

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 22ND
JUSTICE HAINEY) DAY OF OCTOBER, 2019

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DEL EQUIPMENT INC.

Applicant



INITIAL ORDER

THIS APPLICATION, made by Del Equipment Inc. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn October 20, 2019, and the Exhibits thereto (the “**Initial Affidavit**”), and the pre-filing report of MNP Ltd. in its capacity as the proposed Monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, the Monitor, Diesel Equipment Limited, and those other parties present as indicated on the counsel sheet, and on reading the consent of MNP Ltd. to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Initial Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to

the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant shall be entitled to continue to use the corporate credit cards in place with Bank of Montreal and shall make full repayment of all amounts outstanding thereunder, including with respect to any pre-filing charges.

7. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, compensation, employee benefits, pension contributions, vacation pay and expenses (including, without limitation, payroll and benefits processing and servicing expenses) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) all outstanding and future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including with respect to customer warranty obligations and as relates to customer deposits and pre-payments, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (d) amounts owing by the Applicant to insurance premium financiers as necessary to ensure continued coverage for the Applicant under its existing insurance policies, including director and officer insurance; and

- (e) amounts owing for goods or services supplied to the Applicant prior to the date of this Order if, in the opinion of the Applicant and with the consent of the Monitor, such payment is necessary to maintain the operations of the Business.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and including payments to entities who provide insurance premium financing), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order of any other Order of this Court.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$650,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) disclaim such of its arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA; and
- (d) pursue all avenues of refinancing or restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but, for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

13. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor five (5) business

days' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. THIS COURT ORDERS that until and including November 21, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien upon prior written notice to the Applicant and the Monitor.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant (in

each case whether written or oral), except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all truck chassis, truck equipment and parts suppliers, computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, transportation, utility, maintenance, security or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim

against the directors or officers that arose before the date hereof and that relates to any obligation of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that the Applicant shall indemnify its current and future directors and officers (the “**D&Os**”) against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including, without limitation, in respect of any failure to pay wages and source deductions, vacation pay, or other payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b) or 9(c) of this Order except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of such director’s or officer’s gross negligence or wilful misconduct.

22. THIS COURT ORDERS that the D&Os of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,200,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 44 and 46 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the D&Os shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPROVAL OF CHIEF RESTRUCTURING OFFICER ENGAGEMENT

24. THIS COURT ORDERS that:

- (a) the engagement agreement dated as of October 18, 2019 pursuant to which the Applicant has engaged 2255987 Ontario Limited operating as Strategic Results Advisors (“**SRA**”) to provide the services of Douglas Lucky to act as chief

restructuring officer to the Applicant (the “**CRO**”), a copy of which is attached as Exhibit “K” to the Initial Affidavit (the “**CRO Engagement Letter**”), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby, including the success fee stipulated therein (the “**Success Fee**”);

- (b) the CRO shall not be or be deemed to be a director of the Applicant;
- (c) the CRO, in its capacity as an officer of the Applicant, shall be entitled to the benefit of the indemnity provided in paragraph 21 hereof and the Directors’ Charge;
- (d) neither SRA nor the CRO shall, as a result of the performance of their respective obligations and Duties under the CRO Engagement Letter in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if SRA or the CRO is nevertheless later found to be in Possession of any Property, then SRA or the CRO, as the case may be, shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and shall be entitled to the benefits and protections in relation to the Applicant and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property;
- (e) SRA and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct on the part of SRA or the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of fees paid to SRA and the CRO;
- (f) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of SRA and the

CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

- (g) the obligations of the Applicant to SRA and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicant.

APPOINTMENT OF MONITOR

25. THIS COURT ORDERS that MNP Ltd. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on the terms agreed to by the Applicant and the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) assist the Applicant with respect to the consideration, development and implementation of any Restructuring initiatives, including with respect to the Sale Process (as defined below);
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable, including the services or employees of its affiliates, respecting the exercise of its powers and performance of its obligations under this Order;
- (j) carry out such duties and responsibilities as set out in this Order, including in respect of the Sale Process; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

27. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, the financial advisor to the Applicant and the CRO (as defined below) shall be paid their reasonable fees and disbursements, in each case on the terms set forth in their respective

engagement letters and at their standard rates and charges and whether incurred prior to, on or after the date hereof, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant, the financial advisor for the Applicant and the CRO in accordance with the payment terms agreed between the Applicant and such parties and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant, the financial advisor to the Applicant and the CRO retainers in the amounts agreed with such parties, to be held by each of them as security for payment of their respective fees and disbursements outstanding from time to time.

32. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, the Applicant's financial advisor and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements (but excluding the Success Fee) incurred both before and after the granting of this Order at the standard rates and charges of the Monitor, such counsel and advisors and the CRO, subject to the terms set forth in their respective engagement letters, and the CRO shall be entitled to the benefit of and is hereby granted a charge (the "**Success Fee Charge**") on the Property, as security for the Success Fee. The Administration Charge and the Success Fee Charge shall have the priority set out in paragraphs 44 and 46 hereof.

SALE PROCESS

34. THIS COURT ORDERS that the Sale Process (as defined in the Initial Affidavit and appended as Exhibit "L" to the Initial Affidavit) be and is hereby approved.

35. THIS COURT ORDERS that the Applicant and its advisors (including, without limitation, the CRO), and the Monitor and its advisors, are authorized and directed to commence the Sale Process in accordance with its terms. The Applicant, the CRO and the Monitor are hereby authorized and directed to perform their respective obligations in connection with the

Sale Process and to do all things reasonably necessary in relation to such obligations, subject to the terms of the Sale Process.

36. THIS COURT ORDERS that the Applicant, the CRO and the Monitor and their respective affiliates, partners, directors, employees, counsel, advisors, agents, shareholders and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of such party in performing its obligations under the Sale Process, as determined by this Court.

37. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant, the CRO and the Monitor are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their representatives (the “**Representatives**”), if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicant’s records pertaining to the Applicant’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale or other strategic transaction as contemplated by the Sale Process (a “**Sale**”). Each Bidder or Representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Applicant, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Applicant or the Monitor. Any Bidder under a Successful Bid (as defined in the Sale Process) (a “**Successful Bidder**”) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in any Successful Bid, shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicant or the Monitor.

DIP FINANCING

38. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Diesel Equipment Limited (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$1 million (plus accrued and unpaid interest) unless permitted by further Order of this Court.

39. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the DIP Financing Term Sheet between the Applicant and the DIP Lender dated as of October 21, 2019 (the “**DIP Credit Agreement**”), filed.

40. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Credit Agreement and the other Definitive Documents. The DIP Lender’s Charge shall have the priority set out in paragraphs 44 and 46 hereof.

42. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the DIP Credit Agreement, the other related Definitive Documents or the DIP Lender's Charge, the DIP Lender, may, subject to the provisions of the DIP Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Lender's Charge, as applicable, cease making advances to the Applicant, make demand, accelerate payment and give other notices; provided that, the DIP Lender must apply to this Court on five (5) business days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Applicant and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Applicant or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Credit Agreement, the other related Definitive Documents or the DIP Lender's Charge, to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Applicant and to appoint a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

43. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Success Fee Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$400,000);

Second – Directors’ Charge (to the maximum amount of \$1,200,000);

Third – DIP Lender’s Charge; and

Fourth – Success Fee Charge (to the maximum amount of \$100,000).

45. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors’ Charge, the DIP Lender’s Charge and the Success Fee Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except for any secured creditor of the Applicant who did not receive notice of the application for this Order.

47. THIS COURT ORDERS that the Applicant shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the applicable Charges, or further Order of this Court.

49. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of

creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Credit Agreement or the Definitive Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it

publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and in, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/Toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.mnpdebt.ca/DELEquipment (the “**Website**”).

53. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceedings (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Website, provided that the Monitor shall have no liability in respect of the accuracy of, or the timeliness or making any changes to, the Service List.

54. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received; (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

55. THIS COURT ORDERS that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

56. THIS COURT ORDERS that, except with respect to any motion to be heard on the Comeback Date (as defined below), and subject to further Order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in a motion brought by the Applicant or Monitor in these proceedings shall, subject to further Order of this Court, provide the Service List with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Toronto time) on the date that is four (4) days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicant.

57. THIS COURT ORDERS that following the expiry of the Objection Deadline, counsel to the Monitor or counsel to the Applicant shall inform the Court including by way of a 9:30 a.m. appointment, of the absence or the status of any objections to the motion and the judge having carriage of the motion may determine whether the motion should proceed at a 9:30 a.m. chambers appointment or otherwise on consent, or whether a hearing will be held in the ordinary course on the date specified in the notice of motion.

GENERAL

58. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order, or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation of application of this Order.

59. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

60. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

61. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

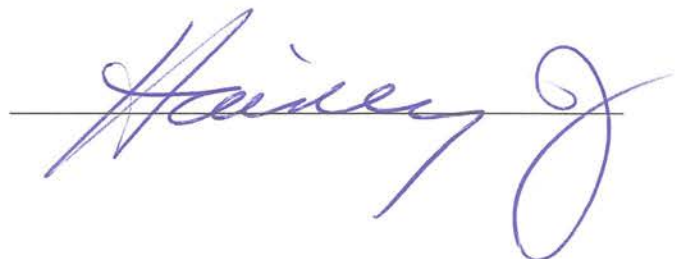
62. THIS COURT ORDERS that any interested party (other than the Applicant and the Monitor) that wishes to amend or vary this Order shall bring a motion before this Court on a date to be fixed by this Court upon the granting of this Order (the "**Comeback Date**"), and any such interested party shall give not less than seven (7) days notice to the Service List and any other party or parties likely to be affected by the relief sought by such party in advance of the Comeback Date; provided, however that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges with respect to any fees and disbursement incurred until the date this Order may be amended, varied or stayed.

63. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 22 2019

PER / PAR: JP

A handwritten signature in blue ink, appearing to read "Hainey", is written over a horizontal line.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL
EQUIPMENT INC.**

Court File No: CJ-14-629552
-0000

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

INITIAL ORDER

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