

Freshtec Food vs Easy Tray LLC
2004-1868-CD

2004-1868-CD
FRESHTEC FOOD PROCESSING EQ. INTER. VS EASY TRAY, LLC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING :
EQUIPMENT INTERNATIONAL, LLC, :
a Pennsylvania limited liability company, :
Plaintiff, :
v. : No. 2004-1868-CD
: :
EASY TRAY, LLC :
Defendant. :

PRAECIPE FOR WRIT OF SUMMONS

TO: Prothonotary

Please prepare and issue a Writ of Summons against Easy Tray, LLC, the above named
Defendant.

Hopkins Heltzel LLP

David J. Hopkins, Esquire

Date: November 24, 2004

FILED

NOV 24 2004

0/4:00pm

William A. Shaw
Prothonotary

2 cents to Atty

3 cents to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING :
EQUIPMENT INTERNATIONAL, LLC, :
a Pennsylvania limited liability company, :
Plaintiff, :
v. : No. 2004-¹⁸⁶⁸ CD
EASY TRAY, LLC :
Defendant. :

WRIT OF SUMMONS

TO: Easy Tray, LLC.

You are hereby notified that FreshTec Food Processing Equipment International, LLC
has commenced an action against you.

Date: Nov. 24, 2004



Prothonotary

Seal of Court:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL, LLC,
a Pennsylvania limited liability company,
Plaintiff,

v.

EASY TRAY, LLC

Defendant.

No. 2004-1868 CD

Type of Pleading: Complaint

Filed on behalf of: FreshTec Food
Processing Equipment International, LLC,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801
(814) 375-0300

FILED
616 09:00 am 3/8/05
SCC/

JAN 18 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL, LLC,
a Pennsylvania limited liability company,
Plaintiff,

v. : No. 2004-1868 CD
EASY TRAY, LLC :
Defendant. :

NOTICE

TO: Defendant

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint is served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING :
EQUIPMENT INTERNATIONAL, LLC, :
a Pennsylvania limited liability company, :
Plaintiff, :
: :
v. : No. 2004-1868 CD
: :
EASY TRAY, LLC :
Defendant. :
:

COMPLAINT

AND NOW, comes FreshTec Food Processing Equipment International, LLC, (hereinafter "FreshTec") and by and through its attorneys, Hopkins Heltzel LLP and says as follows.

1. FreshTec is Limited Liability Company organized under the laws of the Commonwealth of Pennsylvania that maintains a principal business address at P.O. Box 585, BuBois, Pennsylvania 15801.
2. Defendant is Easy Tray, LLC, a South Carolina Limited Liability Company whose principal business address is 8761 Dorchester Road, Suite 100, North Charleston, South Carolina 29420.
3. On or about March 23, 2004 Backus USA, Inc. and Defendant entered into an agreement in which Defendant agreed to purchase an onion processing line and pepper processing line from Backus USA, Inc. A photocopy of the contract is attached hereto as Exhibit "A" and the terms of the contract incorporated herein as if set forth at length.
4. Backus USA, Inc. subsequently assigned all of its right, title and interest in the contract to FreshTec.

5. The contract obligated Defendant to pay Plaintiff \$2,000,000.00 plus shipping expenses of up to \$30,000.00 plus such change orders as Defendant may have ordered.

6. The contract obligated Defendant to provide the installation of the various components of the processing lines under the supervision of Plaintiff's employees.

7. Defendant was obligated to assist Plaintiff in the specification of various components for the production line including but not limited to providing trays for its Oric machines.

8. Defendant failed to provide assistance to Plaintiff for the various components necessary to finish the onion and pepper processing lines.

9. Defendant has failed to pay Plaintiff for the \$30,000.00 in shipping expenses that Plaintiff has incurred to date.

10. The actions of Defendant in failing to pay Plaintiff the shipping expenses constitute a breach of the contract.

11. Defendant has made various change orders to the production lines the cost of which is approximately \$100,000.00.

12. Defendant has indicated that it does not intend to pay Plaintiff the amount due Plaintiff under the contract, the shipping expenses, nor to compensate Plaintiff for the change orders that Defendant ordered.

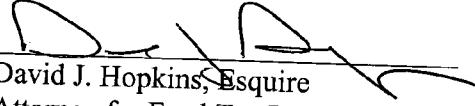
13. The actions of the Defendant constitute an anticipatory breach of the contract entitling Plaintiff to the full amount it would be entitled to under the contract.

14. Throughout the contract between Plaintiff and Defendant, Defendant has made payments to Plaintiff by United States Mail delivered at the office of the Plaintiff in Clearfield County, Pennsylvania. Thus venue is proper and appropriate in Clearfield County, Pennsylvania.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to find in favor of Plaintiff FreshTec Food Processing Equipment International, LLC, and against Defendant Easy Tray, LLC for shipping expenses of \$30,000.00; change orders of \$100,000.00; money due under the contract of \$500,000.00, and for such other and further relief as the court deems fair, just and equitable, costs of suit and pre-judgment and post-judgment interest.

Respectfully submitted,

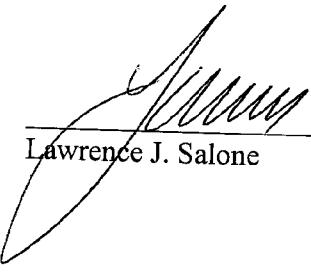
Hopkins Heltzel LLP

By: 

David J. Hopkins, Esquire
Attorney for FreshTec Food Processing
Equipment, International, LLC

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Lawrence J. Salone

EXHIBIT 1

PURCHASE ORDER

THIS PURCHASE ORDER (the "Purchase Order") is entered into on March 23, 2004 by and between EASY TRAY, LLC, a South Carolina limited liability company ("Purchaser"), and BACKUS USA, INC. ("Seller"), with respect to the purchase of an Onion Processing Line (the "Onion Line") and a Pepper Processing Line (the "Pepper Line", and together with the Onion Line and Pepper Lines, the "Equipment").

RECITALS

WHEREAS, Purchaser and Seller desire to set forth the terms of the Purchase Order; and

WHEREAS, Purchaser and Seller have agreed to certain guaranteed minimum hourly outputs for the Onion Line and the Pepper Line and to certain liquidated damages (the "Damages") if the Seller does not perform in a timely manner.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

1. PURCHASE. Subject to the terms and conditions set forth below, Purchaser agrees to purchase, and Seller agrees to manufacture, install and sell, the Equipment in the manner and for the purchase price (the "Purchase Price") of \$2,000,000 plus freight, up to a maximum of \$30,000, as set forth on the price quotation from Seller (the "Quote"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference. For purposes of clarification, Operation Cell #4 set forth in the Quote is not a portion of the Equipment being purchased and its cost will not be included in the Purchase Price.

2. EQUIPMENT SPECIFICATIONS. Without limiting any further warranties or representations of Seller in the Quote, Seller warrants that:

(a) The Onion Line shall produce a minimum guaranteed output of Three Thousand Five Hundred (3500) pounds of finished onions per hour (peeled with tops and bottoms removed, sliced, and in trays covered by lidding film).

(b) The Pepper Line shall produce a minimum guaranteed output of Three Thousand Five Hundred (3500) pounds of peppers per hour (completely decored, sliced, and in trays covered by lidding film).

3. LIQUIDATED DAMAGES. Seller agrees to the following Damages if it does not reach the following targeted performance benchmarks:

(a) Two Thousand Five Hundred (\$2500) Dollars per day beginning on July 29, 2004 if the Onion Line and the Pepper Line are not each producing fifty (50%) percent of the Three Thousand Five Hundred (3500) pound minimum guaranteed hourly output as set forth in Section 2.

(b) Five Thousand (\$5000) Dollars per day beginning on September 1, 2004 if the Onion Line and the Pepper Line are not each producing the Three Thousand Five Hundred (3500) pound minimum guaranteed hourly output as set forth in Section 2.

CHARLESTON 129640_3

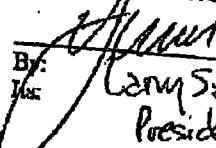
Exhibit "A"

4. **PRICING FORMULA FOR FUTURE PURCHASES.** Seller agrees to the pricing formula for future purchases of Onion Lines and Pepper Lines as set forth on Exhibit B, a copy of which is attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed on the date first above written.

SELLER:

BACKUS USA INC.

By: 
Mr. Henry Selone
President

PURCHASER:

EASY TRAY, LLC

By: 
Mr. David D. Ward
President - CEO

EXHIBIT A

(See the attached proposal from Backus USA Inc. dated 3/10/04; 11 pages)

backusUSAinc.

P.O. Box 585, DuBois, PA 15801

Quotation - Onion Processing Line, Green Pepper Processing Line 3N004

We are pleased to provide a quotation for our proposal to outfit you with a turnkey onion processing line and a turnkey green pepper processing line.

Onion Processing Line

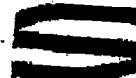
Minimum guaranteed throughput - 3500 pounds per hour of jumbo onions.

Operation Cell #1

Bin Dumper. Onions will be loaded by your pallet truck into the bin dumper. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Feed conveyor with hopper. Onions will travel from the bin dumper into a metering/feed conveyor. The conveyor will have a receiving hopper to accept the onions from the bin dumper. Stainless steel construction with food grade belting. Washdown construction. Variable speed control.

USM-1 Onion Peeler. Metering feed hopper will transport onions into the hopper and singulating elevator of the USM-1 onion peeler. The onions will be individually taken up the singulating elevator and placed onto the USM-1 onion peeler feed chain. An operator (or two) will orient the onions so that the tail/tip are left to right on the feed chain as the onions travel into the peeler. The peeler will first top and tail the onion and then score the diameter. Finally, a peeling head will spin the scored onion and remove the peel, taking minimal layers of onion skin off. Speeds of 100 onions per minute can be achieved, and recovery can be from 75%-85% based on product, speed and operators. Waste is discharged from the bottom of the machine, and peeled onions are also discharged from a different point on the machine. Two (2) operators are required to operate the peeler. We will guarantee 100 onions per minute output at 75% recovery. Performance will be commissioned by weighing 1000 onions in a lot and then weighing the finished sans whole peeled from the onion peeler. The peeled lot should be 75% of total lot weight in.

backusUSAinc.P.O. Box 585, DuBois, PA 15801

Waste Removal. Waste from the USM-1 will be discharged by a conveyor to a Reyco disposal system for transport to your choice of disposal.

Inspection Table. A (6) six-person inspection table will be provided to visually inspect the peeled onions. Driven roller type, stainless steel construction, food grade components. Includes UHMW cutting boards at operator stations. Variable speed drive. Waste chutes built into sides for disposal or re-work. Disposed product will be transferred to the Reyco system. Four (4) people are required to operate/inspect.

Operation Cells

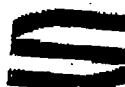
Onion Segmenter - DM-40. Onions will travel from inspection belt into the DM-40. Operators will simply orient the onions with a flat side down onto and into the pockets on the pre-formed indexing conveyor. From there, the onions travel into the segmenting head where, depending on your choice of cuts and knives, the onions will be either halved or quartered. Cutting blades are easily interchanged. One (1) operator required.

Metering belt/chute. From the inspection table, will provide a singulating conveyor that will act also as a metering conveyor to feed the Urschell cutter. Stainless steel construction with food grade components. Variable speed drive.

Urschell cutter with platform. Transficer. Per specifications to/from Easy Tray. Includes stainless steel platform and transitions from Backus. One (1) operator required. Recovery and yield cannot be guaranteed. Urschell only makes recommendations or past history, not performance guarantees. The performance is very dependent on final cut, size of product, cut size, etc.

Elevator. To take cut product from Urschell Transficer to the infeed of Farnam Sizer/Grader. Stainless steel and other food grade construction. Variable speed drive, on casters.

Sizer/Grader with Non-spec Discharge. FreshTec unit. Stainless steel construction and other food grade components. Provides for separation of slivers and fines into (3) three separate size sorts (removable screens); one for trash (or undersize) and then two additional size sorts to be provided to accumulation belts below for processing and packaging. Includes FreshTec unit on stainless steel stand and right-angle gearmotor drive for space requirements. Eight (8) total screens are included with this machine, including the screens on the machine.

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Accumulation Belts. Two (2) accumulation belts to receive sized cut product, one from each of the two FreshTec size-grading stations. Accumulation belts are reversible, variable speed flat belts that will collect product from each sizing discharge point and accumulate product onto the belt until full with product. By selecting one or the other, each accumulating belt can discharge into the feed belt for the Sonova Rinse Tank, or can discharge into a storage container of your choice. Stainless steel and other food grade construction.

Feed Conveyor. To feed product from either the accumulation belts or from bulk storage containers to the Sonova Rinse Tank. With hopper on feed end to accept bulk product. Stainless steel and other food grade material construction, on casters, variable speed.

Bin Dumper. For bulk container feeding of product onto the Feed Conveyor for feeding product directly into the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Sonova Rinse Tank. WL-3000/800 helical rinse tank to provide for a 20-second dwell time of product. Dwell time can be adjusted up or down by included manual valving. Includes self-contained re-circulation system with filtering system. Includes limit sensors to keep pumps from running dry. Vibratory discharge. Unique helical water motion and nozzle placement provides for insured 100% product removal in the appropriate dwell time. Food grade components and stainless steel construction. Variable speed. Product will be transported in from the FreshTec unit into the tank, and then after the dwell in the 3000/800, the product will feed out on the feed out conveyor. Wash tank on casters, with leveling feed for stable location. Fresh water spray bars included at vibratory discharge end for product rinsing. Rinse water will not re-circulate into the Sonova Tank, but rather flow due to special drain pan design, to floor for customer removal.

Transfer conveyor. For transfer from the rinse tank to the tray feeder/metering system. Stainless steel construction with food grade components. Variable speed drive.

Bin Dumper. For bulk container feeding of product onto the Transfer Conveyor for feeding product after the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Automatic In-Line Dryer. FreshTec unit. Product will be automatically transported, and metered into the single drum dryer. The dryer will be a continuous rpm unit, changing speeds appropriately for loading, drying and unloading. Includes full line control and full programming options for different drying cycles. Stainless steel and other food grade components. No performance yield guarantee can be given, as the dryer output is totally dependent on your drying cycle, dryness specification, and your product.

One (1) floater operator is required for cell #2.

backusUSAinc.

P.O. Box 585, DuBois, PA 15801

Operation Cell #3

Tray de-nester and feed. Nevitec In line shaker with scale to automatically feed trays with product. From 8 ounces to 5 pound capability. Includes automatic tray de-nester to automatically de-nest trays and feed with product. Fully programmable. Automatic loader to load trays into tray sealer. Integrated into the tray sealer.

Tray sealer. Otrics automatic tray sealer. Rotary type. Seals trays with film and automatically ejects them to out feed conveyor. Includes printed film registration. Fully programmable. Operates at 2 trays at a time sealing and machine cycles at 24 cycles per minute. Separate tooling included for two (2) trays, 1.5 pound or 3 pound trays.

Metal detector. Loma conveyor with metal detector and automatic reject to inspect automatically filled and sealed trays for debris. Reject can be made to operate left or right. With standards for gaging. Stainless steel, food grade construction. Washdown.

Printer. Markem inkjet to label trays with your choice of data. Options for downloading and direct communication to office PC available.

One (1) operator required for cell #3.

Ten (10) total operators required for onion line.

backusUSAinc.P.O. Box 585, DuBois, PA 15801Green Pepper Processing Line

Minimum guaranteed throughput - 3500 pounds per hour of Grade #1 Green Bell Peppers.

Operation Cell #1

Bin Dumper. Peppers will be loaded by your pallet truck into the bin dumper. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Feed conveyor with hopper. Peppers will travel from the bin dumper into a metering/feed conveyor. The conveyor will have a receiving hopper to accept the peppers from the bin dumper. Stainless steel construction with food grade belting. Washdown construction. Variable speed control.

Pepper De-Corer. Two (2) lane in-line unit providing for two (2) operators. Peppers will be fed from the metering/feed conveyor to a load area from which the operators will load four (4) pockets each. The machine will index forward where eight (8) peppers will be automatically vacuum cored at the de-coring station. Waste will be discharged from the de-coring tubes by vacuum into the Reyco disposal system. Speeds of 100 peppers per minute can be achieved and recovery can be from 65% to 75% based on your product and the operators' ability to perform at machine speed. The cored pepper will then be cut into four (4) segments and discharged from the machine onto the inspection table. Two (2) operators required. Yield to be guaranteed at no less than 95% of manual coring of the same peppers.

Inspection Table. A (6) six-person inspection table will be provided to visually inspect the cored peppers. Driven flat-belt type, stainless steel construction, food grade components. Includes UHMW cutting boards at operator stations. Variable speed drive. Whistle chimes built into sides for disposal or re-work. Disposed product will be transferred to the Reyco system. Four (4) operators required.

backusUSAinc.**P.O. Box 585, DuBois, PA 15801**Operation Call #2

Metering belt/turner. From the Inspection table, will provide a singulating conveyor that will act also as a metering conveyor to feed the Urschell cutter. Stainless steel construction with food grade components. Variable speed drive.

Urschell cutter with platform. Translicer. Per specifications to from Easy Tray. Includes stainless steel platform and transitions from Backus. Recovery and yield cannot be guaranteed. Urschell only makes recommendations or past history, not performance guarantees. The performance is very dependent on final cut, size of product, cut size, etc.

Elevator. To take cut product from Urschell Translicer to the Infeed of FreshTec Sizer/Grader. Stainless steel and other food grade construction. Variable speed drive, on casters.

Sizer/Grader with Non-spec Discharge. FreshTec unit. Stainless steel construction and other food grade components. Provides for separation of shives and fines into (3) three separate size sorts (removable screens); one for trash (or undersize) and then two additional size sorts to be provided to accumulation belts below for processing and packaging. Includes FreshTec unit on stainless steel stand and right-angle gearmotor drive for space requirements. Eight (8) total screens are included with this machine, including the screens on the machine.

Accumulation Belts. Two (2) accumulation belts to receive sized cut produce, one from each of the two FreshTec size-grading stations. Accumulation belts are reversible, variable speed flat belts that will collect product from each sizing discharge point and accumulate product onto the belt until full with product. By selecting one or the other, each accumulating belt can discharge into the feed belt for the Sonova Rinse Tank, or can discharge into a storage container of your choice. Stainless steel and other food grade construction.

Feed Conveyor. To feed product from either the accumulation belts or from bulk storage container to the Sonova Rinse Tank. With hopper on feed end to accept bulk product. Stainless steel and other food grade material construction, on casters, variable speed.

Bin Dumper. For bulk container feeding of product onto the Feed Conveyor for feeding product directly into the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

backusUSAinc.

P.O. Box 585, DuBois, PA 15801

Sonova Rinse Tank. W.L.-3000/600 helical rinse tank to provide for a 30-second dwell time of product. Dwell time can be adjusted up or down by included manual valving. Includes self-contained re-circulation system with filtering system. Includes limit sensors to keep pumps from running dry. Vibratory discharge. Unique helical water motion and nozzle placement provides for insured 100% product removal in the appropriate dwell time. Food grade components and stainless steel construction. Variable speed. Product will be transported in from the FreshTec unit into the tank, and then after the dwell in the 3000/600, the product will feed out on the feed out conveyor. Wash tank on casters. With leveling feed for stable location. Fresh water spray bars included at vibratory discharge end for product rinsing. Rinse water will not re-circulate into the Sonova Tank, but rather flow due to special drain pan design, to floor for customer removal.

Transfer conveyor. For transfer from the rinse tank to the tray feeder/metering system. Stainless steel construction with food grade components. Variable speed drive.

Bin Dumper. For bulk container feeding or product onto the Transfer Conveyor for feeding product directly after the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Automatic In-Line Dryer. FreshTec unit. Product will be automatically transported, and metered into the single drum dryer. The dryer will be a continuous rpm unit, changing speeds appropriately for loading, drying and unloading. Includes full time control and full programming options for different drying cycles. Stainless steel and other food grade components. No performance yield guarantee can be given, as the dryer output is totally dependent on your drying cycle, dryness specification, and your product.

One (1) floater operator is required for cell #2.

backusUSAinc.**P.O. Box 585, DuBois, PA 15801**Operation Cell #2

Tray de-nester and feed. Newber in line shaker with scale to automatically feed trays with product. From 8 ounces to 8 pound capability. Includes automatic tray de-nester to automatically de-nest trays and feed with product. Fully programmable. Automatic loader to load trays into tray sealer.

Tray sealer. Orica automatic tray sealer. Rotary type. Seals trays with film and automatically ejects them to out feed conveyor. Printed film registration included. Fully programmable. 24 cycles per minute, 2 trays per cycle. Tooling for two (2) tray sizes included, 1.5 pound and 3 pound.

Metal detector. Loma conveyor with metal detector and reject lane to inspect automatically filled and sealed trays for debris. Reject can be made to operate left or right. With standards for gaging. Stainless steel, food grade construction. Washdown.

Printer. Markem Inkjet to label trays with your choice of data. Options for downloading and direct communication to office PC available.

One (1) operator required for cell #2.

Nine (9) total operators for the pepper line.

Rotary packoff tables. Two (2) units included with this proposal, one (1) for each cell #2.

Chillers. Based on dual Sonova Rinse tanks, ambient temp. of room at 60 degrees F and product ambient temp at 50 degrees F, incoming water at 85 degrees F, and a 30 second dwell time, desire to keep Sonova Rinse tank at 33 degrees F, We will provide two (2) separate units, one (1) for the Sonova system chiller, and one (1) for the chilling of the make-up and fill water.

backusUSA Inc.

P.O. Box 585, DuBois, PA 15801

Integration, Installation and training. We are pleased to do a complete integration of your system. We will work and instruct your plant electricians, and equipment operators as to machine placement and hookups with air, water and electricity. We will provide a central control panel for complete operation and central control. The PLC will have all I/O labeled and all electrical will be fully documented with blueprints and disc files. The PLC will be built to accept future expansion of the packaging line as we proposed, but no hardware will be provided for this, only space in the control panels. Includes modem for remote troubleshooting and access, standard with all our machines. We will be on site for as long as it takes to complete installation.

To simplify the installation responsibilities, it will be Backus and FreshTec's responsibility to supervise the placement and hookup of all the equipment we provide, and to get it to operate, and commission it to specifications in operation. It will be the facility's responsibility to do anything that is related to the building and services. The facility will place the equipment, provide and hook-up services to all equipment and do anything related to the facility and any facility interface to the equipment. We will supervise the facility during this process to insure success.

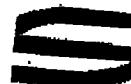
Our engineers will provide installation supervision, and we will require (2) two of your tradesmen. Our engineers will also provide complete training of your personnel in operation and servicing of the lines. Our office in Raleigh, NC will handle all training, installation and service. We will provide (2) two follow up training visits of one week each by our engineering personnel. We provide complete start-up, training, and operation manuals, as well as spare parts and service manuals for all machines. We will further integrate the basic training elements of each manual into a single simplified manual for operator use and training.

We will provide customer with complete CAD layouts of the project layout prior to installation to insure that facilities and utilities work can be completed timely. This includes utility drops, drains and refrigeration walls, completed by 3/20/04. We will further provide the final floor plan within 2 weeks of completion. On disc and paper. Note: we do not provide blueprints of our machines, but rather manuals for service and spare parts.

All machines built to appropriate UL, CE, OSHA or HACCP standards.

Recommended spare parts lists will be provided, with pricing. We will include any outside vendors' spare parts lists and pricing as well.

Guarantee. All our machinery is fully guaranteed to perform to specifications in the quotation provided. All machinery is warranted for up to 6 months, or to the manufacturers warranty requirements if a commercially available component or machine.

backusUSAinc.**P.O. Box 585, DuBois, PA 15801**

Start-up / Delivery. Based on receipt of down payment of 25% by March 17th, 2004 at FreshTec, all equipment will be at Easy Tray by 7/1/04. Start-up is anticipated to be approx. 2 weeks later. We will require approx. 2 weeks to set, install and commission equipment. This is based on facility and utilities being available and ready for hook-up. Liquidating damages per Easy Tray sheet will be agreed upon, but the date will be carried back a day for every day that the down payment funds are not on account with FreshTec from 3/1/04.

Terms. 35% with order placement, 10% net 31 days after execution of PO, 30% payment on each machine as it is ready to ship to Easy Tray, 15% upon install at Easy Tray and minimum of 80% performance executed, balance due upon 100% performance executed at Easy Tray. Payments can be made by bank wire to:

Bank: Timberland Federal Credit Union
Receiver: Mid-Atlantic Federal Credit Union
ABA# 231387550

Further Credit: Timberland Federal Credit Union
ABA# 281380405

Final Credit: FreshTec International LLC
Account # 93857

Freight. Freight and any fees, packaging or customs costs are not included and will be invoiced as we ship. The collective freight costs will be guaranteed at a Not To Exceed price of \$20,000.00 USD.

Cancellation fees applicable. Per Easy Tray schedule.

Lot price for complete system above

\$2,000,000.00 USD.

backusUSAinc.P.O. Box 585, DuBois, PA 15801OptionsOperation Cell #4

Box Former. Box former to automatically fold and assemble "tray" style boxes. Complete unit. Included outfeed conveyor for box "trays".

Box Tray Filler. Automated "robotic" pick and place unit to take filled "trays" and load them into open box "trays". Two wide, side by side style. Includes box tray indexer, fill feed unit and orienter, and fill indexer and separator.

Box tray palletizer. To automatically stack and load filled box trays into 2-3 patterns, with flexibility to do reverse 2-3 patterns on same stack for stacking rigidity. Includes automatic stretch wrapper. Final product to be palletized stack of box trays ready for removal by forklift.

Lot price Operation Cell #4

\$248,000.00 USD

EXHIBIT B

Seller and Purchaser agree that Purchaser shall be entitled to purchase from Seller additional Equipment to increase or provide for production capacity at the Purchaser's current facilities or any future facilities upon such delivery terms as can be mutually agreed upon by Purchaser and Seller.

Provided the additional Equipment has substantially the same specifications as described in the quote, the purchase price for the Equipment shall be \$1,900,000.00 (the "Base Purchase Price"), subject to the following adjustments:

1. It is agreed by the parties that \$540,000 of the Base Purchase Price consists of costs within the control of Seller. This portion of the Base Purchase Price shall be increased or decreased (with a corresponding increase or decrease in the Base Purchase Price) at the time Purchaser orders additional equipment by an amount equal to \$540,000 multiplied by the percentage increase or decrease in the Consumer Price Index For All Urban Consumers South, Size Class B/C, All Items, (1996=100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") from June 2004 to the month in which Purchaser places the order.
2. The other portion of the Base Purchase Price (\$1,360,000) shall be adjusted as follows:
 - (A) With respect to any component purchased from a third party, the Base Purchase Price shall be increased or decreased by any change in the price charged for such component by the third party, after taking into account all available discounts, refunds and rebates. Seller shall be responsible for documenting the basis and calculation of such price change to the reasonable satisfaction of Purchaser; and
 - (B) The Base Purchase Price shall be equitably increased or decreased by any change in the price of stainless steel from the price of stainless steel on the date hereof. Seller shall be responsible for documenting the calculation and basis of such price change to the reasonable satisfaction of Purchaser.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL,
LLC, a Pennsylvania limited liability
company,

Plaintiff,

v.

EASY TRAY, LLC

Defendant.

No. 2004-1868-CJ

FILED
m/23/05
FEB 24 2005
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

NOTICE TO STATE COURT OF REMOVAL

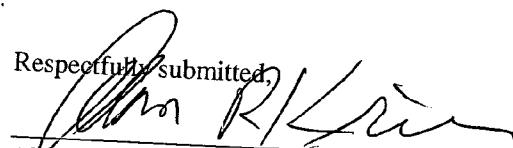
TO: Honorable William A. Shaw, Clerk
Clearfield County Court of Common Pleas
230 East Market Street
Clearfield, PA 16830

Notice is hereby given that this action has been removed to the United States District Court of the Western District of Pennsylvania, Johnstown Division.

Enclosed is a copy of the Notice of Removal which has been filed with the United States District Court by the Defendant, Easy Tray, LLC.

Dated this 23 day of February, 2005.

Respectfully submitted,


Alan R. Krier, Esq.
Jubelirer, Carothers, Krier & Halpern
10 Sheraton Drive
P.O. Box 2024
Altoona, Pennsylvania 16603
Tel: 814-943-1140
Fax: 814-946-8788
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING)
EQUIPMENT INTERNATIONAL,)
LLC, a Pennsylvania limited liability)
company,)
)
Plaintiff,)
)
v.) No. 2004-1868
)
EASY TRAY, LLC)
)
Defendant.)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22 day of February, 2005, a copy of the foregoing *Notice of Removal* has been served upon the person named below by mailing a copy of same in the United States Mail, with sufficient postage properly affixed thereto:

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
900 Beaver Drive
DuBois, PA 15801



COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL,
LLC, a Pennsylvania limited liability
company,

v.

EASY TRAY, LLC

Defendant.

) Case Number No.: 05-142 J

NOTICE OF REMOVAL

05 FEB 23 A9 38

UNITED STATES DISTRICT COURT
JOHNSTOWN DIVISION

PLEASE TAKE NOTICE that the Defendant, Easy Tray, LLC, is this date filing its Notice of Removal in the Office of the Clerk of the United States District Court for the Western District of Pennsylvania, Johnstown Division, thereby removing the said cause from the Court of Common Pleas for Clearfield County, Pennsylvania, to the said United States District Court, and the Court of Common Pleas for Clearfield County, Pennsylvania, shall proceed no further, unless and until the cause is remanded. Defendant's Notice of Removal is based upon the grounds set forth below:

1. The above-entitled civil action was commenced in the Court of Common Pleas for the County of Clearfield, Commonwealth of Pennsylvania, with the issuance of a Writ of Summons followed by the filing of a Summons and Complaint on January 18, 2005. Said Summons and Complaint were served upon the Defendant by mail and received on January 25, 2005. Accordingly, this Notice is being filed with the Court within thirty (30) days after the date of the receipt of the initial pleading setting forth a claim for relief upon which this Notice is

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL, LLC,
a Pennsylvania limited liability company,
Plaintiff,

v.

EASY TRAY, LLC

Defendant.



No. 2004-1868 CD

Type of Pleading: Complaint

Filed on behalf of: FreshTec Food
Processing Equipment International, LLC,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL, LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801
(814) 375-0300

I hereby certify this to be a true
copy of the original
statement filed in this case.

JAN 13 2005

Attest.

L. J. H.
P. J. H.
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL, LLC,
a Pennsylvania limited liability company,
Plaintiff,

v.

EASY TRAY, LLC

Defendant.

No. 2004-1868 CD

NOTICE

TO: Defendant

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint is served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim you. You may lose money or property or other rights important to

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL, LLC,
a Pennsylvania limited liability company,
Plaintiff,

v.

EASY TRAY, LLC

Defendant.

No. 2004-1868 CD

COMPLAINT

AND NOW, comes FreshTec Food Processing Equipment International, LLC, (hereinafter "FreshTec") and by and through its attorneys, Hopkins Heltzel LLP and says as follows.

1. FreshTec is Limited Liability Company organized under the laws of the Commonwealth of Pennsylvania that maintains a principal business address at P.O. Box 585, BuBois, Pennsylvania 15801.
2. Defendant is Easy Tray, LLC, a South Carolina Limited Liability Company whose principal business address is 8761 Dorchester Road, Suite 100, North Charleston, South Carolina 29420.
3. On or about March 23, 2004 Backus USA, Inc. and Defendant entered into an agreement in which Defendant agreed to purchase an onion processing line and pepper processing line from Backus USA, Inc. A photocopy of the contract is attached hereto as Exhibit "A" and the terms of the contract incorporated herein as if set forth at length.
4. Backus USA, Inc. subsequently assigned all if its right, title and interest in the contract to FreshTec.

5. The contract obligated Defendant to pay Plaintiff \$2,000,000.00 plus shipping expenses of up to \$30,000.00 plus such change orders as Defendant may have ordered.

6. The contract obligated Defendant to provide the installation of the various components of the processing lines under the supervision of Plaintiff's employees.

7. Defendant was obligated to assist Plaintiff in the specification of various components for the production line including but not limited to providing trays for its Oric machines.

8. Defendant failed to provide assistance to Plaintiff for the various components necessary to finish the onion and pepper processing lines.

9. Defendant has failed to pay Plaintiff for the \$30,000.00 in shipping expenses that plaintiff has incurred to date.

10. The actions of Defendant in failing to pay plaintiff the shipping expenses constitute a breach of the contract.

11. Defendant has made various change orders to the production lines the cost of which is approximately \$100,000.00.

12. Defendant has indicated that it does not intend to pay Plaintiff the amount due Plaintiff under the contract, the shipping expenses, nor to compensate Plaintiff for the change orders that Defendant ordered.

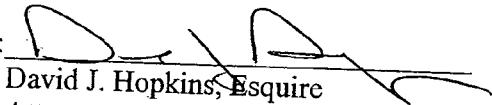
13. The actions of the Defendant constitute an anticipatory breach of the contract entitling Plaintiff to the full amount it would be entitled to under the contract.

14. Throughout the contract between Plaintiff and Defendant, Defendant has made payments to Plaintiff by United States Mail delivered at the office of the Plaintiff in Clearfield County, Pennsylvania. Thus venue is proper and appropriate in Clearfield County, Pennsylvania.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to find in favor of Plaintiff FreshTec Food Processing Equipment International, LLC, and against Defendant Easy Tray, LLC for shipping expenses of \$30,000.00; change orders of \$100,000.00; money due under the contract of \$500,000.00, and for such other and further relief as the court deems fair, just and equitable, costs of suit and pre-judgment and post-judgment interest.

Respectfully submitted,

Hopkins Heltzel LLP

By: 

David J. Hopkins, Esquire
Attorney for FreshTec Food Processing
Equipment, International, LLC

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

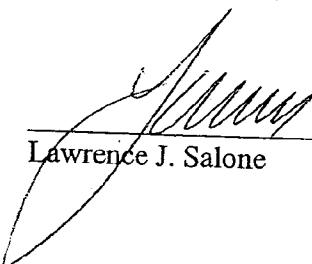

Lawrence J. Salone

EXHIBIT 1

PURCHASE ORDER

THIS PURCHASE ORDER (the "Purchase Order") is entered into on March 23, 2004 by and between EASY TRAY, LLC, a South Carolina limited liability company ("Purchaser"), and BACKUS USA, INC. ("Seller"), with respect to the purchase of an Onion Processing Line (the "Onion Line") and a Pepper Processing Line (the "Pepper Line", and together with the Onion Line and Pepper Lines, the "Equipment").

RECITALS

WHEREAS, Purchaser and Seller desire to set forth the terms of the Purchase Order; and

WHEREAS, Purchaser and Seller have agreed to certain guaranteed minimum hourly outputs for the Onion Line and the Pepper Line and to certain liquidated damages (the "Damages") if the Seller does not perform in a timely manner.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

1. **PURCHASE.** Subject to the terms and conditions set forth below, Purchaser agrees to purchase, and Seller agrees to manufacture, install and sell, the Equipment in the manner and for the purchase price (the "Purchase Price") of \$2,000,000 plus freight, up to a maximum of \$30,000, as set forth on the price quotation from Seller (the "Quote"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference. For purposes of clarification, Operation Cell #4 set forth in the Quote is not a portion of the Equipment being purchased and its cost will not be included in the Purchase Price.

2. **EQUIPMENT SPECIFICATIONS.** Without limiting any further warranties or representations of Seller in the Quote, Seller warrants that:

(a) The Onion Line shall produce a minimum guaranteed output of Three Thousand Five Hundred (3500) pounds of finished onions per hour (peeled with tops and bottoms removed, sliced, and in trays covered by lidding film).

(b) The Pepper Line shall produce a minimum guaranteed output of Three Thousand Five Hundred (3500) pounds of peppers per hour (completely decored, sliced, and in trays covered by lidding film).

3. **LIQUIDATED DAMAGES.** Seller agrees to the following Damages if it does not reach the following targeted performance benchmarks:

(a) Two Thousand Five Hundred (\$2500) Dollars per day beginning on July 29, 2004 if the Onion Line and the Pepper Line are not each producing fifty (50%) percent of the Three Thousand Five Hundred (3500) pound minimum guaranteed hourly output as set forth in Section 2.

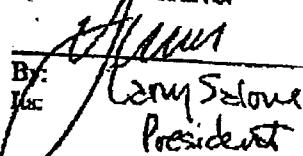
(b) Five Thousand (\$5000) Dollars per day beginning on September 1, 2004 if the Onion Line and the Pepper Line are not each producing the Three Thousand Five Hundred (3500) pound minimum guaranteed hourly output as set forth in Section 2.

4. PRICING FORMULA FOR FUTURE PURCHASES. Seller agrees to the pricing formula for future purchases of Onion Lines and Pepper Lines as set forth on Exhibit B, a copy of which is attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed on the date first above written.

SELLER:

BACKUS USA INC.

By: 
Title: Larry S. Sloane
President

PURCHASER:

EASY TRAY, LLC

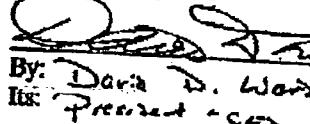
By: 
Title: David D. Ward
President - CEO

EXHIBIT A

(See the attached proposal from Backus USA Inc. dated 3/10/94: 11 pages)

backususa inc.



P.O. Box 585, DuBois, PA 15801

Quotation - Onion Processing Line, Green Pepper Processing Line 3/10/04

We are pleased to provide a quotation for our proposal to outfit you with a turnkey onion processing line and a turnkey green pepper processing line.

Onion Processing Line

Minimum guaranteed throughput - 3500 pounds per hour of jumbo onions.

Operation Cell #1

Bin Dumper. Onions will be loaded by your pallet truck into the bin dumper. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Feed conveyor with hopper. Onions will travel from the bin dumper into a metering/feed conveyor. The conveyor will have a receiving hopper to accept the onions from the bin dumper. Stainless steel construction with food grade belting. Washdown construction. Variable speed control.

USM-1 Onion Peeler. Metering feed hopper will transport onions into the hopper and singulating elevator of the USM-1 onion peeler. The onions will be individually taken up the singulating elevator and placed onto the USM-1 onion peeler feed chain. An operator (or two) will orient the onions so that the tail/top are left to right on the feed chain as the onions travel into the peeler. The peeler will first top and tail the onion and then score the diameter. Finally, a peeling head will spin the scored onion and remove the peel, taking minimal layers of onion skin off. Speeds of 100 onions per minute can be achieved, and recovery can be from 75%-85% based on product, speed and operators. Waste is discharged from the bottom of the machine, and peeled onions are also discharged from a different point on the machine. Two (2) operators are required to operate the peeler. We will guarantee 100 onions per minute output at 75% recovery. Performance will be commissioned by weighing 1000 onions in a lot and then weighing the finished semi whole peeled from the onion peeler. The peeled lot should be 75% of total lot weight in.

backusUSAinc.



P.O. Box 585, DuBois, PA 15801

Waste Removal. Waste from the USM-1 will be discharged by a conveyor to a Reyco disposal system for transport to your choice of disposal.

Inspection Table. A (6) six-person inspection table will be provided to visually inspect the peeled onions. Driven roller type, stainless steel construction, food grade components. Includes UHMW cutting boards at operator stations. Variable speed drive. Waste chutes built into sides for disposal or re-work. Disposed product will be transferred to the Reyco system. Four (4) people are required to operate/inspect.

Operation Cell #2

Onion Segmenter - DM-40. Onions will travel from inspection belt into the DM-40. Operators will simply orient the onions with a flat side down onto and into the pockets on the pre-formed indexing conveyor. From there, the onions travel into the segmenting head where, depending on your choice of cuts and knives, the onions will be either halved or quartered. Cutting blades are easily interchanged. One (1) operator required.

Metering belt chute. From the inspection table, will provide a singulating conveyor that will act also as a metering conveyor to feed the Urschell cutter. Stainless steel construction with food grade components. Variable speed drive.

Urschell cutter with platform. Transfuser. Per specifications to from Easy Tray. Includes stainless steel platform and transitions from Backus. One (1) operator required. Recovery and yield cannot be guaranteed. Urschell only makes recommendations or past history, not performance guarantees. The performance is very dependent on final cut, size of product, cut size, etc.

Elevator. To take cut product from Urschell Transfuser to the infeed of Farmco Sizer/Grader. Stainless steel and other food grade construction. Variable speed drive, on casters.

Sizer/Grader with Non-spec Discharge. FreshTec unit. Stainless steel construction and other food grade components. Provides for separation of silvers and fines into (3) three separate size sorts (removable screens); one for trash (or undersize) and then two additional size sorts to be provided to accumulation belts below for processing and packaging. Includes FreshTec unit on stainless steel stand and right-angle gearmotor drive for space requirements. Eight (8) total screens are included with this machine, including the screens on the machine.

backusUSAinc.



P.O. Box 585, DuBois, PA 15801

Accumulation Belts. Two (2) accumulation belts to receive sized cut product, one from each of the two FreshTec size-grading stations. Accumulation belts are reversible, variable speed flat belts that will collect product from each sizing discharge point and accumulate product onto the belt until full with product. By selecting one or the other, each accumulating belt can discharge into the feed belt for the Sonova Rinse Tank, or can discharge into a storage container of your choice. Stainless steel and other food grade construction.

Feed Conveyor. To feed product from either the accumulation belts or from bulk storage containers to the Sonova Rinse Tank. With hopper on feed and to accept bulk product. Stainless steel and other food grade material construction, on casters. Variable speed.

Bin Dumper. For bulk container feeding of product onto the Feed Conveyor for feeding product directly into the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Sonova Rinse Tank. 14L-3000600 helical rinse tank to provide for a 30-second dwell time of product. Dwell time can be adjusted up or down by included manual valving. Includes self-contained re-circulation system with filtering system. Includes limit sensors to keep pumps from running dry. Vibratory discharge. Unique helical water motion and nozzle placement provides for insured 100% product removal in the appropriate dwell time. Food grade components and stainless steel construction. Variable speed. Product will be transported in from the FreshTec unit into the tank, and then after the dwell in the 3000600, the product will feed out on the feed out conveyor. Wash tank on casters, with leveling feed for stable location. Fresh Water spray bars included at vibratory discharge end for product rinsing. Rinse water will not re-circulate into the Sonova Tank, but rather flow due to special drain pan design, to floor for customer removal.

Transfer conveyor. For transfer from the rinse tank to the tray feeder/metering system. Stainless steel construction with food grade components. Variable speed drive.

Bin Dumper. For bulk container feeding of product onto the Transfer Conveyor for feeding product after the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Automatic In-Line Dryer. FreshTec unit. Product will be automatically transported, and metered into the single drum dryer. The dryer will be a continuous rpm unit, changing speeds appropriately for loading, drying and unloading. Includes full line control and full programming options for different drying cycles. Stainless steel and other food grade components. No performance yield guarantee can be given, as the dryer output is totally dependent on your drying cycle, dryness specification, and your product.

One (1) floater operator is required for cell #2.

backusUSAinc.



P.O. Box 585, DuBois, PA 15801

Operation Cell #3

Tray de-nester and feed. Newtec In line shaker with scale to automatically feed trays with product. From 8 ounces to 5 pound capability. Includes automatic tray de-nester to automatically de-nest trays and feed with product. Fully programmable. Automatic loader to load trays into tray sealer. Integrated into the tray sealer.

Tray sealer. Orios automatic tray sealer. Rotary type. Seals trays with film and automatically ejects them to out feed conveyor. Includes printed film registration. Fully programmable. Operates at 2 trays at a time sealing and machine cycles at 24 cycles per minute. Separate tooling included for two (2) trays; 1.5 pound or 3 pound trays.

Metal detector: Loma conveyor with metal detector and automatic reject to inspect automatically filled and sealed trays for debris. Reject can be made to operate left or right. With standards for gaging. Stainless steel, food grade construction. Washdown.

Printer. Markem Injet to label trays with your choice of data. Options for downloading and direct communication to office PC available.

One (1) operator required for cell #3.

Ten (10) total operators required for onion line.

backususainc



P.O. Box 585, DuBois, PA 15801

Green Pepper Processing Line

Minimum guaranteed throughput - 2500 pounds per hour of Grade #1 Green Bell Peppers.

Operation Cell #1

Bin Dumper. Peppers will be loaded by your pallet truck into the bin dumper. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

Feed conveyor with hopper. Peppers will travel from the bin dumper into a metal-geared conveyor. The conveyor will have a receiving hopper to accept the peppers from the bin dumper. Stainless steel construction with food grade bedding. Washdown construction. Variable speed control.

Pepper De-Corer. Two (2) lane in-line unit providing for two (2) operators. Peppers will be fed from the receiving feed conveyor to a load area from which the operators will load four (4) pockets each. The machine will index forward where eight (8) peppers will be automatically vacuum cored at the de-coring station. Waste will be discharged from the de-coring tubes by vacuum into the Reyco disposal system. Speeds of 160 peppers per minute can be achieved and recovery can be from 85% to 75% based on your product and the operators' ability to perform at machine speed. The cored pepper will then be cut into four (4) segments and discharged from the machine onto the inspection table. Two (2) operators required. Yield to be guaranteed at no less than 85% of manual coring of the same peppers.

Inspection Table. A (6) six-person inspection table will be provided to visually inspect the cored peppers. Driven flat-belt type, stainless steel construction, food grade components. Includes UHMW cutting boards at operator stations. Variable speed drive. Waste chutes built into sides for disposal or re-work. Disposed product will be transferred to the Reyco system. Four (4) operators required.

backusUSAinc.



P.O. Box 585, DuBois, PA 15801

Operation Cell #2

Metering belt/hopper. From the inspection table, will provide a singulating conveyor that will act also as a metering conveyor to feed the Urschell cutter. Stainless steel construction with food grade components. Variable speed drive.

Urschell cutter with platform. Translocor. Per specifications to from Easy Tray. Includes stainless steel platform and transitions from Backus. Recovery and yield cannot be guaranteed. Urschell only makes recommendations or past history, not performance guarantees. The performance is very dependent on final cut, size of product, cut size, etc.

Elevator. To take cut product from Urschell Translocor to the infeed of FreshTec Sizer/Grader. Stainless steel and other food grade construction. Variable speed drive, on casters.

Sizer/Grader with Non-spcc Discharge, FreshTec unit. Stainless steel construction and other food grade components. Provides for separation of silvers and thives into (3) three separate size sorts (removable screens); one for trash (or undersize) and then two additional size sorts to be provided to accumulation belts below for processing and packaging. Includes FreshTec unit on stainless steel stand and right-angle gearmotor drive for space requirements. Eight (8) total Screens are included with this machine, including the screens on the machine.

Accumulation Belts. Two (2) accumulation belts to receive sized out product, one from each of the two FreshTec size-grading stations. Accumulation belts are reversible, variable speed flat belts that will collect product from each sizing discharge point and accumulate product onto the belt until full with product. By selecting one or the other, each accumulating belt can discharge into the feed belt for the Sonova Rinse Tank, or can discharge into a storage container of your choice. Stainless steel and other food grade construction.

Feed Conveyor. To feed product from either the accumulation belts or from bulk storage containers to the Sonova Rinse Tank. With hopper on feed end to accept bulk product. Stainless steel and other food grade material construction, on casters, variable speed.

Bin Pusher. For bulk container feeding of product onto the Feed Conveyor for feeding product directly into the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulic system.

backusUSAinc.



P.O. Box 585, DuBois, PA 15801

Sonova Rinse Tank. WL-3000/800 helical rinse tank to provide for a 30-second dwell time of product. Dwell time can be adjusted up or down by included manual valving. Includes self-contained re-circulation system with filtering system. Includes limit sensors to keep pumps from running dry. Vibratory discharge. Unique helical water motion and nozzle placement provides for ensured 100% product removal in the appropriate dwell time. Food grade components and stainless steel construction. Variable speed. Product will be transported in from the FreshTec unit into the tank, and then after the dwell in the 3000/800, the product will feed out on the feed out conveyor. Wash tank on casters, with leveling feed for stable location. Fresh water spray bars included at vibratory discharge end for product rinsing. Rinse water will not re-circulate into the Sonova Tank, but rather flow due to special drain pan design, to floor for customer removal.

Transfer conveyor. For transfer from the rinse tank to the tray feeding/merging system. Stainless steel construction with food grade components. Variable speed drive.

Bin Dumper. For bulk container feeding of product onto the Transfer Conveyor for feeding product directly after the Sonova Rinse tank. Stainless steel construction. Push button operation with complete self-contained hydraulics system.

Automatic In-Line Dryer. FreshTec unit. Product will be automatically transported, and metered into the single drum dryer. The dryer will be a continuous rpm unit, changing speeds appropriately for loading, drying and unloading. Includes full time control and full programming options for different drying cycles. Stainless steel and other food grade components. No performance yield guarantee can be given, as the dryer output is totally dependent on your drying cycle, dryness specification, and your product.

One (1) floater operator is required for cell #2.

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P.O. Box 585, DuBois, PA 15801

Operation Cell #2

Tray de-nester and feed. Newtec in line shaker with scale to automatically feed trays with product. From 8 ounces to 8 pound capability. Includes automatic tray de-nester to automatically de-nest trays and feed with product. Fully programmable. Automatic loader to load trays into tray sealer.

Tray sealer. Ortec automatic tray sealer. Rotary type. Seals trays with film and automatically ejects them to out feed conveyor. Printed film registration included. Fully programmable, 24 cycles per minute, 2 trays per cycle. Tooling for two (2) tray sizes included, 1.5 pound and 3 pound.

Metal detector. Loma conveyor with metal detector and reject lane to inspect automatically filled and sealed trays for debris. Reject can be made to operate left or right. With standards for gauging. Stainless steel, food grade construction. Washdown.

Printer. Markem inkjet to label trays with your choice of data. Options for downloading and direct communication to office PC available.

One (1) operator required for cell #2.

Nine (9) total operators for the pepper line.

Rotary packoff tables. Two (2) units included with this proposal, one (1) for each cell #2.

Chillers. Based on dual Sonova Rinse tanks, ambient temp. of room at 60 degrees F and product ambient temp at 50 degrees F, incoming water at 85 degrees F, and a 20 second dwell time, desire to keep Sonova Rinse tank at 33 degrees F, We will provide two (2) separate units, one (1) for the Sonova system chiller, and one (1) for the chilling of the make-up and fill water.

backusUSAinc



P.O. Box 585, DuBois, PA 15801

Integration, Installation and training. We are pleased to do a complete integration of your System. We will work and instruct your plant electricians, and equipment operators as to machine placement and hookups with air, water and electricity. We will provide a central control panel for complete operation and central control. The PLC will have all I/O labeled and all electrical will be fully documented with blueprints and disc files. The PLC will be built to accept future expansion of the packaging line as we proposed, but no hardware will be provided for this, only space in the control panels. Includes modem for remote troubleshooting and access, standard with all our machines. We will be on site for as long as it takes to complete installation.

To simplify the installation responsibilities, it will be Backus and FreshTech's responsibility to supervise the placement and hookup of all the equipment we provide, and to get it to operate, and commission it to specifications in operation. It will be the facility's responsibility to do anything that is related to the building and services. The facility will place the equipment, provide and hook-up services to all equipment and do anything related to the facility and any facility interface to the equipment. We will supervise the facility during this process to insure success.

Our engineers will provide installation supervision, and we will require (2) two of your technicians. Our engineers will also provide complete training of your personnel in operation and servicing of the lines. Our office in Raleigh, NC will handle all training, installation and service. We will provide (2) two follow-up training visits of one week each by our engineering personnel. We provide complete start-up, training, and operation manuals, as well as spare parts and service manuals for all machines. We will further integrate the basic training elements of each manual into a single simplified manual for operator use and training.

We will provide customer with complete CAD layouts of the project layout prior to installation to insure that facilities and utilities work can be completed timely. This includes utility drops, drains and refrigeration wells, completed by 3/2004. We will further provide the final floor plan within 2 weeks of completion. On disc and paper. Note: we do not provide blueprints of our machines, but rather manuals for service and spare parts.

All machines built to appropriate UL, CE, OSHA or HACCP standards.

Recommended spare parts lists will be provided, with pricing. We will include any outside vendors' spare parts lists and pricing as well.

Guarantee. All our machinery is fully guaranteed to perform to specifications in the quotation provided. All machinery is warranted for up to 6 months, or to the manufacturers warranty requirements if a commercially available component or machine.

backusUSAinc.



P.O. Box 585, DuBois, PA 16801

Start-up / Delivery. Based on receipt of down payment of 25% by March 17th, 2004 at FreshTec, all equipment will be at Easy Tray by 7/1/04. Start-up is anticipated to be approx. 2 weeks later. We will require approx. 2 weeks to set, install and commission equipment. This is based on facility and utilities being available and ready for hook-up. Liquidating damages per Easy Tray sheet will be agreed upon, but the date will be carried back a day for every day that the down payment funds are not on account with FreshTec from 3/17/04.

Terms. 35% with order placement, 10% net 31 days after execution of PO, 30% payment on each machine as it is ready to ship to Easy Tray, 15% upon install at Easy Tray and minimum of 80% performance executed, balance due upon 100% performance executed at Easy Tray. Payments can be made by bank wire to:

Bank: Timberland Federal Credit Union
Receiver: Mid-Atlantic Federal Credit Union
ABA# 2313887550

Further Credit: Timberland Federal Credit Union
ABA# 231388405

Final Credit: FreshTec International LLC
Account # 93857

Freight. Freight and any fees, packaging or customer costs are not included and will be invoiced as we ship. The collective freight costs will be guaranteed at a Not To Exceed price of \$30,000.00 USD.

Cancellation fees applicable. Per Easy Tray schedule.

Lot price for complete system above..... \$2,000,000.00 USD.

backusUSAinc.



P.O. Box 585, DuBois, PA 15801

Options

Operation Cell #4

Box Former. Box former to automatically fold and assemble "tray" style boxes. Complete unit. Includes outfeed conveyor for box "trays".

Box-Tray filler. Automated "robotic" pick and place unit to take filled "trays" and load them into open box "trays". Two wide, side by side style. Includes box tray indexer, tilt feed unit and orienter, and tilt indexer and separator.

Box tray palletizer. To automatically stack and load filled box trays into 2-3 patterns, with flexibility to do reverse 2-3 patterns on same stack for stacking rigidity. Includes automatic stretch wrapper. Final product to be palletized stack of box trays ready for removal by forklift.

Lot price Operation Cell #4

\$245,000.00 USD

EXHIBIT B

Seller and Purchaser agree that Purchaser shall be entitled to purchase from Seller additional Equipment to increase or provide for production capacity at the Purchaser's current facilities or any future facilities upon such delivery terms as can be mutually agreed upon by Purchaser and Seller.

Provided the additional Equipment has substantially the same specifications as described in the Quote, the purchase price for the Equipment shall be \$1,900,000.00 (the "Base Purchase Price"), subject to the following adjustments:

1. It is agreed by the parties that \$540,000 of the Base Purchase Price consists of costs within the control of Seller. This portion of the Base Purchase Price shall be increased or decreased (with a corresponding increase or decrease in the Base Purchase Price) at the time Purchaser orders additional equipment by an amount equal to \$540,000 multiplied by the percentage increase or decrease in the Consumer Price Index For All Urban Consumers South, Size Class B/C, All Items, (1996=100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") from June 2004 to the month in which Purchaser places the order.

2. The other portion of the Base Purchase Price (\$1,360,000) shall be adjusted as follows:

(A) With respect to any component purchased from a third party, the Base Purchase Price shall be increased or decreased by any change in the price charged for such component by the third party, after taking into account all available discounts, refunds and rebates. Seller shall be responsible for documenting the basis and calculation of such price change to the reasonable satisfaction of Purchaser; and

(B) The Base Purchase Price shall be equitably increased or decreased by any change in the price of stainless steel from the price of stainless steel on the date hereof. Seller shall be responsible for documenting the calculation and basis of such price change to the reasonable satisfaction of Purchaser.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION

FRESHTEC FOOD PROCESSING) Case Number No.: _____
EQUIPMENT INTERNATIONAL,)
LLC, a Pennsylvania limited liability)
company,)
Plaintiff,)
v.)
EASY TRAY, LLC)
Defendant.)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23 day of February, 2005, a copy of the foregoing *Notice of Removal* has been served upon the person named below by mailing a copy of same in the United States Mail, with sufficient postage properly affixed thereto:

David J. Hopkins, Esquire
Hopkins Heltzel, LLP
900 Beaver Drive
DuBois, PA 15801

based. Copies of all pleadings, discovery and other documents are attached hereto and filed herewith. (Exhibit 1)

2. The above-described action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332 and which may be removed to this Court by the Defendant pursuant to the provision of 28 U.S.C. § 1441, in that it is a civil action of which the District Court has original jurisdiction founded on a claim or right where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. Plaintiff is a Limited Liability Company organized under the laws of the Commonwealth of Pennsylvania with its principle place of business in Pennsylvania. Defendant is a Limited Liability Company organized under the laws of the State of South Carolina with its principle place of business in South Carolina. In its prayer for relief, plaintiff seeks damages in excess of Seventy Five Thousand Dollars (\$75,000).

WHEREFORE, Defendant requests that this action be removed from the Court of Common Pleas of Clearfield County, Pennsylvania to this Court.



Alan R. Krier, Esq.
Jubelirer, Carothers, Krier & Halpern
10 Sheraton Drive
P.O. Box 2024
Altoona, Pennsylvania 16603
Tel: 814-943-1149
Fax: 814-946-8788

Attorneys for Defendant

Dated: 2-23-05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FRESHTEC FOOD PROCESSING
EQUIPMENT INTERNATIONAL, LLC,
a Pennsylvania limited liability company,
Plaintiff,

v.

EASY TRAY, LLC

Defendant.

No. 2004-1868 CD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Writ of Summons, filed on behalf of FreshTec Food Processing Equipment International, LLC, was forwarded by U.S. Postal Service, Certified Mail, on the 2nd day of December, 2004, to all counsel of record, addressed as follows:

Article No. 7003 2260 0001 2035 0146

David D. Ward
Easy Tray LLC
8761 Dorchester Road
Suite 100
North Charleston, SC 29420

David J. Hopkins, Esquire
Attorney for Plaintiff

GK FILED NO
01-4487
MAR 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

SEND **COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David D. Ward
Easy Tray LLC
8761 Dorchester Road
Suite 100
North Charleston, SC 29420

2. Article Number

(Transfer from service label)
PS Form 3811, August 2001

7003 2260 0001 2035 0146

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Gail Long

Agent
 Addressee

B. Received by (Printed Name)

Gail Long

C. Date of Delivery
12-7

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

Domestic Return Receipt

102595-02-M-1540