IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

KMC SYSTEMS, INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. N25C-12-451 KMM
v.	)	(CCLD)
	)	
BIOMÉRIEUX, INC.,	)	
	)	
Defendant.	)	

Date Submitted: June 5, 2026
Date Decided: September 17, 2026

Upon Defendant's Partial Motion to Dismiss –
GRANTED

MEMORANDUM OPINION AND ORDER

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Miller, J.

I. INTRODUCTION

Plaintiff KMC Systems, Inc. ("KMC") and Defendant bioMérieux, Inc. ("bioMérieux") entered into a Master Services Agreement (the "MSA" or "Agreement"), pursuant to which KMC manufactured certain products for bioMérieux. After a dispute arose, the parties terminated the MSA through a termination agreement, in which KMC preserved its pricing claim.

KMC asserts three counts: breach of contract based on the MSA (Count I), breach of contract based on the termination agreement (Count II), and unjust enrichment (Count III).

This dispute centers on whether the parties' agreement requires a purchase price adjustment (or true-up) for increased raw material costs after the product was delivered and invoiced. bioMérieux moves to dismiss the MSA contract claim, arguing that the Agreement does not provide for a post-performance payment mechanism. bioMérieux moves to dismiss the unjust enrichment claim, arguing that it cannot survive because the parties' relationship is governed by an express contract.

In determining whether the Agreement creates a purchase price adjustment obligation, as alleged by KMC, the Court looks to the parties' contract. The MSA and related agreements simply do not create such an obligation. Thus, Count I fails to state a claim. Because KMC's unjust enrichment claim is premised on the same alleged price adjustment obligation arising from a relationship governed by a contract, that claim likewise cannot survive. Accordingly, bioMérieux's motion is **GRANTED**.

II. FACTUAL BACKGROUND[1]

A. The MSA

On July 10, 2020, KMC and bioMérieux entered into the MSA.[2] At that time, KMC manufactured mass spectrometry diagnostic instruments and related ancillary components and software components (collectively the "Product") for bioMérieux.[3]

Under the MSA, KMC agreed to serve as the exclusive manufacturer and supplier of the Product, and bioMérieux agreed to purchase the Product from KMC.[4] The MSA established a contractual framework governing how the parties forecasted demand, placed purchase orders, addressed price, made payment, and administered their ongoing commercial relationship.[5]

The process began with forecasting. Every quarter, bioMérieux was required to issue a twelve-month forecast for the Product, with the first three months being a Binding Forecast and the remainder was a Non-Binding Forecast.[6] The forecasts were updated monthly.[7] Section 4.1 further provided that "[t]he Non-Binding

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[1] The facts are derived from the Complaint (D.I. 1) and the documents incorporated therein by reference.
[2] Compl. ¶ 24.
[3] *Id.*
[4] *Id.*
[5] Compl., Ex. A - MSA, § 4, 9, 10.
[6] Capitalized terms not defined herein have the meaning ascribed to them in the MSA.
[7] MSA, § 4.1.

Forecast shall be used to determine material release quantities to be authorized by bioMérieux which will be used in the Unit price calculations per Appendix 6."[8] The forecast "exclude[ed] Spare Parts."[9]

The parties also agreed to an ordering process. KMC was required to sell quantities of the Product "as may be ordered by bioMérieux."[10] bioMérieux placed a purchase order for the Product, which may specify the Product description, quantity, delivery date, and delivery instructions.[11] Section 4.4.3 required KMC to "communicate regularly with bioMérieux regarding supply levels and KMC's ability to meet the Binding and Non-Binding Forecasts and placed purchase orders."[12]

Next, Section 9.1 set forth the parties' pricing, invoicing, and payment terms.[13] It required KMC to sell the Product to bioMérieux at the prices quoted in Appendix 6 and render invoices following delivery of Products.[14] Payment for approved and undisputed invoices was due "within forty-five (45) days of receipt of such invoice."[15] Section 9.2 directed KMC to provide a breakdown of the costs of

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8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.,* § 4.4.3.
13 *Id.,* § 9.1.
14 *Id.,* § 9.1.1, 9.1.2.
15 *Id.,* §§ 9.1, 9.1.3.

the Product as of the Effective Date of the MSA "in order for the Parties to monitor their relationship in the long term."[16]

Finally, the MSA established additional mechanisms governing the parties' ongoing commercial relationship. Foreseeing that "processes used for the manufacture of the Products [were] likely to improve during the Term of [the] Agreement to their mutual benefit," the parties agreed to establish a Productivity Program "designed to share the economic benefits thereof with bioMérieux."[17] The parties agreed to meet quarterly during the Initial Term[18] and at least annually thereafter, "to review the compliance of the Parties with the terms of this Agreement" and "to discuss perspectives, methods, and improvements to be implemented during the coming year."[19]

B. ***Appendix 6 - Unit Transfer Price and Rate Sheet***

The prices at which KMC was required to sell the Product to bioMérieux were set forth in Appendix 6 to the MSA, which contained four principal components.[20] First, it established pricing in a table organized by Unit Count and Build Duration. Second, it set forth provisions governing the establishment and adjustment of prices. Third, it allocated responsibilities for monitoring raw material costs and

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[16] *Id.*, § 9.2.
[17] *Id.*, § 9.3.
[18] The Initial Term was three years.
[19] MSA, § 10.1.
[20] MSA, § 1.4. Compl., Ex. A, at 49-50 – Appendix 6.

productivity-based price adjustments. Finally, it provided pricing terms for Spare Parts.

The appendix contained a pricing chart for three periods based on Unit Count and Build Duration.[21] Period 1 applied to 1–60 units with a six-month Build Duration, Period 2 applied to 61–260 units with a twelve-month Build Duration, and Period 3 applied to 261–500 units with a Build Duration exceeding twelve months.[22] For each period, Appendix 6 identified the total price, which was the total of a specified Raw Material and Laser Cost (a negotiated markup was applied to each)[23] plus a specified labor cost.[24] These prices were based on 500 units (which later became known as "Lot 1") and was to remain in effect through delivery of these Products.[25] Appendix 6 went on to state that the prices were subject to the following conditions:

> - Raw material cost is calculated from the master [Bill of Materials "BOM"] spreadsheet that is maintained by KMC.
> - Adjustment of material or labor costs for changes due to Engineering Change Orders[.]
> - Labor costs and material mark up within each Period are based on achieving Unit Count within the identified Build Duration. If the Unit Count is not ordered for the relevant Period, bioMérieux and KMC will reconcile the unit transfer price annually.[26]

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[21] Appendix 6 at 49.
[22] *Id.*
[23] The Raw Material cost remained the same, while the RM factor changed in each of the three periods.
[24] Appendix 6 at 49.
[25] *Id.* bioMérieux was not committed to actually purchasing 500 Products. *Id.*
[26] Appendix 6 at 50.

Appendix 6 stated that new prices "will need to be established during Period 3 based on material release quantity, annual volume, and build duration."[27] The appendix further provided that, "[n]evertheless, the Parties already acknowledge and agree that for identical or increased material release quantity, annual volume and build duration, the eventual increase, if any, should be limited to the Raw Material and to the KMC hourly [labor] rates not to exceed 5% of the current rates in this Appendix 6."[28] The parties agreed that "[f]or supporting that discussion KMC will provide bioMérieux, upon bioMérieux request, with the detailed updated BOM cost showing the actual purchasing cost of every component and the number of each components in the BOM."[29]

"Monitoring and avoiding Raw Material increases [was] part of KMC['s] responsibilities."[30] If KMC negotiated better pricing conditions on Raw Materials, it was entitled to retain fifty percent of the resulting decrease.[31]

Appendix 6 contained a separate pricing formula for Spare Parts: "Raw Material Cost × 1.235 RM factor + Labor costs."[32] If bioMérieux purchased more than $1 million in Raw Materials for Spare Parts during a calendar year, the parties

[27] *Id.* at 49.
[28] *Id.*
[29] *Id.*
[30] *Id.* at 50.
[31] *Id.*
[32] *Id.* Appendix 1, Products List, stated "As final costing of the Spares will be subject to the Spare Parts formulae set for []on appendix 6."

would discuss in good faith whether pricing terms should be modified.[33] If no agreement could be reached after three months, bioMérieux could source all or some of the Spare Parts or Raw Materials for Spare Parts, from alternative suppliers.[34]

C. *Three Production Lots and Letters of Intent*

During the parties' relationship KMC manufactured and supplied the Product through three production lots pursuant to the MSA and subsequent Letters of Intent ("LOIs").[35]

On November 13, 2020, bioMérieux issued its first PO for Lot 1 (the first 500 units), which KMC delivered on April 12, 2021.[36]

On March 2, 2022, the parties executed a Letter of Intent ("March 2 LOI") extending Appendix 6 of the MSA to an additional 500 units (referred to as "Lot 2").[37] The letter of intent stated that it was the result of "global supply chain challenges" and estimated the number of units required "to fulfill customer demand through the next 30 months through 2023 and 2024."[38] While KMC was confirming pricing for raw material, the parties were "to work in good faith to confirm [Product]

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[33] *Id.*
[34] *Id.*
[35] Compl. ¶¶ 36, 42.
[36] *Id.* ¶ 39.
[37] *Id.*, Ex. C (March 2 LOI), at 1; Compl., Ex. E (May 23 LOI), at 1.
[38] March 2 LOI at 1.

unit price" after which "an addendum to the existing contract will be negotiated in good faith."[39]

The March 2 LOI further required KMC to provide bioMérieux with "an update on a bi-weekly basis with regards to long lead time PO's that have been placed," including "any favorable or unfavorable purchase prices on material."[40] KMC agreed to "use commercially reasonable efforts to hold total BOM cost to original pricing as declared in the supply agreement dated 10th July 2020".[41] Further, "[i]f an individual component price exceed[ed] the original pricing by more than 6%," KMC "need[]ed express written approval by bioMérieux before placing the purchase."[42]

By letter dated July 4, 2022, the parties extended the authorization granted in the March 2 LOI to all material necessary for manufacturing the additional 500 units.[43]

On May 23, 2023, the parties executed another Letter of Intent ("May 23 LOI") authorizing KMC to place blanket POs for materials necessary to manufacture an additional 520 units (referred to as "Lot 3") in response to continued supply-chain

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[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] Compl., Ex. D.

challenges.[44] The May 23 LOI addressed bioMérieux's demand estimate through 2024 and 2025.

Like the March 2 LOI, the parties agreed to determine the Product unit price through good-faith negotiations based on supplier quotations and available manufacturing capacity, after which an addendum to the existing contract would be negotiated.[45] The May 23 LOI also required KMC to provide updates and use "commercially reasonable efforts to hold total BOM costs at the latest agreed pricing," and prior approval was required if any component exceeded the original pricing by more than six percent.[46] Finally, the May 23 LOI stated that all Lot 3 "orders and forecast process will be governed by the existing Manufacturing and Supply Agreement, dated July 10, 2020."[47]

D. ***bioMérieux Disputes KMC's Claim for Additional Payments.***

By May 31, 2024, KMC completed deliveries for Lots 1 and 2 and made the first Lot 3 delivery on June 28, 2024.[48] The crux of KMC's claim is that Appendix 6 required the parties to engage in a Purchase Price Variance ("PPV"), through which KMC conducts a true-up of Raw Material costs and bioMérieux was obligated to pay the delta between the invoiced raw material cost and the actual costs. In June

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[44] May 23 LOI at 1-2.
[45] *Id.* at 2.
[46] *Id.*
[47] *Id.*
[48] Compl. ¶ 62.

2024, KMC asserted that it "discovered an accounting discrepancy" in its Lot 1 PPV analysis.[49] It corrected that error, conducted a PPV analysis on Lot 2 and invoiced bioMérieux for the increase in costs.[50]

On June 26, 2024, bioMérieux objected to KMC's demand for payment.[51] The parties could not reach agreement so they subsequently entered into a Mutual Termination Agreement on December 31, 2024 (the "Termination Agreement").[52] The agreement contained mutual waivers, but stated that "KMC's claim that the Agreement includes any Purchase Price Variance ("PPV"), is specifically excluded from this Settlement Agreement."[53] This litigation followed.

III. THE PARTIES' CONTENTIONS

bioMérieux contends that KMC fails to state a claim for breach of the MSA because that parties' agreement does not contain a PPV component.[54] According to bioMérieux, various provisions of the MSA contradict KMC's claim.[55] bioMérieux further argues that KMC cannot rely on the Termination Agreement, or other post-

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[49] *Id.* ¶ 69.
[50] *Id.* ¶¶ 52, 69.
[51] *Id.* ¶¶ 52, 71-72.
[52] *Id.* ¶ 74, Ex. B (Termination Agreement) § 10.
[53] Termination Agreement § 7 (original in all caps).
[54] OB at 7.
[55] *Id.* at 10, 12.

MSA communications, to create a PPV obligation.[56] Finally, bioMérieux contends that KMC's unjust enrichment claim fails as a matter of law.[57]

KMC argues that bioMérieux's challenge presents a factual dispute that cannot be resolved on a motion to dismiss and that the MSA's pricing framework, the parties' written agreements, course of dealing, and bioMérieux's prior PPV payment all support the existence of a PPV obligation.[58] KMC further contends that where, as here, the existence or scope of the governing contract remains disputed and no contractual remedy has yet been established, unjust enrichment may be pled in the alternative.[59]

IV. STANDARD OF REVIEW

A party may move to dismiss a complaint under Rule 12(b)(6) for failure to state a claim upon which relief may be granted.[60] At this stage, the court limits its review to the complaint and the documents incorporated into, or integral to, the complaint.[61]

On a 12(b)(6) motion, the Court must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the non-moving party.[62]

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[56] RB at 7-8.
[57] OB at 13.
[58] AB at 10, 12, 16, 18, 20.
[59] *Id.* at 22.
[60] Super. Ct. Civ. R. 12(b)(6).
[61] *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006).
[62] *Id.*

Dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.[63]

The court, however, is required to accept only those reasonable inferences that logically flow from the face of the complaint and need not accept strained interpretations or conclusory allegations unsupported by specific facts.[64] Moreover, a complaint may be dismissed where the unambiguous language of documents upon which the claims are based contradicts the complaint's allegations.[65]

V. ANALYSIS

A. *KMC fails to state a reasonably conceivable claim for breach of contract.*

To state a claim for breach of contract, a plaintiff must allege (1) a contractual obligation, (2) a breach of that obligation by the defendant, and (3) a causally related injury.[66] Here, the parties' dispute centers on the first element.[67]

Under Delaware law, absent ambiguity, contract interpretation is a question of law suitable for determination on a motion to dismiss.[68] Contract interpretation seeks to ascertain the parties' shared intent.[69] In doing so, the court applies an

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[63] *Id.* at 168.
[64] *Id.*
[65] *Schiavo v. TD Bank USA National Ass'n*, 2025 WL 551742, at *3 (Del. Super. Feb. 19, 2025) (citing *Tigani v. C.I.P. Assocs., LLC*, 2020 WL 2037241, at *2 (Del. Apr. 27, 2020)).
[66] *VLIW Tech., LLC v. Hewlett-Packard Co*., 840 A.2d 606, 612 (Del. 2003); *Lineup Sys. Corp. v. Lee Enterprises Inc.,* 2026 WL 882749, at *11 (Del. Super. Mar. 31, 2026).
[67] OB at 1, 7-9; AB at 10.
[68] *Magellan Pipeline Co., L.P. v. Suncor Energy (U.S.A.) Inc*., 2026 WL 766429, at *9 (Del. Super. Feb. 26, 2026).
[69] *MicroStrategy Inc. v. Acacia Research Corp.*, 2010 WL 5550455, at *5 (Del. Ch. Dec. 30, 2010).

objective standard, asking what a reasonable person in the position of the parties would have understood the contractual language to mean.[70] Contract terms are given their common and ordinary meaning.[71] "The Court takes a holistic view, reading the given instrument as a whole, giving effect to all of its terms, and reconciling or harmonizing all of its provisions."[72]

The mere fact that the parties disagree about a contract's meaning does not render the contract ambiguous.[73] A contract is ambiguous only when it is reasonably or fairly susceptible to different interpretations or may have two or more different meanings.[74] Where a contract is ambiguous, a court may not choose between two competing reasonable interpretations on a motion to dismiss.[75] "To succeed under 12(b)(6), the movant's interpretation must be 'the only reasonable construction as a matter of law.'"[76]

KMC first argues that bioMérieux's motion is actually an attack on the factual basis of the complaint, which cannot be resolved on a motion to dismiss. KMC points to the complaint's allegations that the parties intended and agreed to a true-

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[70] *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).
[71] *Bobcat N. Am., LLC v. Inland Waste Holdings, LLC*, 2019 WL 1877400, at *11 (Del. Super. Apr. 26, 2019).
[72] *Id.* (citations omitted).
[73] *In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 572 (Del. 2019).
[74] *MicroStrategy Inc.*, 2010 WL 5550455, at *5.
[75] *Khushaim v. Tullow Inc.*, 2016 WL 3594752, at *3 (Del. Super. June 27, 2016).
[76] *Magellan Pipeline Co.,* 2026 WL 766429, at *9 (quoting *VLIW Tech.*, 840 A.2d at 615 (citation omitted)).

up process and bioMérieux failed to perform, and argues that at this stage, these well-pleaded allegations must be accepted as true. Allegations that are contradicted by the written agreement upon which they rely, however, are not well-pleaded.[77] As discussed below, the parties agreement did not create a PPV obligation. Thus, the complaint does not raise a factual dispute as to the contract's interpretation.

1. *Appendix 6 does not provide for a PPV true-up.*

Applying these principles, the Court begins with the language of the MSA. Despite the complaint asserting that the MSA "expressly" requires a PPV, the term "purchase price variance" (or any derivative thereof) does not appear in Appendix 6 or anywhere else in the Agreement. In a tacit acknowledgement of the absence of an express term, KMC asserts that "no magic words" are required for the agreement to contain a true-up provision and relies on "multiple written agreements incorporating the PPV framework" to support its claim.[78]

Appendix 6 does contain some price adjustment-related provisions. The parties agreed that "bioMérieux and KMC will reconcile the unit transfer price annually" if specified unit-count thresholds were not achieved within the identified Build Duration.[79] Appendix 6 also contemplated that "[n]ew [pricing] will need to be established during Period 3 based on material release quantities, annual volume,

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[77] *Peter Schoenfeld Asset Mgt. LLC v. Shaw,* 2003 WL 21649926, at *2 (Del. Ch. July 10, 2003).
[78] AB at 9, 14, 16.
[79] Appendix 6 at 50.

and build duration."[80] And, the parties acknowledged that "the eventual increase, if any, should be limited to the Raw Material and KMC [labor] rates not to exceed 5% of the current rates in this Appendix 6."[81]

Although Appendix 6 provided that bioMérieux and KMC would "reconcile the unit transfer price annually," that language was directed to the price itself, rather than to any reconciliation of actual raw material costs.[82] The triggering event was the failure to achieve specified production thresholds within the applicable build period. The provision did not contemplate actual costs or reimbursement of additional costs, or any type of post-sale settlement process.

The Period 3 price adjustment was to be "based on the material release quantity, annual volume and build duration."[83] The factors identified by the parties were all prospective business variables used to determine pricing for future production.[84] Nothing in this provision suggests that the parties intended to recalculate prices for Products previously sold or reconcile historical cost variances.

Finally, Appendix 6 provided that any future increase in price would be limited to increases in raw material costs, which were capped at six percent of the rates set forth in Appendix 6.[85] The temporal focus of this provision is prospective

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[80] *Id.* at 49.
[81] *Id.*
[82] *Id.* at 50.
[83] *Id.* at 49.
[84] *Id.*
[85] *Id.*

rather than retrospective. By referring only to future increases in the Product pricing, the clause governs how prices may change going forward, not how historical differences between forecasted and actual costs are to be settled.

KMC primarily bases its argument on Appendix 6's provision that the prices were subject to the condition of: "Raw material cost is calculated … from the master BOM spreadsheet that is maintained by KMC."[86] Under KMC's interpretation, the master BOM spreadsheet is "a living, breathing document that gets changed over time as the instruments are made."[87] The master BOM spreadsheet is "something [the parties] go over" and "if the raw material costs are fixed, [the parties] don't need to go over the master BOM spreadsheet … every month."[88]

KMC was responsible for monitoring and avoiding increases in Raw Material costs, which it tracked through the master BOM spreadsheet. According to KMC, these provisions reflect that Raw Material costs were expected to fluctuate in both directions and bioMérieux was obligated to pay the PPV.[89]

Accepting KMC's proposition that the parties expected the Raw Material costs to change, its arguments do not address *when* such a change may impact the price. As noted, Appendix 6 anticipated a potential increase for Period 3 in Lot 1.

[86] *Id.*; Transcript of June 5, 2026, oral argument ("Tr.") at 15. D.I. 25.
[87] Tr. at 19
[88] *Id.* at 17.
[89] Appendix 6 at 50; Tr. at 17.

Thus, tracking Raw Material costs in the BOM for Product for a period more than 12 months after the MSA was executed, makes sense. Thus, this contractual KMC obligation was not superfluous, as KMC argued it would be if no PPV provision is found.

By the parties' agreement, bioMérieux was to issue a PO for Products. After the Products were delivered, KMC was required to invoice bioMérieux. Nothing in Appendix 6 or the MSA contemplated KMC invoicing bioMérieux for additional costs after the original invoice.

2. *Appendix 6's Spare Parts provision lends no support to KMC.*

KMC next relies on another pricing formula to argue a PPV obligation as to Products. It argues that Appendix 6 expressly provides for raw material cost adjustments for Spare Parts and that the BOM language serves the same function with respect to Products. KMC posits that "[t]he [S]pare [P]art adjustment is exactly the same as the regular pricing adjustment" because both pricing formulas incorporate a raw material (RM) factor.[90] Specifically, the Spare Parts provision uses "Raw Material Cost × 1.235 RM factor + Labor costs," while the Products pricing chart likewise applies an applicable "RM factor × RM cost."[91]

[90] Tr. at 21.
[91] *Id.*

bioMérieux counters that Appendix 6 demonstrates that the parties knew how to provide for a "cost-plus" pricing formula when they intended to do so, which the parties employed for Spare Parts pricing.[92] According to bioMérieux, because the Agreement expressly adopts such a formula for Spare Parts but not for Products, the omission was deliberate under the interpretive maxim *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of another).[93]

KMC is correct that both pricing mechanisms incorporate an RM factor, but the pricing mechanisms are different. For Spare Parts, the pricing formula made clear, KMC was permitted to charge its actual costs for raw material by using the formula "Raw Material Cost × 1.235 RM factor + Labor costs."[94]

By contrast, the Raw Material costs were fixed in Period 1 and 2 for Products, and subject to future modifications within the stated parameters in Period 3.[95] Once those Raw Material Costs were incorporated into the Product unit price, the pricing formula no longer operated as a mechanism for ongoing raw material cost adjustments.

When the parties intended an actual cost pricing formula, they expressly provided one for Spare Parts.[96] They did not do so for Product pricing.

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[92] OB at 12.
[93] *Id.*
[94] Appendix 6 at 50.
[95] *Id.* at 49.
[96] *Delmarva Health Plan, Inc. v. Aceto,* 750 A.2d 1213, 1216 (Del. Ch. 1999). KMC argues that the doctrine *expressio unius est exclusio alterius* may only be used when a contract is ambiguous,

3. *The LOIs did not change the parties' pricing scheme.*

KMC points the March 2 LOI which stated: "[t]his letter allows for KMC to place blanket POs for long-lead time material (over 40 weeks), whilst in parallel confirming pricing."[97] And further, that the parties "will work in good faith to confirm [Product pricing] based on gaining quotes and confirming capacity within the supply base," after which "an addendum to the existing contract will be negotiated in good faith."[98] KMC reads the March 2 LOI's references to "confirming pricing" and "confirm [Product] Price" as evidence that the Product prices reflected in Appendix 6 were not fixed.

KMC's reading is not reasonable. The March 2 LOI extended the terms of the MSA to an additional 500 units. For this Lot, KMC was permitted to issue blanket POs for raw materials while confirming Product pricing. But, the pricing-confirmation process was required to occur before the Product unit price was finalized. Indeed, the March 2 LOI stated that once the parties confirmed the price,

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citing *Del Collo v. Houston*, 1986 WL 5841, at *4 (Del. Super. May 7, 1986). *Del Collo*, however, does not stand for such a proposition. The *Del Collo* court ruled that the doctrine of reasonable expectations, which provides that "an insurance contract should be read to accord with the reasonable expectations of the purchaser *so far as its language will permit*," applies only when the insurance contract is ambiguous. *Id.* at *3 (emphasis in original). *Del Collo* does not stand for the proposition that other doctrines of contract construction cannot be applied to an unambiguous contract. *See Township Capital, LLC v. Audent Global Asset Mgt., LLC,* 2026 WL 62905, at *2 (Del. Ch. Jan. 6, 2026) (applying *expressio unius est exclusio alterius* to an unambiguous contract).

[97] Tr. at 24.

[98] March 2 LOI at 1; Tr. at 24. During the oral argument, KMC stated that the parties did not execute an addendum; KMC issued invoices which it claims need to be paid.

an addendum would be negotiated. Nothing in the March 2 LOI suggested that, after the agreed price confirmation, the parties intended to revisit that price through a later PPV reconciliation based on actual Raw Material costs.[99]

KMC also directs the Court to the provisions requiring KMC to "provide to bioMérieux an update on a bi-weekly basis with regards to long lead time POs that have been placed," to "communicate through this update any favorable or unfavorable purchase prices on material," and to obtain "express written approval by bioMérieux before placing the purchase" if "an individual component price exceeds the original pricing by more than 6 percent."[100] According to KMC, these provisions describe "how the parties' relationship worked" after purchase orders were issued and invoices had been completed.[101] KMC further points to the provisions that limited increases in Raw Material costs to five or six-percent, arguing that these limitations in Appendix 6 and the March 2 LOI both contemplated Raw Material cost fluctuations rather than fixed prices.[102]

Neither provision, however, supports KMC's interpretation that the March 2 LOI created (or confirmed) a continuing PPV reimbursement mechanism after the bioMérieux POs were issued and invoices were rendered. Both documents

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[99] March 2 LOI at 1.
[100] *Id.*; Tr. at 43.
[101] Tr. at 43.
[102] Appendix 6 at 49; March 2 LOI at 1; Tr. at 43.

contemplated that Raw Material may increase (subject to the cap) but the parties were still required to agree to the price.[103]

The May 23 LOI contains the same Product pricing process.[104] Both LOIs confirm that the Lot 2 and 3 orders and forecast process remained governed by the MSA.

4. *The Termination Agreement does not show the parties intended a PPV.*

Finally, KMC relies on the Termination Agreement. KMC highlights that the Termination Agreement explicitly mentions "PPV" and provides that the parties would "work in good faith" to resolve the "PPV claim."[105] KMC argues that the carve-out in the Termination Agreement demonstrates that the parties recognized the PPV obligation as part of their commercial relationship and, at a minimum, supports the inference that PPV reconciliation formed part of the parties' commercial agreement.[106]

KMC misreads the Termination Agreement. It does not state that bioMérieux agreed or even suggest that "PPV was part of the Parties' commercial agreement."[107]

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[103] March 2 LOI at 1 ("When Instrument Unit price is confirmed by the parties, an addendum to the existing contract will be negotiated in good faith.").
[104] May 23 LOI.
[105] AB at 17; Compl. ¶ 78. "KMC'S CLAIM THAT THE AGREEMENT INCLUDES ANY PURCHASE PRICE VARIANCE (PPV), IS SPECIALLY EXCLUDED FROM THIS SETTLEMENT AGREEMENT. THE PARTIES SHALL WORK IN GOOD FAITH TO ADDRESS KMC'S PPV CLAIM." Termination Agreement § 7.
[106] AB at 17.
[107] Termination Agreement.

Instead, it "excludes any PPV claim from the settlement" and provides that the parties will "work in good faith to address KMC's PPV claim."[108] This merely acknowledged the parties' continuing dispute over the existence of a PPV obligation.[109]

5. *The course of dealing is extrinsic evidence that cannot be considered.*

Beyond the contract, KMC relies on bioMérieux's August 8, 2022 payment of $721,819 as a PPV true-up for Lot 1.[110] According to KMC, that payment demonstrates that bioMérieux understood, acknowledged, and acted upon the PPV reconciliation process as a binding obligation under the MSA.[111] KMC further argues that bioMérieux's current position is wholly inconsistent with its prior conduct because bioMérieux reviewed KMC's cost data, negotiated the amount owed, and ultimately remitted the PPV payment.[112]

In response, bioMérieux makes two arguments. First, the plain terms of the MSA leave no room for ambiguity, barring the Court from looking to extrinsic evidence to interpret the Agreement.[113] Second, the MSA requires any amendment

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[108] *Id.*

[109] KMC argues that because it interprets the Termination Agreement as reflecting the parties' agreement on PPV, it is ambiguous, and therefore, the Court cannot dismiss the claim. A contract is not rendered ambiguous, however, merely because the parties disagree on its meaning. *Doe v. Cedars Academy, LLC,* 2010 WL 5825343, at *5 (Del. Super. Oct. 27, 2010).

[110] AB at 20.

[111] *Id.* at 21.

[112] *Id.* at 22.

[113] RB at 11.

to be made in a writing duly executed by both parties, yet KMC identifies no written amendment imposing a PPV obligation.[114]

"When there is an ambiguity in a contract provision or term, courts look to extrinsic evidence in order to give effect to the parties' intent."[115] The Court may not, however, look to extrinsic evidence to show an ambiguity.[116] Because the MSA, Appendix 6, and the Termination Agreement are not ambiguous, the Court cannot consider extrinsic evidence of the parties' course of dealing.[117]

KMC has failed to allege a reasonably conceivable claim for breach of contract under the MSA. Therefore, this claim must be dismissed.

B. *The unjust enrichment claim must also be dismissed.*

The parties likewise offer competing views regarding KMC's unjust-enrichment claim. KMC argues that, if Appendix 6 does not impose a PPV reimbursement obligation, then the MSA does not govern the specific subject matter of the dispute, permitting recovery under a theory of unjust enrichment.[118] bioMérieux disagrees. It contends that a valid and enforceable MSA governs the

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[114] *Id.* bioMérieux disputed why this payment was made. But the Court cannot address such a factual dispute on a motion to dismiss.
[115] *Amkor Tech., Inc. v. Motorola, Inc.*, 2007 WL 3360039, at *7 (Del. Super. Nov. 14, 2007).
[116] *Schwartz v. Centennial Ins. Co.,* 1980 WL 77940, at *5 (Del. Ch. Jan. 16, 1980); *In re Morrow Park Hlg. LLC,* 2022 WL 3025780, at *17 (Del. Ch. Aug. 16, 2022) (noting that course of conduct "is a powerful indication" of the correct interpretation of an ambiguous contract).
[117] *Amkor Tech., Inc. v. Motorola, Inc.*, 2007 WL 3360039, at *7 (Del. Super. Nov. 14, 2007).
[118] *See* AB at 22-25.

parties' relationship and that, therefore, Delaware law forecloses any quasi-contractual remedy.[119]

As a threshold matter, Delaware law permits a party to plead claims "alternately or hypothetically."[120] Thus, the mere fact that KMC asserts unjust enrichment in the alternative to its breach of contract claim does not, standing alone, render the unjust enrichment claim improper.

Although Rule 8 permits alternative pleading, that permission is not without limits.[121] For instance, when an express and enforceable contract controls the parties' relationship, a plaintiff may not invoke unjust enrichment.[122] More specifically, unjust enrichment is generally unavailable where a valid contract covers the subject matter of the dispute.[123]

Here, there is no dispute that an express, enforceable contract controls the parties' relationship and even more specifically, pricing of the Product.[124]

KMC argues that unlike the cases cited by bioMérieux, this case involves a factual dispute as to whether the MSA contains a PPV obligation.[125] Because that issue remains disputed, KMC argues that "[t]hat is precisely the type of bona fide

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[119] *See* RB at 14-16.
[120] Super. Ct. Civ. R. 8(e)(2).
[121] *Dillon Gage Inc. of Dallas v. Umicore Precious Metals USA Inc.*, 2025 WL 3779149, at *3 (Del. Super. Dec. 30, 2025).
[122] *Id.* at *5.
[123] *Id.*
[124] OB at 14; RB at 16.
[125] AB at 23.

dispute about the scope and application of the contract that permits alternative pleading of unjust enrichment."[126]

KMC's argument fails for two reasons. First, it conflates two distinct inquiries. The first is whether a particular contractual obligation exists under the contract. The second is whether the contract at issue governs the rights and obligations underlying the claim. As *Textron Inc. v. Endurance American Insurance Company* explained, the relevant inquiry for purposes of unjust enrichment is the latter, not the former.[127] *Textron* expressly rejected the notion that a contractual dispute automatically places the matter outside the scope of the governing agreement.[128] Simply "because an enforceable contract may not provide the relief a litigant wants does [not] mean the case is 'not controlled by the contract.'"[129]

Second, KMC's unjust enrichment claim is not based on obligations independent of the MSA. KMC's alternative theory is not directed to promises or services outside the contractual relationship. Instead, the unjust enrichment claim is based on the same alleged PPV obligation, the same alleged underpayments, and seeks the same recovery sought under the breach of contract claim. The MSA therefore governs the rights and obligations underlying the dispute. Therefore, KMC

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[126] *Id.* at 24.
[127] *See Textron Inc. v. Endurance Am. Ins. Co.*, 346 A.3d 639, 653 (Del. Super. 2025) (rejecting the argument that the absence of a contractual right necessarily means the parties' relationship is not governed by the contract).
[128] *Id.*
[129] *Id.*

may not pursue an unjust enrichment claim as an alternative means of recovery and must be dismissed.

VI. CONCLUSION

The parties entered into an unambiguous contract, which included forecasting, ordering, pricing, and payment terms. None of those terms provided for any type of price adjustment for Products after delivery and invoicing. With no contractual basis for its claim, KMC's assertion that the MSA provided for a true-up process fails.

The parties' agreement covers the topic of manufacturing, delivering, and invoicing for the Product. As such, a claim for unjust enrichment based on an alleged price adjustment is not viable.

bioMérieux's Motion for Partial Dismissal is **GRANTED**.

IT IS SO ORDERED.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge