arguing that they are entitled to judgment as a matter of law because the indemnity provisions at issue do not cover the cleanup at the Orzinuovi plant The question presented by this motion is whether the cost of Plaintiffs' landfill-removal project falls within Defendants' indemnification obligations as defined by the 1988 Purchase Agreement, as amended, and the 1989 Purchase Agreement

This issue is one of New York law because both contracts specify that they are governed by the laws of New York *See* First Am Compl , Ex A, § 10 9(a), Ex C, § 75 To establish a breach of contract claim under New York law, a plaintiff must prove (1) the existence of a contract between the parties, (2) plaintiff's compliance with the terms of the contract, (3) defendant's breach of the contract, and (4) damages as a result of the breach *See Prince v American Airlines, Inc*, 1999 WL 796178, No 97 Civ 7231, at *7 (S D N Y Oct 6, 1999), *see also Terwilliger v Terwilliger*, 206 F 3d 240, 245-46 (2d Cir 2000) To avoid summary judgment, a nonmovant must present specific evidence to support its position that there is a genuine issue of material fact *See Banca Commerciale Italiana v Northern Trust Int'l Banking Corp*, 160 F 3d 90, 93 (2d Cir 1998), *Marks v New York Univ*, 61 F Supp 2d 81, 88- 89 (S D N Y 1999)

Defendants contend that Plaintiffs have failed to create a triable issue of material fact to support one of these essential elements--to wit, that Plaintiffs suffered damages as a result of the alleged breach Given that the indemnity provision under the 1989 Purchase Agreement differs from the indemnity provision under the 1988 Purchase Agreement, as amended, the Court will discuss them separately

A Contractual Indemnification Under 1989 Purchase Agreement

In count I of their amended complaint, Plaintiffs assert a claim against defendants Abex and Pneumo Abex ("Defendants") for indemnification under the 1989 Purchase Agreement for losses incurred on account of removing allegedly unlawful landfills at the Orzinuovi plant *See* First Am Compl ¶¶ 7-21 Section 7 3(a) of the 1989 Purchase Agreement obligates Defendants to indemnify Plaintiffs in connection with any loss resulting from a material breach of Defendants' representation of Frendo's compliance with applicable law *See* First Am Compl , Ex A, § 7 3(a), pp 39-40, § 3 1 7, pp 15-16 The introductory phrase of section 7 3 makes this indemnity obligation subject to the procedural limits set forth in section 7 1 *See id* , Ex A, § 7 3, p 39 Pursuant to section 7 1(a), any notice of claim for indemnification must satisfy both a timeliness and a specificity requirement Section 7 1(a), the "survival" provision, provides in relevant part

> *7 Each of the representations and warranties will survive the Closing and remain in full force and effect until the expiration of one year after the Closing Date or, if earlier, January 31, 1990, with the result that any claim for an alleged breach of a representation or warranty which is not asserted by written notice given as herein provided which describes the basis for such claim with specificity may not be pursued
>
> *Id* , § 7 1(a), p 38

By virtue of section 7 1(a), the time period in which Plaintiffs could make an indemnity demand expired on January 31, 1990, the one-year anniversary of the closing date *See* First Am Compl ¶ 9 (alleging that "[t]he purchase and sale provided for in the 1989 Stock Purchase Agreement was closed on or about January 31, 1989 (the "1989 Closing Date") ") Based on section 7 1(a)'s specificity provision, written notice of a claim predicated on the compliance representation should identify specific liability under the law Defendants argue that Plaintiffs cannot pursue an indemnity claim because they did not give proper notice of their claim within the one-year period allowed for in the 1989 Purchase Agreement Plaintiffs contend that their October 23, 1989 letter to Defendant Abex--advising of Plaintiffs' belief of a possible breach under the 1989 Purchase Agreement--satisfies section 7 1(a)

Plaintiffs sent the demand letter more than three months prior to expiration of the one-year period But to fulfill the conditions of section 7 1(a), the October 23, 1989 notice must satisfy the specificity requirement as well Based on the contractual language, section 7 1(a)'s two requirements go hand-in-hand, thus, a bare assertion of a claim for indemnity within the one-year window is meaningless without accompanying details regarding the basis for the claim Any other interpretation of section 7 1(a) would eviscerate its specificity clause, a result contrary to the rules of contract construction This is so because under New York law, the governing law specified in the 1989 Purchase Agreement, a court must interpret a contract so as to give effect to all of its clauses and to avoid an interpretation that leaves part of a contract meaningless *See Insurance Co of North America v ABB Power Generation, Inc*, 925 F Supp 1053, 1058-59 (S D N Y 1996) Moreover, New York courts apply the canon of strict construction with particular force to indemnity provisions to avoid reading into an agreement a duty not anticipated by the parties *See TD Waterhouse Investor Srvcs Inc v Integrated Fund Srvcs, Inc*, No. 01 Civ 8986, 2002 WL 441123, at *2

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