contrary, be limited to the description of the Products or Services and by the terms set forth or incorporated by reference herein. The failure of PGF to insist on performance of any provision hereof shall not be construed to be a waiver of such provision or any part thereof.

- Prices.** Except as otherwise provided in any exhibit attached to this PO or any pre-existing master agreement, the price(s) set forth on the face of this PO are firm, and are not subject to increase.
- Taxes.** The prices for the Products or Services provided hereunder include all Federal, state and local taxes imposed upon or on account of such sale, unless otherwise indicated on the face of this PO.
- Invoices.** All invoices shall be submitted in duplicate and be accompanied by a copy of the bill of lading if on collect freight shipments or if otherwise required by law, and by a prepaid freight bill if all or any part of the freight is included on the face of the invoice. PGF shall have no obligation to pay any Supplier invoice submitted more than ninety (90) days after (i) completion of Services and/or (ii) delivery of Products hereunder. In addition to any other information specified elsewhere herein, invoices and packing slips shall contain the following information: PO number, item number, description of Products and Services, sizes, quantities, weight, unit prices and extended totals.
- Payment.** PGF shall make payment for Products and Services within 45 days after receipt of invoice and delivery and acceptance of the Products or complete performance of the Services, unless different terms have been stated on the face of this PO. PGF shall receive a two percent (2%) discount for any Supplier invoice paid within ten (10) days of receipt of invoice. Payment of an invoice shall not constitute acceptance of Products or Services and shall be subject to adjustment for errors, shortages, defects in the Products or Services, damage to PGF for which Supplier is partially or wholly responsible or other failure of Supplier to meet the requirements of the PO.

- Delivery.** Time is of the essence and the Products must be received or Services performed on the dates and at the destination(s) set forth on the face hereof. If Supplier fails to meet any such delivery date, PGF may, without limiting its other rights and remedies, direct expedited routing, charge excess costs incurred thereby to Supplier, or cancel all or part of this PO. All rejected or over-run

Products and material with PGF's printing or identification must be destroyed by Supplier at Supplier's expense and not sold as surplus.

- Freight, Title and Risk of Loss.** Unless otherwise specifically provided for on the face page hereof, (a) Supplier shall be responsible for freight and delivery to the PGF destination specified on the face of this PO and (b) all freight and delivery charges will be paid by Supplier. Notwithstanding anything else herein,

Supplier shall bear all risks of loss and damage to the Products until final acceptance by

PGF at PGF's "ship to" destination specified on the face of this PO. Further, Supplier shall bear the same risks with respect to any Products rejected by PGF or as to which PGF has revoked its acceptance, from the time of such rejection or revocation.

- Inspection.**
  - Notwithstanding any prior inspections or payments hereunder, all Products and Services shall be subject to final inspection, which may include measurement, testing or examination, and acceptance at PGF's facility within a reasonable time (but not less than 45 days) after receipt at destination. Any inspection by PGF does not relieve Supplier of any obligations or liabilities under this PO.
  - If any Products or Services delivered do not meet all of the requirements of this PO, PGF shall have the right to reject such Products or Services and return such Products at Supplier's expense. PGF may elect to reject the entire Products or Services tendered even if only a portion thereof is nonconforming. If PGF elects to accept nonconforming Products or Services, PGF, in addition to its other remedies, shall be entitled to an appropriate reduction in price. Payment for any Products or Services shall not be deemed an acceptance thereof.
  - Supplier agrees to undertake such quality control and inspection procedures as required by the FDA or any other appropriate regulatory agency. Supplier will provide PGF with access to its manufacturing facilities in order that PGF may make CGMP audits at such times as PGF shall deem necessary, upon not less than 48 hours notice.
- Warranty.**
  - Supplier warrants that all Products and Services furnished hereunder shall: (i) be free from latent and patent defects in workmanship, material, manufacture, and design (where design is Supplier's responsibility); (ii) comply with the requirements of this PO, including all drawings, specifications and or quality plans incorporated herein and samples and warranties furnished by Supplier; (iii) be merchantable and safe for consumer use, and fit and sufficient for the use intended by PGF; (iv) be free and clear of any lien, security interest or other adverse claim against title; (v) comply with the laws of the states and of the United States governing weights, measures and sizes; (vi) not be adulterated or misbranded within the meaning of any State food and drug laws or the Federal Food, Drug and Cosmetic Act, or not be an article which may not under the provisions of sections 510, 513, 515 or 801 of the Act or any other applicable Federal, state or local laws, be sold, legally transported or introduced into interstate commerce; and (vii) not infringe, including without limitation their sale or use alone or in combination, any United States or foreign patents, trademarks, trade secrets, copyrights or proprietary rights of any third party.
  - The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive any delivery, inspection, acceptance, and payment by PGF.
  - Supplier's warranties shall be effective for the period of time either (i) set forth on the face of this PO, or (ii) one (1) year from the date of PGF's final acceptance, whichever is greater.
  - These warranties shall run to PGF's customers and users of its products.
  - If any Products or Services furnished hereunder do not meet the warranties specified in this PO, PGF may, at its option: (i) require Supplier to correct, at no cost to PGF, any defective or nonconforming Products or Services by repair or replacement within seven (7) days of notice to Supplier; (ii) return such defective or nonconforming Products at Supplier's expense to Supplier and recover from Supplier the price thereof; (iii) correct the defective or nonconforming Products or Services itself and charge Supplier with the cost of such correction; or (iv) accept the defective or nonconforming Products or Services at a reduced price.



12. Changes. PGF reserves the right at any time to change this PO in writing, and if such change causes an increase or decrease in price or delivery of Products or Services, an equitable written adjustment shall be made.
13. Confidentiality. In its performance of this PO, PGF may disclose to Supplier or Supplier may have access to certain Confidential Information of PGF. "Confidential Information" means trade secrets (as defined by applicable laws), any data, reports, computer programs or models and related documentation, business or research plans, specifications, drawings, designs or information transmitted by PGF to Supplier in connection with this PO, and any other information that is of value to its owner and is treated as confidential, including without limitation, the fact that Supplier has furnished or contracted to furnish to PGF the Products or Services covered by this PO. All Confidential Information of PGF shall remain the property of PGF. Supplier shall keep all Proprietary Information of PGF confidential and use such information only as necessary to fulfill Supplier's obligations pursuant to this PO. All originals, copies, summaries and derivations of Confidential Information in whatever form shall be returned to PGF or destroyed upon PGF's request.
14. Intellectual Property.
- (a) Ownership. To the extent this PO entails the Provision of Services, Supplier agrees that all writings, drawings, designs, copyrightable material, inventions (whether or not patentable), improvements, discoveries, developments, and all works of authorship created by Supplier in performance of its obligations hereunder, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other intellectual property right (collectively "Intellectual Property"), are the sole property of PGF. Supplier assigns to PGF all right, title and interest in and to all such Intellectual Property, and shall perform such further acts needed to transfer, perfect, and defend PGF's ownership of the Intellectual Property. Supplier shall require its subcontractors to execute written assignments of Intellectual Property to effect such assignment.
- (b) License. To the extent that Supplier or third parties retain ownership rights in materials delivered with the Products, or upon which the Services are based, Supplier hereby grants to PGF an irrevocable, worldwide, non-exclusive, royalty-free right and license to make, have made, modify, use, distribute, publicly perform or display, sell, offer to sell, and import such materials. Supplier hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the licenses and intellectual property rights set forth in this Intellectual Property section.
15. Tooling and Equipment. Design, tools, jigs, dies, fixtures, templates, patterns, drawings, and other information and things (herein collectively, the "Tools") paid for or furnished by PGF shall be PGF's property and Supplier shall not encumber or dispose of them in any way. Supplier shall maintain such Tools in Product working condition. The Tools shall be used exclusively for Supplier's performance of its obligations hereunder. To the extent any equipment owned by PGF is placed at Supplier's facility to be used in connection with Supplier's performance of its obligations hereunder, in addition to the foregoing terms and conditions, such equipment and Supplier's use thereof shall be subject to the terms and conditions set forth in PGF's Equipment Placement Terms.
16. Work on PGF's Premises; Occupational Health Services. If the Services are to be performed on PGF's premises, Supplier shall comply with all applicable safety laws and PGF's then current safety and other applicable regulations. Supplier shall provide PGF with a complete list of all chemicals, hazardous materials, and ingredients in the composition of Products or used in the performance of the Services hereunder and a copy of the Material Safety Data Sheet for such chemicals and hazardous materials. The submission of such list by Supplier shall not relieve Supplier of exclusive responsibility for the safe transportation, use, storage, and disposal of such materials prior to acceptance by PGF. All chemicals and hazardous materials brought by Supplier to PGF's premises shall bear a label stating the identity of the chemical or material and the hazards associated therewith.
17. Indemnity; Insurance.
- (a) Supplier shall defend, indemnify and hold PGF, its affiliated companies, and their respective shareholders, officers, directors, employees, agents, successors, and assigns harmless from and against any and all claims, suits, actions, liabilities, losses, costs, reasonable attorneys' fees, expenses, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of Supplier; (ii) Products or Services supplied hereunder; (iii) a breach of any of Supplier's warranties or any other term and condition of this PO; (iv) Supplier's negligent, unauthorized or wrongful acts or omissions with regard to the transportation, use, handling, disposal, processing or installation of hazardous materials; (v) a claim that any Products or Services furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another; (vi) a claim of any lien, security interest or other encumbrance made by a third party; (vii) a violation of federal or state law, regulation, statute or ordinance; or (viii) failure to comply with the Confidentiality obligations set forth herein. Notwithstanding the foregoing, Supplier shall not hold PGF harmless from claims arising out of the negligence, reckless actions or willful misconduct or malfeasance of PGF, its officers, agents, or employees or any person or entity not subject to Supplier's supervision or control.
- (b) Without limiting PGF's rights and remedies hereunder, if PGF believes that the Products or Services supplied hereunder are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, trade secret, or other proprietary right, PGF may require Supplier to (i) replace such Products or Services with equivalent functionality or (ii) modify such Products or Services with equivalent functionality to make them non-infringing.
- (c) Supplier shall carry and maintain insurance coverage satisfactory to PGF to cover its obligations in this PO, including without limitation, the following insurance with the respective minimum limits per occurrence: Commercial General Liability - \$1,000,000, Workers' Compensation - statutory, Business Automobile Liability - \$1,000,000 and Product Liability Coverage's - \$1,000,000. Upon request, Supplier shall submit to PGF certificates of insurance showing proof of such coverage's. All such policies shall name PGF as an additional insured.
18. Termination.
- (a) PGF may, at any time, terminate this PO, in whole or in part, without cause, upon written notice to Supplier. Upon any such termination Supplier shall, to the extent specified by PGF, stop all work on this PO, and cause its suppliers and subcontractors to stop work. Charges for any such termination of this PO shall be limited to actual non-recoverable costs incurred by Supplier that Supplier can demonstrate were properly incurred for the Products or Services hereunder prior to the date of termination. In no event will PGF reimburse Supplier for anticipated profits or revenue or other economic loss for undelivered Products or unperformed Services. Any Products for which Supplier is reimbursed shall become PGF's property.
- (b) PGF may terminate this PO, in whole or in part, if Supplier: (i) fails to make delivery of the Products or perform the Services within the time specified herein; or (ii) fails to replace or correct defective Products or Services in accordance with the provisions of this PO; or (iii) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors.
- (c) Any such termination shall not relieve Supplier from any liability hereunder.
19. Remedies. PGF's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision.
20. PGF Property. All drawings, artwork, data, material, supplies, equipment, tooling, dies, molds, fixtures, and patterns furnished or paid for by PGF shall be PGF's exclusive property, and shall be used by Supplier only in performance of this PO. Such property, while in Supplier's custody and control, shall be held at Supplier's sole risk and, upon PGF's request, shall be returned to PGF in Product condition, normal wear and tear excepted.
21. Assignability and Subcontracting. This PO shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, neither this PO nor any interest therein shall be assigned, delegated subcontracted for, or otherwise transferred by the Supplier, except upon the prior written consent of PGF. Any assignment or transfer without such consent shall be void and of no effect. Regardless of PGF's consent to any of the foregoing, Supplier shall remain liable for the performance of all such obligations and shall ensure that any permitted subcontractor or non-employee reads and understands the terms of this PO. PGF may assign its rights or obligations under this PO to any PGF affiliate or successor without Supplier's consent.
22. Survivorship. All provisions, representations and warranties contained herein which by their nature are required or intended to be observed or performed after termination of this PO will survive its termination.
23. Release of Information. Supplier shall not release any statement, advertisement, information, or publicity referring to PGF, or any PGF affiliate without PGF's prior written approval.
24. Compliance with Laws. Supplier warrants that all Products and Services will be produced or performed in compliance with all applicable federal, state and local laws, rules and regulations, including without limitation: (a) the nondiscrimination provisions of (i) the Equal Opportunity clause set forth in 41 CFR 60-1.4 (a) pursuant to the requirements of Executive Order 11246; (ii) the Rehabilitation Act of 1973 as set forth in 41 CFR 60-741.1; (iii) the Vietnam Era Veteran Readjustment Assistance Act of 1974 as set forth in 41 CFR 60-250.4; and (iv) any law, order, or regulatory provision issued in addition, supplement or replacement of the foregoing; and (b) the requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and all regulations and orders issued under section 14 thereof.



25. Applicable Law. This PO shall be governed by and construed according to the laws of the State of Michigan as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles of such state.
26. Independent Contractor. Supplier will perform this PO as an independent contractor, and this PO will not be construed to create between the parties the relationship of principal and agent, joint-ventures, co-partners, employer and employee, franchiser and franchisee or any other similar relationship, the existence of which is expressly denied by each party. Supplier represents that Supplier is engaged in similar business for other clients. Supplier will conduct its business under its own name as an independent contractor, and is hereby expressly prohibited from holding itself out as an employee, agent, partner or representative of PGF. It is agreed that any person employed by Supplier to perform hereunder will not be deemed to be an employee of PGF, and Supplier and its suppliers, subcontractors, agents or representatives will not be, or represent themselves to be, officers, employees, agents or representatives of PGF and will not bind, or attempt to bind, PGF to any agreement, liability or obligation of any nature.
27. Force Majeure. Supplier and PGF shall have the right to suspend their respective performance hereunder, without penalty or liability, in the event of war, riot, flood, acts of God, fire, court order, strike, work stoppage, act of governmental authority, or other causes beyond their control (a "Force Majeure Event."). Delays in delivery due to a Force Majeure Event shall automatically extend the delivery date for a period equal to the duration of such event. Any acceptance or warranty period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.
28. Severability. These Terms and Conditions shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.
29. Change Control Statement. Supplier will not make any change to the product, process, materials, formulation, packaging, labeling, software, environment conditions, quality assurance processes, equipment, production location or subcontractor that could in anyway affect the quality of the finished device, without prior written notification and where appropriate, approval from PGF.
30. Packaging and Shipping. Seller agrees to:
  - (a) Properly prepare, pack, mark, load and ship all Products to prevent damage and deterioration, in accordance with requirements of the Purchase Order, Buyer and involved carriers, and in a manner to secure lowest transport cost
  - (b) Route shipments in accordance with instructions from Buyer.
  - (c) Make no charge for handling, packaging, storage, transportation or drayage of Products unless otherwise stated in Purchase Order.
  - (d) Provide with each shipment packing slips with Buyer's order number marked thereon.
  - (e) Properly mark each package with the Purchase Order number, the factory plant and dock number, and where multiple packages comprise a single shipment, to consecutively number each package.
  - (f) Promptly forward the original bill of lading or other shipping receipt or similar applicable Seller Document for each shipment, in accordance with the Buyer's instructions. Seller will include on bills of lading or other shipping receipts or similar Seller Documents correct identification of the Products correct identification of Products shipped in accordance with Buyer's instructions and carrier's requirements. The marks on each package and identification of the Products on packing slips, bills of lading, invoices and similar Seller Documents shall be sufficient to enable Buyer to easily identify the Products.
31. Harmful Ingredients Disclosure. If requested by Buyer, Seller shall promptly furnish to Buyer in such form and details as Buyer may direct:
  - (a) A list of all ingredients in Products purchased hereunder.
  - (b) The amount of one or more ingredients.
  - (c) Information concerning any changes in or additions to such ingredients. Prior to and with shipment of Product purchases hereunder, Seller agrees to furnish to Buyer sufficient warning and notice in writing including appropriate labels on goods, containers and packing of any hazardous material which is an ingredient or part of any of the Products, together with such handling instructions as may be necessary to advise carriers, Buyer and their respective employees as how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Products, containers and packing shipped to Buyer. Whenever Seller becomes aware that any ingredient or component of the Products cover by this Purchase Order are or may become harmful to persons or property or that the design or construction of the Products is defective in any manner, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.
32. Insolvency. Buyer may immediately terminate this Purchase Order in whole or in part without liability to Buyer upon the occurrence of any of the following events (or any other comparable event).
  - (a) Insolvency of the Seller.
  - (b) Filing of voluntary or involuntary petition for bankruptcy by or against Seller.
  - (c) Appointment of a receiver or trustee for Seller.
  - (d) Execution of an assignment for benefit of creditors by Seller, provided that any such petition, appointment, or assignment is not vacated or nullified within fifteen (15) days of such event.
33. Technical Information Disclosure to Buyer. Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information or data of any type whatsoever which Seller shall have disclosed or may hereafter disclose to Buyer in connection with Products or Services covered by this Purchase Order.
34. Liens. Seller shall not take or permit any third party to take any security interest, lien or other interest in Buyer's Property. Seller expressly waives any lien, including, without limitation, molder's, builder's, artisan's or similar liens or any security interest that Seller might otherwise have on any products for any amounts owed Seller by the Buyer or Buyer's customer. If requested by Buyer, Seller shall furnish all necessary lien Waivers, affidavits or other documents arising out of furnishing of Products necessary for release of any purported lien or security interest.
35. Duty Drawback Rights. This Purchase Order includes all related custom duty drawback rights, if any, which Seller can transfer to Buyer. Seller shall inform Buyer in writing of the existence of any such rights, and upon request, supply such documents as may be required for Buyer to obtain such drawback.
36. Setoff. In addition to any right of setoff provided by law, Buyer shall have the right at all times to deduct from all amounts due Seller under this Purchase Order, either damages from any breach of the Purchase Order or all indebtedness or other amount due Buyer from Seller, irrespective of whether or not such deduction is related to the Products of Services covered by the Purchase Order.
37. No Implied Waiver. The failure of either party at any time to require performance by the other party of any provision of the Purchase Order shall in no way affect the right to require such performance at any time thereafter, not shall the waiver of either party of a breach of any provision of this Purchase Order constitute a waiver of any succeeding breach of the same or any other provision.
38. Successors. The Purchase Order shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representative, successors and permitted assigns.
39. Assignment and Delegation. Seller shall not assign it rights or delegate its obligations under this Purchase Order without the written consent of Buyer, and any attempt to make such assignment or delegation without the consent shall be null and void.
40. Subcontracting. No Products to be delivered under this Purchase Order shall be procured by Seller from a third party in completed or substantially completed form without the Buyer's written consent unless the purchase if being made from Seller in its capacity as a retailer, jobber or distributor. Seller shall not enter into a subcontract for any Services to be performed under this Purchase Order without the Buyer's written consent; provided, however, that Buyer's approval of any subcontract or any provisions thereof shall not in any way be construed as a ratification thereof or relieve Seller of any responsibility for performing this Purchase Order.
41. Relationship of Parties. Seller and Buyer and independent contracting parties and nothing in the Purchase Order shall be construed to make either party the partner, agent or legal representative of the other for any purpose whatsoever, and neither party shall be liable for the debts, obligations or responsibilities of the other. Neither party shall have any authority to assume or create any obligation on behalf of or in the name of the other party in any manner.
42. Electronic Documents. Buyer may submit any documents to be provided to Seller relating to the Purchase Order electronically, using electronic data transmission methods or web portal specified by Buyer. If requested by Buyer, Seller shall submit invoices and other documents to be provided to Buyer relating to the Purchase Order or Products, using electronic data transmission methods or web portal specified by Buyer.



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Supplier Name

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Signature

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Date

\_\_\_\_\_  
PGF Representative

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Signature

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Date