

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE) WEDNESDAY, THE 17th
)
JUSTICE) DAY OF JUNE, 2020
)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF FERREX ENGINEERING LTD., OF THE CITY OF AJAX, IN THE
PROVINCE OF ONTARIO**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Ferrex Engineering Ltd. (the “**Company**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between the Company and 1199541 Ontario Inc. (“**1199541**”) dated June 8, 2020 and vesting in 1199541’s permitted assignee, MSC Inc. (the “**Purchaser**”), all of the Company’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day by Zoom videoconference call due to the COVID-19 crisis.

ON READING the Second Report of MNP Ltd., in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”), dated June ♦, 2020 (the “**Second Report**”) and on hearing the submissions of counsel for the Company, the Proposal Trustee and the Purchaser, no one appearing

for any other person on the service list, although properly served as appears from the affidavit of
◆ sworn June ◆, 2020, filed:

SERVICE

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

SALE AGREEMENT APPROVAL

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Sale Agreement.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Company and the Purchaser is hereby authorized and approved, with such minor amendments as the Company and the Purchaser, with the approval of the Proposal Trustee, may agree upon. The Company and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**"), all of the Company's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto, including, without limitation, the Assigned Contracts, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Madam Justice Conway dated May 4, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal*

Property Security Act (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that the Proposal Trustee may rely on written notice from the Company and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Proposal Trustee’s Certificate.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Company and the Proposal Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company’s records pertaining to the Company’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Company.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Company and any bankruptcy order issued pursuant to any such applications or otherwise; and
- (c) any assignment in bankruptcy made in respect of the Company;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

10. **THIS COURT ORDERS** that for a period of not less than two years from the Closing Date, the Purchaser shall provide the Proposal Trustee and any trustee in bankruptcy of the Company with access to the books and records of the Company in the possession of the Purchaser during normal business hours upon request, and shall not thereafter alter or destroy such books and records without providing the Proposal Trustee or and any trustee in bankruptcy of the Company with 30 days prior written notice, and the trustee may make copies of same as it considers appropriate.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company and the Proposal Trustee and their 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 Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this

Order or to assist the Company and the Proposal Trustee and their agents in carrying out the terms of this Order.

Schedule A – Form of Proposal Trustee’s Certificate

Court File No. 31-2636073
Estate File No. 31-2636073

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PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

- A. Ferrex Engineering Ltd. (the “**Company**”) commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, on April 2, 2020 (the “**NOI**”);
- B. MNP Ltd. was appointed as proposal trustee (the “**Proposal Trustee**”) under the NOI;
- C. Pursuant to an Order of the Court dated June 17, 2020 (the “**Approval and Vesting Order**”), the Court approved the asset purchase agreement made as of June 8, 2020 (the “**Sale Agreement**”) between the Company and 1199541 Ontario Inc. (“**1199541**”) providing for the vesting in 1199541’s permitted assignee, MSDC Inc. (the “**Purchaser**”), of the Company’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or

waived by the Company and the Purchaser (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

D. Pursuant to the Approval and Vesting Order, the Proposal Trustee may rely on written notice from the Company and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement.

E. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Company and the Purchaser have each delivered written notice to the Proposal Trustee that all applicable conditions under the Sale Agreement have been satisfied and/or waived, as applicable;
2. The Proposal Trustee has received payment of the Purchase Price; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

**MNP Ltd., in its capacity as Proposal Trustee
of Ferrex Engineering Ltd., and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

- (a) the Personal Property;
- (b) the Intellectual Property and the Technical Information;
- (c) the Assigned Contracts;
- (d) the Books and Records; and
- (e) the Goodwill.

Appendix 1 to Schedule B - Assigned Contracts

All supplier and customer contracts to which the Company is a party, to the extent that such contracts are assignable.