

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**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

**MOTION RECORD
APPROVAL & VESTING ORDER
STAY EXTENSION, KERP & LITIGATION PROTOCOL APPROVAL ORDER
(Motion returnable February 27, 2020)**

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Del Equipment Inc.

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Court File No.: CV-19-629552-00CL

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**IN THE MATTER OF THE COMPANIES' CREDITORS
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ARRANGEMENT OF DEL EQUIPMENT INC.**

Applicant

NOTICE OF MOTION

(returnable February 27, 2020)

Del Equipment Inc. ("**DEL**" or the "**Company**") will make a motion before Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on February 27, 2020, at 9:00 a.m. or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, in substantially the form attached at Tab 3 of DEL's Motion Record dated February 22, 2020 (the "**Motion Record**"), among other things:

- (a) approving the Transaction (as defined in the Lucky Affidavit) pursuant to the Asset Purchase Agreement dated as of February 21, 2020 (the "**Purchase Agreement**") between DEL and Drive Products Inc. ("**DPI**");

- (b) upon completion of the Transaction, vesting DEL's right, title and interest in and to the Purchased Assets in DPI, free and clear of all interests, liens, charges and encumbrances, other than permitted encumbrances; and
 - (c) ordering the sealing of the confidential appendix to the Second Report containing an unredacted version of the Purchase Agreement;
2. An Order, in substantially the form attached at Tab 4 of the Motion Record, among other things:
- (a) extending the Stay Period (as defined below) until and including May 29, 2020;
 - (b) approving a key employee retention program to address the need to retain certain key employees (the "**KERP**") through the closing of the Transaction and authorizing DEL to perform its obligation thereunder;
 - (c) approving the Litigation Protocol (as defined in the Lucky Affidavit) and granting certain ancillary relief related thereto;
 - (d) authorizing the Company, in consultation with the Monitor, to continue to explore opportunities with respect to the Residual Assets (as defined below); and
 - (e) ordering the sealing of the confidential appendix to the Second Report containing certain information with respect to the KERP; and
3. Such further and other relief as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION are as follows:

Overview

4. DEL is a Canadian truck body and equipment “up-fitter” that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles.
5. On October 22, 2019, DEL was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to the Initial Order of the Court (the “**Initial Order**”).
6. The Initial Order, among other things, (i) appointed MNP Ltd. as the monitor (the “**Monitor**”) of DEL in the CCAA proceedings, (ii) granted a stay of proceedings in respect of DEL until and including November 21, 2019, or such later date as the Court may order (the “**Stay Period**”), and (iii) approved DEL’s commencement of a sale and investment solicitation process (the “**Sale Process**”).
7. On November 19, 2019, the Court granted an Order (the “**Stay Extension and DIP Amendment Order**”) which, among other things, extended the Stay Period to and including February 28, 2020.
8. Since the Stay Extension and DIP Amendment Order, DEL has continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including in its efforts to advance the Sale Process.

The Transaction

9. DEL has continued to advance the Sale Process with a view to identifying a going-concern solution or other transaction that maximizes the value of DEL and its business for the benefit of the Company and its stakeholders.

10. The Company has solicited indications of interest and potential bids from a range of prospective parties in connection with the Sale Process.

11. Phase 2 of the Sale Process was concluded on January 31, 2020 and multiple binding offers in respect of DEL and its business, property or assets were received.

12. Following the Company's initial review of the Phase 2 bids, the Company and its legal advisors determined to enter into an exclusivity agreement with DPI for the purpose of negotiating the terms and conditions of a definitive transaction with DPI.

13. After extensive review, discussion and negotiation, DEL has determined in the exercise of its business judgment that the Company should proceed with the Transaction as the best available option in the circumstances.

14. The Transaction provides for the going-concern sale of DEL's Ontario business (which represents a significant portion of its overall business) and certain additional assets to DPI in exchange for cash consideration payable upon closing of the Transaction.

15. As the Transaction is mostly focused on DEL's Ontario, branch DEL retains the ability to seek to conclude additional value maximizing transactions in respect of its remaining branches and assets.

16. The Monitor is supportive of the proposed Transaction.

Residual Assets

17. The Company is in the process of considering and pursuing various options with respect to its remaining branches and assets not included within the scope of the Transaction (the “**Residual Assets**”) in order to maximize the value of the Company and its business and assets for the benefit of its stakeholders.

18. The Company is seeking authorization to continue to explore opportunities for the sale of its Residual Assets and, with the prior approval of the Monitor, to enter into and complete any transaction for the Residual Assets for proceeds equal to or less than \$250,000.

19. DEL shall be required to seek Court approval for any transaction for the Residual Assets for proceeds in excess of \$250,000.

KERP

20. In light of the commencement of these CCAA proceedings and the Company’s overall circumstances, the Company became concerned that certain of its key employees may choose to discontinue their employment with DEL and seek other opportunities. These concerns increased significantly following the resignation of approximately 20 employees over the course of November and December 2019, and the sudden resignation of four key employees at one branch in mid-January 2020.

21. The Company developed the KERP in an effort to maintain the continued employment of certain key employees that are essential to the success of the CCAA process, including to maintaining DEL’s ongoing business operations pending closing of the Transaction.

22. It would have been highly detrimental to the Company, its stakeholders and the Sale Process if the unplanned employee departures continued at the rate that DEL had been experiencing prior to the development and implementation of the KERP.

23. The Company consulted with the Monitor in the development of the KERP and the Monitor and is supportive of the KERP.

Stay Extension

24. As noted above, the Initial Order granted a stay of proceedings in favour of DEL during the Stay Period. DEL is requesting an extension of the Stay Period until and including May 29, 2020.

25. DEL requires the ongoing benefit of the CCAA stay of proceeding in order to complete the proposed Transaction, finalize additional value maximizing transactions with respect to the Residual Assets and otherwise generate value from its ongoing business while the Transaction and other restructuring alternatives are advanced and finalized.

26. The Company has been acting in and continues to act in good faith and with due diligence in these CCAA proceedings.

27. DEL is forecast to have sufficient liquidity to operate its business throughout the proposed Stay Period.

28. The Monitor supports the extension of the Stay Period.

Litigation Protocol

29. Counsel to DEL and counsel to Gin-Cor have worked cooperatively to agree to the terms of the Litigation Protocol, which will provide for the prompt and efficient resolution of the Payment Dispute as between DEL and Gin-Cor.

30. Approval of the Litigation Protocol is fair and reasonable and in the best interest of DEL and its stakeholders.

General

31. The confidential supplement to the Second Report, which include an unredacted copy of the Purchase Agreement and a summary of the individual KERP payments, contains commercially sensitive and personal information, as applicable, that DEL believes should not be made publicly available.

32. Such other grounds as further set out in the affidavit of Douglas Lucky sworn February 22, 2020 (the “**Lucky Affidavit**”).

33. The provisions of the CCAA, including sections 11 and 11.02(2), and this Court’s equitable jurisdiction thereunder.

34. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

35. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

36. The Lucky Affidavit and the exhibits attached thereto;

37. The Second Report of the Monitor (the “**Second Report**”) to be filed in connection with this Motion; and
38. Such further and other materials as counsel may advise and this Court may permit.

February 22, 2020

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO#: 51148B
Andrew Harmes LSO#: 73221A

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Del Equipment Inc.

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Court File No: CV-19-629552-00CL

Applicant

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>NOTICE OF MOTION (returnable February 27, 2020)</p>
<p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p>Christopher G. Armstrong LSO#: 55148B carmstrong@goodmans.ca</p> <p>Andrew Harmes LSO#: 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>

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**AFFIDAVIT OF DOUGLAS LUCKY
(sworn February 22, 2020)**

I, Douglas Lucky, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

I. INTRODUCTION

1. I am the Chief Restructuring Officer (“**CRO**”) of Del Equipment Inc. (“**DEL**” or the “**Company**”), a Canadian truck body and equipment “up-fitter” that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles nationwide through its six manufacturing and distribution locations. DEL retained 2255987 Ontario Limited o/a Strategic Results Advisors (“**SRA**”) (a company which I am the principal of) on July 23, 2019, to provide restructuring and turn-around advisory services. I was appointed by DEL as CRO immediately prior to the Company’s commencement of the within proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), with such appointment becoming effective upon the issuance by this Court of the Initial Order (as defined below). Accordingly, I have personal knowledge of the matters to

which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.¹

2. On October 22, 2019, DEL sought and obtained an order of this Court (the “**Initial Order**”) providing creditor protection and related relief under the CCAA. The Initial Order also appointed MNP Ltd. (“**MNP**”) as the Court-appointed monitor of DEL in these CCAA proceedings (the “**Monitor**”) and approved DEL’s proposed sale and investment solicitation process (the “**Sale Process**”) pursuant to which the Company would seek to identify a going-concern solution or other transaction that maximizes the value of DEL and its business for the benefit of the Company and all stakeholders.

3. The Sale Process has culminated in a sale agreement that, subject to the approval of this Court and satisfaction of the other closing conditions, will see Drive Products Inc. (“**DPI**”) acquire, among other things: (i) all of DEL’s owned equipment and personal property located at the Company’s Newmarket, Ontario branch; (ii) DEL’s rights and obligations in respect of certain pool stock, customer and supplier agreements; (iii) certain of DEL’s inventory and supplies; and (iv) all intellectual property rights and goodwill related to DEL’s business (the “**Transaction**”).

4. The Transaction is a very positive development for the Company and its stakeholders. It provides fair market value for the subject assets and will see DEL’s Ontario business continue on a going concern basis for the benefit of customers and suppliers. It will also see a portion of DEL’s remaining workforce receive offers of employment from DPI. The Company, with the

¹ Capitalized terms not defined herein shall have the meaning given to them in my affidavit previously sworn in these proceedings on October 20, 2019, in support of the Initial Order (the “**Initial Affidavit**”).

assistance of its professional advisors, has determined that the Transaction, in conjunction with an orderly disposition of the Company's remaining assets and property which are outside the scope of the Transaction coupled with completing its remaining order book outside of Ontario to generate additional cash, represents the best alternative available to the Company in the circumstances. As a result, the Company is seeking approval to proceed with the Transaction while it continues to pursue sale alternatives in respect of its property and assets not included in the Transaction and otherwise works to complete and wind-down its remaining business.

5. In addition to seeking approval of the Transaction, the Company is also seeking an Order, among other things: (i) extending the stay of proceedings in respect of DEL to May 29, 2020; (ii) approving a key employee retention program to address the need to retain certain key employees (the "KERP") through the closing of the Transaction; (iii) approving the Litigation Protocol (as defined below) and granting certain ancillary relief related thereto; and (iv) authorizing the Company, in consultation with the Monitor, to continue to explore opportunities with respect to the Residual Assets (as defined below). This affidavit is sworn in support of the Company's motion seeking the foregoing relief.

II. BACKGROUND

6. DEL is a family-owned OEM-approved vehicle up-fitter which operates six distribution and manufacturing facilities across Canada in Moncton, Montréal, Calgary, Edmonton, Vancouver (Port Coquitlam) and Newmarket. The Company's primary business consists of the sale of work-ready trucks to OEM-authorized dealers, end users, large fleets, government, and large leasing companies through its nation-wide distribution network. DEL designs, manufactures, installs, markets and sells specialized truck bodies, attachments and equipment as

part of this business. DEL has been serving the Canadian market for over 70 years, and has a broad and diverse customer base, including municipalities, truck dealerships, national fleet accounts and business operators.

7. As described in more detail in the Initial Affidavit, DEL reached an agreement in June 2017 with Gin-Cor Industries Inc. (“**Gin-Cor**”), a company that operates in the same field as DEL, pursuant to which Gin-Cor would acquire a 40% equity interest in and management control of DEL for a nominal sum, with a view to earning a 100% equity interest upon the achievement of certain profitability related milestones (the “**Gin-Cor Transaction**”). Although the Gin-Cor Transaction was intended to enhance DEL’s performance through the achievement of business synergies, most of the expected synergies failed to materialize and DEL experienced increasing losses during the period of Gin-Cor control, leading to the termination of the Gin-Cor Transaction in July 2019.

8. Despite efforts to re-establish management control and implement various restructuring initiatives, it became apparent that a formal restructuring process was required to stabilize DEL’s business and implement a process to explore and execute a strategic transaction. At the time of the commencement of the CCAA proceedings, more than \$8 million was owing to the Company’s supplier base and certain suppliers had started to compress payment terms. In addition, DEL’s liquidity was also negatively impacted by a payment dispute involving Mack Defense, LLC and Gin-Cor (the “**Payment Dispute**”), which resulted in an approximately 20% reduction in anticipated receipts for September 2019.

9. Facing imminent liquidity challenges, on October 22, 2019, DEL commenced these CCAA proceedings in an effort to, among other things, (i) provide stability for its business,

(ii) afford it additional time to pursue the Sale Process, and (iii) obtain interim financing from Diesel Equipment Limited (“**Diesel**”) of up to \$1 million (the “**DIP Financing**”) to fund the Company’s operational needs while it pursues its restructuring efforts. The DIP Financing was subsequently increased by \$1.5 million (for a total of \$2.5 million in the aggregate) pursuant to an Order of this Court issued on November 19, 2019 (the “**Stay Extension and DIP Amendment Order**”).

10. In addition to being the DIP Lender, Diesel is also DEL’s principal shareholder and senior secured creditor as a result of Diesel taking an assignment of the Secured Credit Agreement from the Bank of Montreal. There was approximately \$11.5 million owing by DEL to Diesel under the Secured Credit Agreement as at the commencement of these CCAA proceedings, which amount (plus ongoing interest and expenses) remains outstanding.

III. UPDATE SINCE THE STAY EXTENSION AND DIP AMENDMENT ORDER

11. The Company, with the assistance of the Monitor, has been working diligently to advance the Sale Process, maintain the stability of its business, manage relationships with key stakeholders, and carry out the terms of the Initial Order. These efforts have been successful and DEL has continued to operate its business in the normal course without disruption while the Sale Process was being advanced.

12. More specifically, the Company’s activities since the Stay Extension and DIP Amendment Order have included the following:

- (a) the Company, under my direction in my capacity as CRO, has worked with its professional advisors and with the assistance of the Monitor to continue to pursue

the Sale Process. As described further below, the Company has advanced the Sale Process through its two-phased structure and has identified the Transaction as the best available alternative for DEL and its stakeholders in the circumstances, has executed the Purchase Agreement and is seeking approval of the Transaction by the Court;

- (b) the Company has reduced ongoing operational expenses and input costs and sought to generate working capital through the completion of work-in-process and the collection of outstanding accounts receivable;
- (c) the Company has continued to pay its employees in the ordinary course in accordance with existing practices and, as discussed in further detail below, responded to the unplanned departure of certain key employees by implementing the KERP in an effort to retain the services of selected key employees and prevent future departures;
- (d) the Company has continued to pay its suppliers for goods and services that were contracted for and provided to the Company after the commencement of the CCAA proceedings and has had discussions and made arrangements with various suppliers to ensure the continued supply of goods and services to the business;
- (e) the Company and its legal counsel have responded to inquiries from various stakeholders regarding the CCAA proceedings and their impact on such stakeholders;

- (f) the Company and Gin-Cor, together with their respective legal counsel, have engaged in various discussions to reach an understanding as to the amount of monthly rent payable by DEL to Gin-Cor with respect to DEL's continued occupation and sub-lease of the Newmarket facility from which DEL's head office and primary manufacturing facility is located. Following such discussions, DEL has made payment to Gin-Cor of any outstanding rent for the period from and after the commencement of the CCAA proceedings; and
- (g) the Company's legal counsel has prepared, and engaged with legal counsel to Gin-Cor in respect of, a litigation protocol (the "**Litigation Protocol**") outlining the timeline and procedure to resolve the Payment Dispute, a copy of which is attached as Exhibit "A" to this affidavit. In accordance with the Litigation Protocol, I swore a supplementary affidavit in respect of the Payment Dispute on January 15, 2020, which was served upon Gin-Cor's counsel that same day. The Litigation Protocol contemplates that this Court will determine certain issues relating to the Payment Dispute at a hearing to be held the week of May 4, 2020 (subject to Court availability), namely: (i) whether the fund at issue (the "**Fund**") is a "specific fund"; and (ii) whether Gin-Cor has the right to retain all or any portion of the Fund and to set-off the Fund against: (a) any amount owing by DEL to Gin-Cor; and (b) any amount owing by DEL to another Gin-Cor group entity (the "**Set-Off Dispute**"), which issues include whether Gin-Cor would be unjustly enriched by retaining the Fund and whether the Fund is a fund that can be used to pay Gin-Cor's claims. To the extent that the Court determines that Gin-Cor is entitled to retain all or any portion of the Fund and that Gin-Cor and/or another

Gin-Cor group entity are entitled to exercise a right of set-off against the Fund, the parties will attempt to resolve any dispute regarding the amount Gin-Cor and/or another Gin-Cor group entity are entitled to set-off against the Fund (the “**Claim Amount Dispute**”), failing which the Claim Amount Dispute will be referred to Andrew Diamond who will serve as a CCAA claims officer to hear and determine such dispute. I am advised by counsel that Mr. Diamond is an experienced arbitrator and mediator in the commercial litigation and insolvency space and that he has served as a claims officer in a number of other CCAA cases. As such, I believe he is an appropriate candidate to serve as a CCAA claims officer for this matter to the extent required.

13. The Monitor and its counsel have received frequent updates with respect to the Company’s business operations, interactions with key stakeholders, the progress of the Sale Process, and other developments during the CCAA proceedings. I understand that the Monitor’s second report (the “**Monitor’s Second Report**”), which is to be filed in connection with this motion, will detail the activities of the Monitor since the issuance of the Stay Extension and DIP Amendment Order.

IV. THE SALE PROCESS

14. The Sale Process was formally commenced following the issuance of the Initial Order on October 22, 2019. A copy of the Sale Process approved by the Initial Order is attached to this affidavit as Exhibit “B”.

15. The Sale Process was structured as a two-phase process. The first phase of the Sale Process (“**Phase 1**”) involved providing notice of the Sale Process to interested parties, executing

non-disclosure agreements, permitting participants to conduct initial due diligence and the submission of non-binding expressions of interest (“**EOI**”) to the Company by December 6, 2019 (the “**Non-Binding EOI Bid Deadline**”). The second phase of the Sale Process (“**Phase 2**”) involved a period of additional data room access and due diligence, additional advisor and principal discussions and the submission of final bids in the form of binding definitive documentation by January 31, 2020 (the “**Binding Bid Deadline**”).

16. The Sale Process was designed to be flexible in order to maximize the value of the Company and its business and assets for the benefit of its stakeholders. The Company, in conjunction with SRA and the Monitor, developed the Sale Process with a view to being able to identify transactions in a variety of forms, including potentially selling the nation-wide DEL business as a going concern or selling individual branches or lines of business.

B. Implementation of the Sale Process

(i) Phase 1

17. Following issuance of the Initial Order and the approval of the Sale Process, the Company, under my direction and with the assistance of its financial advisor, Grant Thornton LLP (the “**Financial Advisor**”) and the Monitor, began soliciting indications of interest from a wide array of prospective parties to acquire some or all of DEL’s business, property or assets. The Financial Advisor and CRO contacted approximately 125 potentially interested parties – including strategic and financial parties – to describe the transaction opportunity, provide a teaser containing details regarding the Sale Process, and to encourage them to participate in the Sale Process.

18. In addition, the Sale Process was advertised in the Globe & Mail (National Edition) on November 5, 2019, and in Insolvency Insider on each of November 11, 18 and 25, 2019.

19. Twenty-six parties ultimately entered into non-disclosure agreements to receive confidential information with respect to the Company. Parties that executed non-disclosure agreements were provided with a confidential information memorandum and were given access to a confidential data site containing non-public information regarding the Company and its business.

20. The Company and its professional advisors worked diligently with potential purchasers throughout Phase 1 of the Sale Process to respond to inquiries, discuss the DEL business and the acquisition opportunity, and to otherwise ensure that prospective purchasers had the information necessary to formulate EOIs in respect of a potential transaction.

21. The Company received four EOIs on the Non-Binding EOI Bid Deadline. None of the EOIs received contemplated a complete going concern transaction with respect to the DEL business. Rather, all of the EOIs received either contemplated the acquisition of certain assets of DEL and consolidation of the DEL business into the interested party's existing business, or the acquisition of certain of DEL's branches or other specified assets.

(ii) Phase 2

22. The Company, with the assistance of its professional advisors, undertook a review of the EOIs received in Phase 1 of the Sale Process. After considering, among other things, the amount and form of consideration, proposed transaction structure, including the proposed scope of the offer, timing, conditionality and feasibility, it was determined that all of the parties that had submitted EOIs would be invited to participate in Phase 2 of the Sale Process (the "**Phase 2**

Participants”). A Phase 2 process letter was provided to Phase 2 Participants on or about December 17, 2020, a generic copy of which is attached as Exhibit “C” hereto.

23. The Phase 2 Participants continued their due diligence and were given additional information regarding, among other things, the Company’s strategy, operations, financial condition, and industry opportunities and challenges. Phase 2 of the Sale Process also involved more site visits, and detailed discussions between the Company and certain of the Phase 2 Participants.

24. Throughout Phase 2 of the Sale Process, the Company and its professional advisors continued to work diligently to respond to any information requests and inquires and to otherwise provide the Phase 2 Participants with the information necessary to formulate their final bids. For purposes of the submission of final bids, Phase 2 Participants were provided with a form of asset purchase agreement which they were instructed to markup and include as part of their final bid, and DEL and its advisors engaged in discussions regarding the form and content of the agreement as requested.

V. RESULTS OF THE SALE PROCESS

25. At the conclusion of Phase 2 of the Sale Process on the Binding Bid Deadline of January 31, 2020, the Company received three final bids. The final bids aligned with the EOIs that had been received in that no final bid contemplated a complete going concern transaction with respect to DEL’s business.

26. The Company, with the assistance of its professional advisors, reviewed the final bids received in connection with Phase 2 of the Sale Process. In addition, the Company had

previously asked the Monitor to undertake a liquidation analysis to help inform the Company's review of the results of Phase 2 of the Sale Process and reviewed and considered the Monitor's preliminary liquidation analysis in conjunction with its review and consideration of the Phase 2 bids.

27. Following the Company's initial review of the Phase 2 bids, the Company and its legal counsel held an in-person meeting with DPI to discuss the structure, terms and value of its bid, including proposed improvements to the DPI bid. Following this meeting, the Company determined on February 10, 2020, to enter into an exclusivity agreement with DPI for the purpose of negotiating the terms and conditions of a definitive transaction with DPI.

28. The exclusivity agreement contemplated an exclusivity period of 10 days (expiring on February 19, 2020, and subsequently extended to February 21, 2020) during which the parties would seek to finalize an agreed upon transaction structure. The exclusivity agreement permitted the Company to deal with any of its assets, business and/or properties that were not contemplated to be included in the Transaction and, accordingly, permitted DEL to continue discussions with various third parties regarding proposals for the sale of such assets, business and/or properties. During the exclusivity period, DEL also consulted with certain of its key stakeholders regarding the potential Transaction.

29. Following further review, discussion and negotiation, the Company, with the assistance of its professional advisors and in the exercise of its business judgment, determined that the Company should proceed with the Transaction as the best available option in the circumstances and DEL and DPI finalized and executed the Purchase Agreement.

30. As a result of the extensive review of potential options and alternatives through the Sale Process, DEL believes that the Transaction, coupled with the sale of its residual assets and the completion of its outstanding remaining order-book outside of Ontario, represents the best available alternative for the Company and its stakeholders. Of note, the Transaction will see the going concern sale of DEL's Ontario business (which represents a significant portion of its overall business) and certain additional assets to DPI in exchange for 100% cash consideration payable upon closing of the Transaction. Additional benefits of the proposed Transaction include:

- (a) DPI making offers of employment to at least 22 of DEL's employees;
- (b) DPI assuming most of DEL's open customer and supplier purchase orders, thereby facilitating the completion of truck up-fitting for DEL's customers and the continuation of supplier relationships; and
- (c) while DEL expects to complete most of its open customer purchase orders that are not being transferred to DPI prior to closing of the Transaction, DPI has agreed to provide certain transition services to DEL to allow it to complete any customer purchase orders that DPI is not assuming and may not be complete by the time of closing of the proposed Transaction as well as to collect accounts receivable. This, in turn, will enhance DEL's ability to generate and collect accounts receivable for the benefit of its creditors.

31. In addition, as the Transaction is mostly focused on DEL's Ontario branch, DEL retains the ability to seek to conclude additional value maximizing transactions in respect of its

remaining branches and assets and is in the midst of considering and pursuing various options in this regard.

32. The Monitor has assisted with the Sale Process and has been kept informed of key developments regarding the negotiation of the Transaction. I understand that the Monitor is supportive of the proposed Transaction and will be filing a report with the Court in respect of same.

VI. THE TRANSACTION AND THE PURCHASE AGREEMENT

33. The terms of the Transaction are set forth in the Purchase Agreement between DEL and DPI, a partially redacted copy of which is attached as Exhibit “D” to this affidavit. An unredacted copy of the Purchase Agreement will be provided to the Court in a confidential supplement to the Monitor’s Second Report. The unredacted Purchase Agreement contains certain sensitive commercial information (including the overall purchase price and the specific components thereof as well as detailed inventory listings) that, if disclosed prior to closing of the Transaction, could adversely impact the interests of the Company and its stakeholders. It also contains certain employee and customer information. Accordingly, DEL is requesting that this Court order that the confidential supplement be sealed pending the completion of the Transaction.

34. The material terms of the Transaction are summarized below:²

² Capitalized terms used in this section that are not otherwise defined herein shall have the meaning given to such terms in the Purchase Agreement. The following constitutes a summary only; reference should be made to the Purchase Agreement for a complete understanding of its terms.

- (a) DPI will acquire the Purchased Assets in exchange for: (i) all cash consideration consisting of (a) a Base Purchase Price, (b) a fixed purchase price for the Purchased Equipment, (c) an amount for the Purchased Inventory and Supplies, as may be adjusted upwards or downwards at Closing based on an inventory count to be conducted by the parties prior to the Closing, and (d) an amount for supplier prepayments and deposits as may be adjusted upwards or downwards at Closing based on the actual amount of such prepayments and deposits existing as at the Closing; and (ii) the assumption of the Assumed Liabilities;
- (b) DPI has paid a deposit in respect of the Purchase Price to the Monitor representing approximately 8.5% of the aggregate cash Purchase Price;
- (c) the Purchased Assets include:
 - (i) all of DEL's owned equipment and personal property located at its Newmarket, Ontario branch;
 - (ii) certain of DEL's contracts and agreements, including the Ford Authorized Converter Pool Agreement between Ford Motor Company of Canada Limited and DEL effective as of February 1, 2010, certain customer purchase orders and certain supplier purchaser orders, including any prepayment or deposit funded by DEL thereunder;
 - (iii) certain of DEL's inventories of products and merchandise, including raw materials, supplies, packaging, parts, components and assemblies which are listed on a schedule to the Purchase Agreement;

- (iv) DEL's right, interest and benefits (through ownership, licensing or otherwise) in intellectual property used exclusively in its business or to which DEL has rights;
 - (v) the goodwill of DEL's business;
 - (vi) all of DEL's warranty rights against manufacturers, contractors or suppliers relating to any of the Purchased Assets, to the extent transferrable; and
 - (vii) all of the books and records of DEL for the Purchased Assets;
- (d) the Purchased Assets are purchased on an "as is, where is" basis;
 - (e) Excluded Assets under the Transaction include DEL's cash, accounts receivable and equipment and most of its inventory and supplies located at its branches other than its Newmarket branch;
 - (f) DPI will assume certain specified liabilities of DEL, including all liabilities under or in connection with the Assumed Contracts, including the Assumed Suppliers POs, and including any warranty claims relating to the Assumed Customers POs;
 - (g) at least 14 days prior to closing, DPI will make an offer of employment to at least 22 of the Company's employees and may make offers to such other employees as DPI determines in its sole discretion, in each case effective as of the Closing Date;

- (h) the Transaction is subject to certain customary closing conditions, including this Court issuing the proposed CCAA Approval Order and the operation and effect of such order not having been stayed, amended, modified, reversed or dismissed; and
- (i) subject to the satisfaction of the foregoing closing conditions, the Transaction is expected to close in the late March 2020 to early April 2020 timeframe. The Purchase Agreement contains a Sunset Date for closing of April 30, 2020, after which either party may elect to terminate the Purchase Agreement, subject to certain restrictions.

35. The Company and DPI are working to finalize the terms of certain ancillary agreements in connection with the Transaction, including an agreement to be entered into among Diesel, certain of Diesel's affiliates and DPI, pursuant to which Diesel shall transfer certain specified trademarks to DPI that are used in DEL's business and owned by Diesel, and DPI shall license such trademarks back on an exclusive basis within the applicable field of use to Diesel and certain of its affiliates for use in connection with such affiliates' businesses.

VII. RESIDUAL ASSETS

36. The Transaction is mostly focused on DEL's Ontario branch and DEL is in the midst of considering and pursuing various options with respect to its remaining branches and assets not included within the scope of the Transaction. As referenced above, the Company is seeking authorization from this Court to continue to explore opportunities for the sale of its property and assets that are not subject to the Transaction (the "**Residual Assets**") and, with the prior approval of the Monitor, to enter into and complete any transaction for the Residual Assets (a "**Residual**

Asset Transaction”) for proceeds equal to or less than \$250,000. DEL shall be required to seek Court-approval for any Residual Asset Transaction in excess of \$250,000.

VIII. KERP

37. The retention of key employees is of vital importance to DEL during these CCAA proceedings, including to maintain the operation of DEL’s business while it works to close the Transaction and determine the best path to maximize the value of its residual assets. In addition, the ongoing commitment of its key employees is required to enable DEL to complete its outstanding customer purchase orders (which will generate additional cash for DEL) and otherwise wind-down the remainder of its business.

38. In light of the commencement of these CCAA proceedings and the Company’s overall circumstances, the Company became concerned that certain of its key employees may choose to discontinue their employment with DEL and seek other opportunities. The concern regarding potential key employee departures also arose from the fact that there is a high demand for skilled labour in the truck up-fitting industry in certain markets and that the Company was already relatively thinly staffed in an effort to limit overall expenses, the result being that certain key employees were being asked to make exceptional contributions to assist the Company in preserving its business while DEL pursued the Sale Process.

39. The Company’s concerns increased over the course of November and December 2019, as approximately 20 employees resigned in this period, and became critical following the sudden resignation of four key employees at one location in mid-January 2019.

40. In light of the foregoing, on or about January 19, 2020, the Company, following consultation with the Monitor, established a KERP designed to encourage certain selected key employees (the “**Eligible Employees**”) to continue their employment with DEL through the completion of a transaction arising from the Sale Process.

41. Pursuant to the terms of the KERP, the Eligible Employees are entitled to receive a specified amount (the “**KERP Payment**”) in two installments, with the first installment having been paid following execution by the Eligible Employee of a letter agreement pertaining to the KERP, and the second (and larger) installment payable if, among other things, the Eligible Employee remains employed with the Company until closing of a transaction resulting from the Sale Process. An Eligible Employee forfeits their entitlement to the second installment of their KERP Payment and is obligated to repay their first installment if, among other things, they resign or their employment is terminated with cause prior to the closing of a transaction. An Eligible Employee remains entitled to the *pro rata* amount of their remaining KERP Payment if their employment is terminated without cause prior to the closing of a transaction. The second installment of the KERP Payment is subject to DEL obtaining Court approval of the KERP.

42. The Eligible Employees selected by DEL to participate in the KERP have been and will continue to be essential to the success of the CCAA process, including maintaining DEL’s ongoing business operations pending closing of the Transaction. It would have been highly detrimental to the Company and the Sale Process if the unplanned employee departures continued at the frequency at which DEL had been experiencing in this critical period. The Eligible Employees have significant experience and specialized expertise that is critical to DEL’s business and its overall restructuring efforts, and cannot be easily replicated or replaced within a reasonable period of time. The KERP’s design encourages Eligible Employees to continue their

employment with DEL through the Sale Process and completion of a transaction by making the second KERP Payment subject to and payable following the closing of such a transaction.

43. I understand that further details regarding the KERP and the Eligible Employees will be set out in a confidential supplement to be appended to the Monitor's Second Report.³ If approved by the Court, the aggregate maximum amount of KERP Payments authorized under the KERP will be approximately \$215,000. Neither myself nor Paul Martin (DEL's other officer and sole director) is a participant in the KERP.

44. As noted, the Company, in consultation and with the approval of the Monitor, decided to implement the KERP and make payment of the first KERP Payment installment (approximately \$45,500 in the aggregate) prior to obtaining Court approval. Given the high and increasing rate of unplanned employee departures, the critical juncture of the Sale Process and DEL's restructuring efforts, the likelihood that DEL's employees could seek alternative employment or opportunities with competitors in the absence of the KERP, the importance of skilled and experienced employees to DEL's business operations, and the relatively small amount of the initial instalment, the Company determined that immediate implementation of the KERP and payment of the first instalment was in the best interests of DEL and its stakeholders.

IX. EXTENSION OF THE STAY OF PROCEEDINGS

45. The Initial Order granted a stay of proceedings and other rights in favour of DEL until November 21, 2019 (the "**Stay Period**"). The Court subsequently granted an extension of the

³ DEL is requesting that this confidential supplement be sealed as it contains private and confidential personal compensation information regarding the Eligible Employees who have a reasonable expectation that their personal compensation information will not be publicly disclosed. In addition, disclosure of the specific KERP details could be harmful to DEL's commercial interests.

Stay Period until February 28, 2020. DEL is requesting a further extension of the Stay Period until and including May 29, 2020.

46. The Company, with the assistance of its professional advisors, has continued to act diligently and in good faith in respect of all matters relating to these CCAA proceedings. As described in further detail earlier in this affidavit, the Company and its advisors have undertaken a wide range of activities to advance the CCAA process since the granting of the Stay Extension and DIP Amendment Order.

47. The Sale Process is now complete and the Company has entered into the Purchase Agreement in respect of the Transaction. The Company is also in the process of advancing sale alternatives in respect of the Residual Assets, and is also focused on generating value from its ongoing business, reducing expenses and managing cash flow to ensure efficient operation of the business while the Transaction and other restructuring alternatives are advanced and finalized.

48. The extension of the Stay Period is necessary in order to maintain stability and protect value while the Company, with the assistance of the Monitor, works to complete the Transaction and advance and finalize other sale or restructuring alternatives with respect to the Residual Assets. It is important to protect the ongoing operations and maintain the stability of DEL's business while these matters are being advanced, and any disruption could result in delay or a reduction in the value of DEL's business to the detriment of the Company and its stakeholders.

X. INTERIM FINANCING AND CASH FLOW MATTERS

49. As part of the granting of the Initial Order, the Court approved the DIP Financing of up to \$1 million to be provided to the Company by Diesel pursuant to the DIP Term Sheet

substantially in the form attached to the Initial Affidavit in order to fund DEL's operations and expenses during these CCAA proceedings, and granted a Court-ordered priority charge to secure the obligations under the DIP Term Sheet. The DIP Term Sheet was executed on October 21, 2019, and, pursuant to the Stay Extension and DIP Amendment Order, the DIP Financing was increased by \$1.5 million (for total availability of \$2.5 million in the aggregate).

50. To date, the Company has been able to fund its business based on its cash on hand, receipts from the sale of non-core assets and continuing receipts in the normal course, and has not been required to draw on its DIP Financing. As at February 19, 2020, the Company's cash balance was approximately \$4.48 million. I note that this cash balance is approximately \$225,000 higher than the Company's cash balance when it sought its last stay extension in mid-November 2019 and is more than \$2 million higher than forecast.

51. DEL, with the assistance of the Monitor, has prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**") which will cover the requested extension of the Stay Period. I understand that the Updated Cash Flow Forecast will be attached as an appendix to the Monitor's Second Report to be filed in connection with this motion. The same information has or will be provided to Diesel in accordance with the terms of the DIP Term Sheet.

52. The Updated Cash Flow Forecast indicates that DEL is forecast to have sufficient liquidity to operate its business throughout the proposed Stay Period.

XI. CONCLUSION


53. The Company and its professional advisors have extensively considered and explored a wide variety of strategic options and alternatives with a view to maximizing the value of the


Company and its business for its stakeholders, including creditors, employees, customers, suppliers and other business partners. In connection with this process, the Company has conducted the comprehensive and competitive Sale Process.

54. The Company, with the assistance and advice of its professional advisors, has determined that the Transaction is the best alternative for DEL in the circumstances and that completion of the Transaction, in conjunction with an orderly disposition of the Residual Assets and completion of its remaining order book outside of Ontario, is in the best interests of the DEL and its stakeholders, including because this path will generate the highest value for DEL’s business and assets. The Transaction will also benefit certain of the Company’s key stakeholders, including employees, suppliers and customers, by enabling the continuation of a portion of DEL’s business as consolidated within DPI’s existing business operations.

55. In the circumstances, I believe that the approval of the Transaction and the other relief requested on the within motion is in the best interests of the Company and its stakeholders.

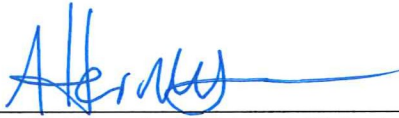
SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on February 22, 2020


A Commissioner for taking affidavits
Name: ANDREW HARMES


Douglas Lucky

A

**THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF DOUGLAS LUCKY
SWORN BEFORE ME THIS 22nd DAY OF FEBRUARY, 2020**

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

Commissioner for Taking Affidavits

DEL EQUIPMENT INC. V. GIN-COR INDUSTRIES INC. Proposed Dispute Resolution Protocol

The purpose of this Dispute Resolution Protocol (the “**Protocol**”) is to establish the procedure and timetable for resolving the two disputes between Del Equipment Inc. (“**DEL**”) and Gin-Cor Industries Inc. (“**Gin-Cor**” and with its affiliates, the “**Gin-Cor Group**” and each, including Gin-Cor, a “**Gin-Cor Group Entity**”) outlined below . DEL and the Gin-Cor Group Entities are referred to herein as the “**Parties**”.

The term “**Fund**” as used herein has the meaning ascribed to it in the Order granted by Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on November 5, 2019, in DEL’s CCAA proceedings (Court File No. CV-19-629552-00CL) (the “**CCAA Proceedings**”).

A. The Disputes

This Protocol will address the following disputes that exist between the Parties:

1. Whether the Fund is a specific fund (the “**Fund Dispute**”).
2. Whether Gin-Cor has the right to retain all or any portion of the Fund and to set-off the Fund against: (a) any amount owing by DEL to Gin-Cor; and (b) any amount owing by DEL to another Gin-Cor Group Entity (the “**Set-Off Dispute**”), which issues include whether Gin-Cor would be unjustly enriched by retaining the Fund and whether the Fund is a fund that can be used to pay Gin-Cor’s claims; and
3. The amounts owing by: (i) DEL to each Gin-Cor Entity; and (ii) each Gin-Cor Entity to DEL, including the specific amount that Gin-Cor is entitled to set-off against the Fund if the Court determines the Set-Off Dispute in Gin-Cor’s favour (the “**Claim Amount Dispute**”).

B. Background Facts

This Protocol is structured to take account of the following background facts:

1. On October 22, 2019, DEL commenced the CCAA Proceedings before the Court.
2. Prior to the CCAA Proceedings, trade and other payables were owing between DEL and the Gin-Cor Entities. The Parties are in the process of reconciling the amounts owing between DEL and the Gin-Cor Entities.
3. There is no significant dispute between DEL and Gin-Cor regarding the factual circumstances in which Gin-Cor received the monies from Mack Defence LLC, and those circumstances are the subject of affidavits already filed by the Parties in the CCAA Proceedings, which affidavits may be used and relied on in the Fund Dispute and the Set-Off Dispute.

C. Resolution Process

As a result of the forgoing, (i) the Fund Dispute and the Set-Off Dispute will be decided by the Court first; and (ii) if the Court decides that Gin-Cor is entitled to retain all or any portion of the Fund and that one or more of the Gin-Cor Entities are entitled to exercise a right of set-off against the Fund, any Claim Amount Dispute that cannot be settled by the Parties within ten (10) days following the Court's determination of the Fund Dispute and the Set-Off Dispute will be referred to Andrew Diamond as a CCAA claims officer (the "**Claims Officer**") to be resolved within 30 days of the hearing. The Parties will work in good faith to attempt to resolve the Claim Amount Dispute.

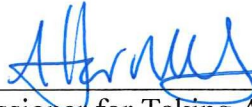
D. Agreed Timetable

DEADLINE	STEP
Fund Dispute/Set-Off Dispute	
Wednesday, January 15, 2020	DEL delivers any supplementary affidavit(s) on the Fund Dispute and Set-Off Dispute
Friday, February 28, 2020	Gin-Cor delivers any supplementary affidavit(s) on the Fund Dispute and Set-Off Dispute
Week of March [23/30] , 2020	Cross-examinations, if requested by either Party
Friday, April 10, 2020	DEL delivers factum
Thursday, April 24, 2020	Gin-Cor delivers factum
Week of May 4, 2020	Hearing of Fund Dispute and Set-Off Dispute by Court
Claim Amount Dispute (if necessary) (initial date reference point is ten (10) days following Court's determination of the Fund Dispute and Set-Off Dispute)	
+2 weeks	Gin-Cor delivers affidavit re: Claim Amount Dispute
+2 weeks	DEL delivers affidavit re: Claim Amount Dispute
+2 weeks	Cross-examinations, if requested by any Party
+1 week	Gin-Cor delivers written submissions
+1 week	DEL delivers written submissions
+1-2 weeks	Hearing before Claims Officer
Within +30 days	Decision Rendered

7036164

B

**THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF DOUGLAS LUCKY
SWORN BEFORE ME THIS 22nd DAY OF FEBRUARY, 2020**

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

Commissioner for Taking Affidavits

DEL EQUIPMENT INC.
SALE AND INVESTMENT SOLICITATION PROCESS

1. This sale and investment solicitation process (the “**Sale Process**”) sets out the manner in which (i) bids and proposals for a broad range of executable transaction alternatives involving the business and assets or shares of Del Equipment Inc. (“**DEL**”), whether en bloc or any portion(s) thereof, will be solicited from interested parties, (ii) any bids and/or proposals received will be negotiated, (iii) any Successful Bid(s) (as defined below) will be selected, and (iv) approval of any Successful Bid(s) (as defined below) will be sought from the Ontario Superior Court of Justice (Commercial List) (“**Court**”) supervising DEL’s proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceedings**”). The Sale Process shall also include the marketing of the real property owned by Diesel Equipment Limited (“**Diesel**”) from which DEL operates (the “**Real Property**”), it being understood that: (i) any transaction involving the Real Property shall require the approval of Diesel; and (ii) bidders shall be permitted to submit, and DEL shall be permitted to consider, transaction proposals that do not include an acquisition of the Real Property.
2. The Sale Process shall be conducted by DEL under the supervision of MNP Ltd., in its capacity as Court-appointed monitor of DEL in the CCAA Proceedings (the “**Monitor**”).
3. Parties who wish to have their bids and/or proposals considered shall be expected to participate in this Sale Process as conducted by DEL.
4. The Sale Process will be conducted (under the oversight and in consultation with the Monitor) such that DEL will:
 - (a) prepare marketing materials and as soon as reasonably practicable but no later than November 5, 2019, provide notice of the Sale Process in the *Globe & Mail* (National Edition), the *Insolvency Insider* news letter (if possible) and in such other publications or forums as it shall elect;
 - (b) complete the preparation of a data room;
 - (c) solicit interest from parties to enter into non-disclosure agreements, obtain access to the data room and begin analyzing potential transaction alternatives;
 - (d) request that such parties submit initial non-binding expressions of interest (“**EOIs**”) by a target date of December 6, 2019 (as may be extended by DEL with the consent of the Monitor or further order of the Court, the “**Non-Binding EOI Bid Deadline**”), which EOIs should include: (i) an overview of the proposed transaction, including, as applicable, the assets or interests to be acquired, liabilities to be assumed and the purchase price or other consideration payable, or investment to be made; (ii) contact information for the party submitting the EOI, including disclosing the identity of each entity or person (including its ultimate shareholders and/or sponsors) that is submitting the EOI; (iii) evidence of the party’s financial wherewithal that will allow DEL and the Monitor to assess the party’s ability to consummate a transaction; and (iv) a description of the remaining material steps,

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conditions or approvals that need to be taken, satisfied or obtained to consummate a transaction, provided; however, that DEL reserves the right to consider and respond to EOIs that do not conform to any of the foregoing criteria;

- (e) as appropriate, select from parties that submitted an EOI by the Non-Binding EOI Bid Deadline the parties invited to enter into the second phase of the Sale Process (the “**Phase 2 Parties**”) to conduct detailed due diligence;
- (f) request that Phase 2 Parties mark-up the form of transaction document(s) to be provided by DEL; and
- (g) request that Phase 2 Parties submit binding offers together with a duly executed proposed transaction document(s) (the “**Binding Bid**”) by 5:00 p.m. (Toronto time) on January 31, 2020 (as may be extended by DEL with the consent of the Monitor or further order of the Court, the “**Binding Bid Deadline**”).

5. In order to constitute a Binding Bid, a bid must comply with the following:

- (a) it contains:
 - (i) duly executed binding transaction document(s);
 - (ii) the identity and contact information of the bidder (including its ultimate shareholders and/or sponsors);
 - (iii) a blackline to the form of transaction document(s) provided by DEL; and
 - (iv) evidence of authorization and approval from the bidder’s board of directors (or comparable governing body);
- (b) it includes a letter stating that the bid is irrevocable for a period of at least 15 business days from the date of the Binding Bid Deadline, as may be extended by such bidder;
- (c) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
- (d) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (e) it is not conditional upon:
 - (i) the outcome of unperformed due diligence by the bidder, and/or
 - (ii) obtaining financing;
- (f) it specifies any regulatory or other third party approvals the party anticipates would be required to complete the transaction;

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- (g) it is accompanied by a cash deposit (the “**Deposit**”) of 10% of the total cash purchase price contemplated by such bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust by the Monitor; and
 - (h) it is received by the Binding Bid Deadline (as may be extended in accordance with Section 4 above).
- 6. DEL, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 5 above, and deem a non-compliant bid to be a Binding Bid.
- 7. Following the Binding Bid Deadline, DEL may, in consultation with the Monitor, determine to (i) continue negotiations with a selected number of bidders that have submitted Binding Bids, with a view to selecting one or more non-overlapping Binding Bids as the successful bid(s) (the “**Successful Bid(s)**”), taking into account the overall value of each Binding Bid in the judgement of DEL after consultation with the Monitor, and applicable conditions to completion, among other factors deemed appropriate by DEL, in consultation with the Monitor, and (ii) take such steps as are necessary to finalize and consummate the Successful Bid(s). DEL has no obligation to conclude a sale or other transaction arising out of this Sale Process and reserves the right and unfettered discretion to reject any bid or proposal (including any Binding Bid), or to complete a standalone restructuring transaction outside of the Sale Process, subject to consultation with the Monitor. If DEL does select any Successful Bid(s), it shall be under no obligation to accept the highest bid.
- 8. Following selection of a Successful Bid, if applicable, DEL, with the assistance of its advisors, shall seek to finalize any necessary definitive agreement(s) with respect to the Successful Bid(s). Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by DEL, in consultation with the Monitor, DEL may apply to the Court for an order approving such Successful Bid and authorizing DEL to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (a “**Transaction Approval Order**”).
- 9. All Deposits shall be retained by the Monitor in a trust account. If a Successful Bid is selected and a Transaction Approval Order is granted in connection therewith, the Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the purchase price to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Binding Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date upon which the Successful Bid is approved pursuant to a Transaction Approval Order or such earlier date as may be determined by DEL, in consultation with the Monitor.

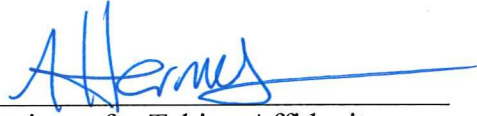
- 4 -

10. Diesel will be entitled to be consulted throughout the Sale Process on a strictly confidential basis, including obtaining access to information in respect of any EOIs, Binding Bids and/or Successful Bids and any definitive agreement(s) in connection therewith. For the avoidance of doubt, notwithstanding any other provision hereof, any transaction involving the Real Property shall require the agreement of Diesel.
11. Any amendments to this Sale Process may only be made by DEL with the written consent of the Monitor, or by further order of the Court.

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C

**THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF DOUGLAS LUCKY
SWORN BEFORE ME THIS 22nd DAY OF FEBRUARY, 2020**

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

Commissioner for Taking Affidavits



Over 70 years of service in the North American truck up-fitting industry
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STRICTLY PRIVATE AND CONFIDENTIAL

December 16, 2019

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Dear [REDACTED],

Thank you for your continued interest in Del Equipment Inc. (“**DEL**” or the “**Company**”) and pursuing a potential transaction involving the Company and its business and assets (a “**Transaction**”).

DEL is pleased to formally invite you to participate in the next phase (“**Phase II**”) of the Transaction process. During Phase II, you will have the opportunity to conduct additional due diligence and review the form of asset purchase agreement provided by DEL. At the end of Phase II, you will be expected to submit your binding offer in the form of a fully-executed Asset Purchase Agreement (the “**APA**”), together with a blackline showing the changes to the form of asset purchase agreement provided by DEL (the “**Binding Bid**”).¹ **The deadline for submission of a Binding Bid is 5:00 p.m. (Toronto time) on January 31, 2020** (as may be extended by DEL with the consent of the Monitor or further Order of the Court, the “**Binding Bid Deadline**”). Binding Bids, along with confirmation of your Deposit (as defined below), should be delivered in person or submitted via email to the following persons on or before the Binding Bid Deadline:

Del Equipment Inc.
210 Harry Walker Parkway
Newmarket, Ontario L3Y 7B4
Attention: Douglas Lucky
Email: dlucky@delequipment.com

with a copy to:

MNP Ltd.
Court-appointed Monitor of DEL Equipment Inc. (the “**Monitor**”)
111 Richmond Street West
Toronto, Ontario M5H 2G4
Attention: Sheldon Title
Email: Sheldon.Title@mnp.ca

¹ DEL expects to make the form of APA available in the data room shortly.

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Submission of Binding Bids

Your Binding Bid must comply with the following requirements:

- (a) it contains:
 - (i) a duly executed binding APA;
 - (ii) the identity and contact information of the bidder (including its ultimate shareholders and/or sponsors);
 - (iii) a blackline to the form of APA provided by DEL; and
 - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body);
- (b) it includes a letter stating that the bid is irrevocable for a period of at least 15 business days from the date of the Binding Bid Deadline, as may be extended by such bidder;
- (c) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
- (d) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (e) it is not conditional upon:
 - (i) the outcome of unperformed due diligence by the bidder, and/or
 - (ii) obtaining financing;
- (f) it specifies any regulatory or other third party approvals the party anticipates would be required to complete the Transaction;
- (g) it is accompanied by a cash deposit (the "**Deposit**") of 10% of the total cash purchase price contemplated by such bid, which Deposit shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust by the Monitor; and
- (h) it is received by the Binding Bid Deadline.

DEL, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified above, and deem a non-compliant bid to be a Binding Bid.

Qualifications Regarding the Process

Following the Binding Bid Deadline, the Company will, in consultation with the Monitor, review the Binding Bids and may designate one or more non-overlapping Binding Bids as the

- 3 -

successful bid(s) and/or continue negotiations with a selected number of bidders that have submitted Binding Bids with a view to finalizing acceptable terms of one or more Transactions.

The Company and its advisors, in consultation with the Monitor, reserve the right to negotiate with one or more prospective acquirers at any time, to enter into a definitive agreement with respect to a Transaction at any time, or to determine not to proceed with any Transaction, without prior notice to or approval of any recipient of this letter. The Company reserves the right to terminate, at any time, and for any reason, further participation in the process by any party and to modify any other procedures it establishes without assigning any reason therefor. The Company and its advisors also expressly reserve the right, in their sole discretion, to amend or modify in any manner the guidelines and procedures set forth in this letter and to waive non-compliance with any such guidelines and procedures.

As you are aware, on October 22, 2019, the Company sought and obtained an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting DEL protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). In the context of DEL’s CCAA proceedings, any APA or other definitive agreement that DEL may execute with respect to any Transaction may be subject to Court approval under the CCAA. DEL’s legal counsel, Goodmans LLP, is available to discuss the CCAA proceedings and any implications thereof with respect to a Transaction.

Confidentiality

Nothing in this letter amends or otherwise changes any term in the non-disclosure agreement relating to this proposed Transaction previously executed and delivered by you to DEL, which, among other things, restricts your disclosure to any third parties of any confidential information related to the Company or any information pertaining to a potential Transaction or the status thereof. The terms of the non-disclosure agreement remain in full force and effect and the existence and the contents of this letter are to be treated confidentially in accordance with the terms of that agreement. DEL intends to strictly enforce the terms of the non-disclosure agreement.

Questions Regarding the Process

All inquiries or communications regarding the process should be directed to Douglas Lucky, Chief Restructuring Officer of DEL, at 416-421-5851 x1169 (dlucky@delequipment.com) or Sheldon Title, Senior Vice-President of MNP Ltd., at 416-263-6945 (Sheldon.Title@mnp.ca). Under no circumstances should the directors, management, employees, creditors, suppliers, customers or shareholders of DEL be contacted directly or indirectly, without the Company’s prior express written consent.

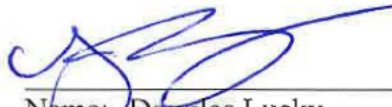
- 4 -

The Company thanks you for your continued interest and looks forward to receiving your Binding Bid.

Sincerely,

DEL EQUIPMENT INC.

Per:



Name: Douglas Lucky

Title: Chief Restructuring Officer

7013851

D

**THIS IS EXHIBIT "D"
TO THE AFFIDAVIT OF DOUGLAS LUCKY
SWORN BEFORE ME THIS 22nd DAY OF FEBRUARY, 2020**

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

Commissioner for Taking Affidavits

ASSET PURCHASE AGREEMENT

DEL EQUIPMENT INC.

as the Seller

- and -

DRIVE PRODUCTS INC.

as the Buyer

Made as of February 21, 2020

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 21st date of February, 2020

B E T W E E N:

DEL EQUIPMENT INC., a corporation incorporated under the laws of the Province of Ontario (the “**Seller**”)

- and -

DRIVE PRODUCTS INC., a corporation organized under the laws of the Province of Ontario (the “**Buyer**”)

RECITALS:

- A. The Seller owns and operates a truck and body equipment up-fitting business that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles from its manufacturing and distribution locations in the Provinces of British Columbia, Alberta, Ontario, Quebec and New Brunswick (the “**Business**”).
- B. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) dated October 22, 2019 (as may be amended or restated from time to time, the “**Initial CCAA Order**”), the Seller is subject to proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
- C. Pursuant to the Initial CCAA Order, MNP Ltd. was appointed as monitor of the Seller (the “**Monitor**”) in its proceedings under the CCAA (the “**CCAA Proceedings**”).
- D. Subject to the CCAA Approval Order, the Seller has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire, assume and accept from the Seller, the Purchased Assets and the Assumed Liabilities, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and confirmed), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**Accounts Payable**” means the trade accounts payable, other accounts payable, and all other accrued payables (including customer deposits and customer credit balances) of the Business;
- (b) “**Additional Indemnitees**” means, with respect to any Party, its directors, officers and employees;
- (c) “**affiliate**” has the same meaning as “affiliate” under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;
- (d) “**Agreement**” means this purchase agreement and all Appendices, Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions “Article”, “Section”, “Schedule” and “Exhibit” followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;
- (e) “**Applicable Law**” means any Canadian federal, provincial or municipal statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority, that applies in whole or in part to the Transaction, the Seller, the Buyer or any of the Purchased Assets;
- (f) “**Assumed Contracts**” has the meaning given to it in Section 2.1(b);
- (g) “**Assumed Customer POs**” means all customer purchase orders of the Seller (including the Material Customer POs) other than the Excluded Customer POs;
- (h) “**Assumed Supplier POs**” means all supplier purchase orders of the Seller which relate to purchases from suppliers that are required to satisfy Assumed Customer POs that were entered into in the Ordinary Course;
- (i) “**Assumed Liabilities**” has the meaning given to it in Section 3.1;
- (j) “**Authorizations**” means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Authority having jurisdiction over the Person;
- (k) “**Base Purchase Price**” has the meaning given to it in Section 2.4(a);
- (l) “**Books and Records**” means all books, records, operating manuals, engineering standards, specifications, sales books and export of the Seller’s databases for the

assets, books of account, employee personal records of Transferred Employees (only) and other sales and business records, in each case which is (A) related to the Business and (B) is in the possession or control of the Seller or posted in the data room to which access has been given to, and that has been accessed by, the Buyer and its advisors, agents and other Representatives;

- (m) “**Business**” has the meaning given to it in the recitals to this Agreement;
- (n) “**Business Day**” means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;
- (o) “**Buyer**” has the meaning given to it in the preamble to this Agreement;
- (p) “**Buyer Purchased Inventory and Supplies Purchase Price**” has the meaning given to it in Section 2.6(b);
- (q) “**CCAA**” has the meaning given to it in the recitals to this Agreement;
- (r) “**CCAA Approval Order**” means an approval and vesting order of the CCAA Court, *inter alia*, (i) approving the Transaction and (ii) effective upon the delivery of a Monitor’s certificate to the Buyer, vesting in the Buyer all of the Seller’s respective right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances, such order to be substantially in the form appended hereto as Schedule 1.1(r);
- (s) “**CCAA Assignment Order**” means an order or orders of the CCAA Court pursuant to Section 11.3 and other applicable provisions of the CCAA authorizing and approving the assignment of any Assumed Contract for which a Third Party Consent for the assignment of such Assumed Contract has not been obtained, in form and substance satisfactory to the Buyer, acting reasonably;
- (t) “**CCAA Court**” has the meaning given to it in the recitals to this Agreement;
- (u) “**CCAA Proceedings**” has the meaning given to it in the recitals to this Agreement;
- (v) “**Closing**” means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 8.1 and of all other transactions contemplated by this Agreement that are to occur concurrently with the sale and purchase of the Purchased Assets;
- (w) “**Closing Date**” means the first Business Day that is (i) at least five (5) Business Days following the first date by which all of the conditions in Section 7.3 have been satisfied or waived (but excluding the condition specified in Section 7.3(c), it being understood that such condition must be satisfied or waived for Closing to occur) or (ii) such other date as may be agreed upon by the Parties hereto in

consultation with the Monitor, provided however that the Closing Date shall be no later than the Sunset Date;

- (x) “**Commercially Reasonable Efforts**” means the efforts that a reasonably prudent Person who desires to complete the Transaction on commercially reasonable terms would use in similar circumstances without the necessity of, directly or indirectly, assuming or incurring any material obligations or paying or committing to pay any material amounts to an unrelated Person;
- (y) “**Confidential Information**” means (i) all information (whether in written, electronic or other form and whether or not identified as confidential at the time of disclosure) furnished or otherwise provided by the Seller, Diesel, the Monitor or their respective Representatives to the Buyer or any of its Representatives, whether prior to, on or after the date hereof, (ii) all analyses, compilations, notes, reports, studies, files, data or other documents or materials whether prepared by the Buyer, its Representatives, or others, which are based upon, contain or otherwise reflect, in whole or in part, any such information, and (iii) any other information which any of the Parties are obligated to hold confidential pursuant to the terms of the Non-Disclosure Agreement. Notwithstanding the foregoing, “Confidential Information” does not include information which: (i) is or becomes available to the public, other than as a result of a disclosure by the Buyer or its Representatives; or (ii) the Buyer can establish was available to the Buyer, or has become available to the Buyer, on a non-confidential basis from a source other than the Seller, Diesel, the Monitor or their respective Representatives, provided that the source of such information was not (x) bound by a confidentiality agreement with the Seller or any of their respective Representatives, or (y) otherwise prohibited from transmitting the information to the Buyer or its Representatives;
- (z) “**Contract**” means any contract, agreement, lease, sublease, licence, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on any Person or any part of its assets or property (personal, real, tangible, intangible or otherwise) under Applicable Law;
- (aa) “**Deposit**” has the meaning given to it in Section 2.4(a);
- (bb) “**Deposit Amount**” has the meaning given to it in Section 2.4(b);
- (cc) “**Diesel**” means Diesel Equipment Limited;
- (dd) “**Diesel IP Transfer and License Back Agreement**” means an agreement among Diesel, certain of Diesel’s affiliates, and the Buyer pursuant to which Diesel shall transfer the trademarks specified on Schedule 1.1(dd) to the Buyer and the Buyer shall license such trademarks back on an exclusive basis within the applicable field of use to Diesel and certain of its affiliates (excluding, for the avoidance of doubt, the Seller) for use in connection with such affiliate’s businesses, such

agreement to be in form and substance satisfactory to Diesel and the Buyer, each acting reasonably;

- (ee) **“DIP Credit Agreement”** means the DIP financing term sheet between the Seller, as borrower, and Diesel, as lender, dated October 21, 2019, as amended and restated;
- (ff) **“Disclosed Personal Information”** has the meaning given to it in Section 11.4(b);
- (gg) **“Disputed Amount”** has the meaning given to it in Section 2.6(b);
- (hh) **“Effective Closing Time”** means 12:01 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Effective Closing Time shall take place;
- (ii) **“Employee Plans”** means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, equity compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by the Seller for the benefit of the current or former directors, officers, employees, contractors, consultants of the Seller in respect of the Business and/or their respective dependants or beneficiaries, by which the Seller is bound or with respect to which the Seller participates or has any actual or potential liability, other than statutory benefit plans which the Seller is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;
- (jj) **“Encumbrance”** means any security interest, lien, prior claim, charge, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, mortgage or adverse claim of any nature or kind;
- (kk) **“Excluded Assets”** has the meaning given to it in Section 2.2;
- (ll) **“Excluded Contracts”** means all Contracts of the Seller that are not Assumed Contracts, including the Excluded Customer POs, Excluded Supplier POs, Gin-Cor Agreements and Claims and the Mack Defense Agreements and Claims;
- (mm) **“Excluded Customer POs”** means the customer purchase orders set out in Schedule 1.1(mm);

- (nn) **“Excluded Equipment”** means (i) any equipment and/or personal property leased by the Seller, (ii) any equipment located at any of the Premises other than the Newmarket Premises, and (iii) any equipment which becomes an Excluded Asset pursuant to Section 6.3(e);
- (oo) **“Excluded Inventory and Supplies”** means any inventories of products and merchandise including raw materials, supplies, packaging, work in process and finished goods related to the Business which (a) are not included in the Purchased Inventory and Supplies, (b) have been sold or disposed of after January 1, 2020, (c) are sold or otherwise disposed of during the Interim Period, (d) are work in process forming part of a vehicle or designated to be used with respect to a specific vehicle during the process of being upfitted; (e) relate to Excluded Customer POs; or (f) which become Excluded Assets pursuant to Section 6.3(e). For the avoidance of doubt, all of the Seller’s inventory and supplies classified as “class 8 snow and ice” constitutes Excluded Inventory and Supplies;
- (pp) **“Excluded Liabilities”** has the meaning given to it in Section 3.2;
- (qq) **“Excluded Litigation”** means the litigation matters to be excluded from the Transaction contemplated herein, which are described in Schedule 1.1(qq);
- (rr) **“Excluded Supplier POs”** means all supplier purchase orders of the Seller which do not relate to purchases from suppliers that are required to satisfy Assumed Customer POs or were entered into outside the Ordinary Course;
- (ss) **“Ford”** means Ford Motor Company of Canada Limited and/or its applicable affiliates;
- (tt) **“Ford Converter Agreement”** means the Ford Authorized Converter Pool Agreement between Ford and DEL effective as of February 1, 2010;
- (uu) **“General Conveyance and Assumption Agreement”** means an agreement in the form set forth in Schedule 1.1(uu);
- (vv) **“Gin-Cor Agreements and Claims”** means: (i) all agreements between the Seller and Gin-Cor Industries Inc. and its affiliates, including, without limitation, all purchase orders, work orders and change orders, each as may be amended from time to time, as well as any and all agreements related to the transaction completed on April 30, 2018 pursuant to which, among other things, GCD Holdings (2017) Limited acquired a 40% interest in the Seller; and (ii) all claims, causes of actions and rights of whatever nature or kind of the Seller against Gin-Cor Industries Inc. and its affiliates;
- (ww) **“Goodwill”** means the goodwill of the Business, including the right of the Buyer to represent itself as carrying on the Business in continuation of and in succession to the Seller;

- (xx) **“Governmental Authority”** means: (i) any federal, provincial, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (yy) **“GST/HST”** means goods and services tax payable under the GST/HST Legislation, including “harmonized sales tax”;
- (zz) **“GST/HST Legislation”** means the *Excise Tax Act* (Canada) and other Applicable Laws in Canada (or any province thereof) giving rise to the requirement to pay GST/HST;
- (aaa) **“Independent Accountant”** has the meaning given to it in Section 2.5;
- (bbb) **“Initial CCAA Order”** has the meaning given to it in the recitals to this Agreement;
- (ccc) **“Intellectual Property”** means all rights, interests and benefits (through ownership, licensing or otherwise) in (i) any trademarks, trade names, business names, brand names, services marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know how, technology, manufacturing, engineering and other technical drawings and manuals, blue prints, research and development reports, technical information, technical assistance, engineering data, design and engineering specifications, telephone numbers, domain names, domain name registrations, website names and worldwide web addresses, social media accounts and social media handles and other communication addresses, and related goodwill and (ii) any applications or registrations of the foregoing, issued patents, continuations in part, divisional applications or analogous rights therefor, in each case whether registered or not;
- (ddd) **“Intercompany Receivable”** means any Receivable owing to the Seller from an affiliate of the Seller;
- (eee) **“Interim Period”** means the period from and after the date hereof up to and including the Closing Date;
- (fff) **“Inventory Count Date”** has the meaning given to it in Section 2.6(a).
- (ggg) **“Losses”** means all claims, liabilities, obligations, damages, awards, assessments, settlement amounts, penalties, fines, judgments, losses, costs, charges and expenses, but for greater certainty, excluding in all cases any and all indirect, incidental, consequential, punitive, exemplary and special damages (including, as exclusions, loss of future revenue or income, business interruption, cost of capital or loss of business reputation or opportunity or diminution in value);

- (hhh) **“Mack Defense Agreements and Claims”** means: (i) all agreements between the Seller and Mack Defense, LLC and its affiliates including, without limitation, all purchase orders, work orders and change orders, each as may be amended from time to time; and (ii) all claims, causes of actions and rights of whatever nature or kind of the Seller against Mack Defense and its affiliates;
- (iii) **“Material Customer”** means [REDACTED] and its affiliates;
- (jjj) **“Material Customer POs”** means the customer purchase orders of the Seller with the Material Customer or any Person providing financing to the Material Customer in respect of the purchase of goods from the Seller;
- (kkk) **“Minister”** has the meaning given to it in Section 2.7(b);
- (lll) **“Monitor”** has the meaning given to it in the recitals to this Agreement;
- (mmm) **“Newmarket Premises”** has the meaning given to it on Schedule 1.1(uuu);
- (nnn) **“Non-Disclosure Agreement”** means the non-disclosure agreement by and among the Buyer, the Seller and Diesel dated November 14, 2019, as well as any amendments thereto;
- (ooo) **“Offered Employees”** has the meaning given to it in Section 9.1(a);
- (ppp) **“Ordinary Course”** means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the recent past practices of the Person having regard to the recent circumstances leading up to and including the transactions contemplated by this Agreement and, as applicable, the CCAA Proceedings;
- (qqq) **“Parties”** means the Seller and the Buyer, and **“Party”** means any of them;
- (rrr) **“Permitted Encumbrances”** means: (a) Encumbrances for Taxes not yet due and delinquent; (b) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit or by any Applicable Laws, to terminate any such lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof; (c) all rights reserved to or vested in any Governmental Authority pursuant to laws to control or regulate any of the Purchased Assets in any manner; (d) rights of general application reserved to or vested in any Governmental Authority to levy Taxes on any of the Purchased Assets or the income therefrom, or to limit, control or regulate any of the Purchased Assets or operations in respect of the Purchased Assets in any manner; and (e) Encumbrances listed and described in Schedule 1.1(rrr);
- (sss) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust,

trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

- (ttt) **“Pre-Filing Liabilities”** means any liabilities of, or claims against, the Seller that arose or existed prior to October 22, 2019, being the day the CCAA Proceedings were commenced;
- (uuu) **“Premises”** means the leased premises from which the Business operates as listed on Schedule 1.1(uuu) by reference to their respective municipal addresses;
- (vvv) **“Proration Period”** has the meaning given to it in Section 2.7(c);
- (www) **“Provinces”** means the Provinces of Canada from which the Business operates, including, for greater certainty, the Provinces of British Columbia, Alberta, Ontario, Quebec and New Brunswick;
- (xxx) **“Purchase Price”** has the meaning given to it in Section 2.4(a);
- (yyy) **“Purchased Assets”** has the meaning given to it in Section 2.1;
- (zzz) **“Purchased Equipment”** has the meaning given to it in Section 2.1(a);
- (aaaa) **“Purchased Equipment Purchase Price”** has the meaning given to it in Section 2.4(a)(ii);
- (bbbb) **“Purchased Inventory and Supplies”** has the meaning given to it in Section 2.1(c);
- (cccc) **“Purchased Inventory and Supplies Purchase Price”** has the meaning given to it in Section 2.4(a)(iii);
- (dddd) **“Real Property Leases”** means all of the Seller’s leasehold interest in the leases, agreements to lease, subleases or licences or other agreements or rights and any amendments, extensions and restatements thereof, pursuant to which the Seller uses or occupies the Premises;
- (eeee) **“Receivables”** has the meaning given to it in Section 2.2(h);
- (ffff) **“Representatives”** means, in respect of any Party, their respective affiliates, directors, officers, employees, agents and advisors (including financial advisors and legal counsel) of that Party and its affiliates, as well as the directors, officers and employees of any such Party’s agents or advisors;
- (gggg) **“Restrictive Covenant Agreement”** means an agreement in the form set forth in Schedule 1.1(gggg);
- (hhhh) **“Secured Credit Agreement”** means the Second Amended and Restated Credit Agreement dated as of May 31, 2018, among the Seller and certain other entities

party thereto as co-borrowers, certain guarantors, and Diesel, as lender (as previously assigned to Diesel by the Bank of Montreal) as amended, restated and/or supplemented from time to time;

- (iii) “**Seller**” has the meaning given to it in the preamble to this Agreement;
- (jjj) “**Seller Employees**” means the employees of the Seller (full-time or part-time, on leave or on disability and including those on statutory or other absences) and employed on the Closing Date;
- (kkkk) “**Specified Insurance Proceeds**” has the meaning given to it in Section 2.1(e);
- (lll) “**Specified New Inventory**” means: (i) Job Boss configuration bodies in steel and aluminum and [REDACTED] bodies consisting of: 2 ton dump with compressor (known as LD10 Cage Body - 10’ custom dump with compressor), 5 ton dump (“HRU” known as 12’ dump with body heat or 12’ dump with body heat and compressor using a Beuroc brand dump), 1.5 ton stake body (known as 10’ stake body), and standard Job Boss 11’4”; and (ii) additional parts, materials and components specific to Material Customer POs (including parts, materials and components which may not currently be listed in Schedule 2.1(c)), including hydraulic PTO’s/pumps, wetline kits, drivelines, lighting and electrical accessories, hoses and fittings, body accessories (taps, air cylinders, proximity sensors, pintle plates and hooks, paint and primer, Beuroc bodies, VanAir compressors), raw materials (steel and aluminum), Trebor aluminum toolboxes and underbody toolboxes;
- (mmmm) “**Sunset Date**” has the meaning given to it in Section 10.1(b);
- (nnnn) “**Tax**” and “**Taxes**” means all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including, without limitation, (a) those levied on, or measured by, or referred to as income, gross receipts, earnings, profits, capital, corporate, transfer, land transfer, sales, goods and services, use, value-added, excise, stamp, withholding, business, license, franchising, real or personal property, payroll, employment, wage, employer health, social services, severance, utility, occupation, premium, windfall, education and social security taxes, all surtaxes, all custom duties and import and export taxes, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Quebec and other government pension plan premiums, workers’ compensation levies, retirement contributions, including those imposed by any Governmental Authority, and (b) any liability for the payment of any amount of the type described in the immediately preceding clause (a) as a result of being a “transferee” (within the meaning of section 160 of the Tax Act or any other Applicable Laws) of another taxpayer or entity or a member of a related, non-arm’s length, affiliated or combined group;
- (oooo) “**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time;

- (pppp) “**Third Party Consents**” means the notices to and consents, approvals, permission and/or authorizations reasonably required for or in connection with the Transaction or any part thereof, including other Persons for the assignment or transfer of the Assumed Contracts, as may be required by the terms thereof;
- (qqqq) “**Transaction**” means the purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement and any of the other transactions contemplated by this Agreement;
- (rrrr) “**Transfer Taxes**” has the meaning given to it in Section 2.7(a);
- (ssss) “**Transferred Employees**” means those Offered Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 9.1 or who otherwise continue employment with the Buyer or its affiliates after Closing.

1.2 Appendices and Schedules

The following Schedules form part of this Agreement:

Schedule 1.1(r)	CCAA Approval Order
Schedule 1.1(dd)	Diesel IP Transfer and License Back Agreement
Schedule 1.1(mm)	Excluded Customer Purchase Orders
Schedule 1.1(qq)	Excluded Litigation
Schedule 1.1(uu)	General Conveyance and Assumption Agreement
Schedule 1.1(rrr)	Permitted Encumbrances
Schedule 1.1(uuu)	Premises
Schedule 1.1(gggg)	Restrictive Covenant Agreement
Schedule 2.1(c)	Purchased Inventory and Supplies
Schedule 6.6	Transition Services
Schedule 9.1(a)	Offered Employees

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars.

1.7 Knowledge

Any reference to the “knowledge” or awareness of the Seller, will mean the actual knowledge, information and belief of the Seller’s senior executive officers, without inquiry, in their respective capacity as senior executive officers of the Seller only and not in their personal capacity or in any other capacity, and without personal liability, as of the date of this Agreement.

1.8 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, together with the Non-Disclosure Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by each of the Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of or in connection with this Agreement or the Transaction or any part thereof, and in each case whether based on contract, tort, or any other theory, including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein (including, as applicable,

the CCAA), without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the courts of the Province of Ontario (including, as applicable, the CCAA Court) for the resolution of any such disputes arising under or in connection with this Agreement or any other arrangement between the Parties. Each Party agrees that service of process on such Party as provided in Section 11.10 shall be deemed effective service of process on such Party.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as of the Effective Closing Time, the Seller agrees to sell, assign, transfer and convey to the Buyer, and the Buyer agrees to purchase, assume and accept from the Seller, all of the Seller's right, title and interest in and to, and the Buyer agrees to assume and perform all of the Seller's obligations in and under, the following assets, free and clear of all Encumbrances other than the Permitted Encumbrances (all of such assets and property, excluding for greater certainty, the Excluded Assets, hereinafter collectively referred to as the "**Purchased Assets**"):

- (a) **Purchased Equipment.** All equipment and personal property owned by the Seller and located at the Newmarket Premises (including all of the fixed and tangible assets, machinery, chattels, equipment, furniture, computer hardware and peripheral equipment) (the "**Purchased Equipment**") and, for greater certainty, excluding the Excluded Equipment;
- (b) **Assumed Contracts.** The Seller's benefit (in each case subject to the burden, including restrictive covenants, termination rights and other obligations, restrictions and conditions therein) in (i) the Ford Converter Agreement, (ii) the Assumed Customer POs, and (iii) the Assumed Supplier POs (including any prepayment or deposit funded by the Seller under the Assumed Supplier POs) (collectively, the "**Assumed Contracts**"), but excluding, for greater certainty, the Excluded Contracts;
- (c) **Purchased Inventory and Supplies.** As at the Closing, the Seller's inventories of products and merchandise, including raw materials, supplies, packaging, parts, components and assemblies (including serialized and non-serialized) which are listed on Schedule 2.1(c) and including inventories of the same categories listed on Schedule 2.1(c) and any Specified New Inventory which has been purchased by the Seller in the Ordinary Course on or after January 1, 2020, or are purchased by the Seller in the Ordinary Course during the Interim Period (the "**Purchased Inventory and Supplies**"), but excluding the Excluded Inventory and Supplies;
- (d) **Intellectual Property.** The Seller's rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the Business or to which the Seller has rights;

- (e) **Specified Insurance Proceeds.** If, and only to the extent, any Purchased Asset is lost, damaged or destroyed for any reason, the net proceeds of any insurance payable or paid, as well as the Seller's rights in and to any such proceeds, as a result of the occurrence of such loss, damage or destruction (the "**Specified Insurance Proceeds**");
- (f) **Goodwill.** The goodwill of the Business, including the right of the Buyer to represent itself as carrying on the Business in continuation of and in succession to the Seller;
- (g) **Warranty Rights.** All warranty rights against manufacturers, contractors or suppliers relating to any of the Purchased Assets, to the extent the foregoing are transferable to the Buyer; and
- (h) **Books and Records.** All of the books and records of the Seller for the Purchased Assets, excluding, for greater certainty, those referenced in Section 2.2(i),

but, for greater certainty, in each case excluding any Excluded Contracts (including any of the foregoing property rights to the extent they relate to the Excluded Contracts) and other Excluded Assets.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets shall not, and will not be deemed to, include the following assets (collectively, the "**Excluded Assets**"):

- (a) all rights and interests in and to the Employee Plans and any related assets or insurance policies;
- (b) the Excluded Contracts;
- (c) the Excluded Equipment;
- (d) the Excluded Inventory and Supplies;
- (e) the Seller's products and merchandise installed on demonstrator vehicles;
- (f) all Authorizations;
- (g) all cash (other than the Specified Insurance Proceeds), bank balances, monies in possession of banks and other depositories, term deposits and similar cash property, cash equivalents, securities and short term investments, any Tax credit, refund or attribute, GST/HST and other Tax refunds and receivables, as well as future Tax receivables and Tax refund entitlements related to periods ending on or before the Closing Date, or in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date, in each case of the Seller or the Business;

- (h) all accounts receivable of the Seller, including, for greater certainty, (i) all accounts receivable related to any Excluded Asset, (ii) any Intercompany Receivable, (iii) any receivable owing under or in connection with the Gin-Cor Agreements and Claims and (iv) any receivable owing under or in connection with the Mack Defense Agreements and Claims (collectively, the “**Receivables**”);
- (i) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Seller as a Person or the Seller’s business and operations, in each case that do not relate to the Purchased Assets, provided that if they do relate to any of the Purchased Assets, the Seller may redact any confidential or sensitive information that does not relate to the Purchased Assets; provided however that the Seller shall retain the original copies of any of the redacted records required to be provided to the Buyer hereunder (and provide the Buyer with a copy thereof) to the extent the Seller is required to do so under Applicable Law;
- (j) all of the Seller’s rights and benefits under this Agreement and the Transaction;
- (k) all insurance policies, proceeds and claims, but excluding, if assignable and assigned by the Seller to the Buyer in accordance with the terms and conditions of this Agreement, the Specified Insurance Proceeds;
- (l) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period or in furtherance of or in connection with the Transaction, or otherwise in compliance with the terms of this Agreement;
- (m) shares, partnership or joint venture interests and any other securities of any Person owned or held by the Seller or any of its affiliates;
- (n) all minute books, share ledgers, corporate seals and stock certificates of the Seller;
- (o) all rights, claims or causes of action by or in the right of the Seller against any current or former director or officer of the Seller or any of its affiliates;
- (p) all claims and causes of action of the Seller (i) arising from acts, omissions, or events, or damage to or destruction of property occurring prior to the Effective Closing Time, or (ii) affecting any of the other Excluded Assets, including, for greater certainty, all claims in respect of the Excluded Litigation;
- (q) the Gin-Cor Agreements and Claims and the Mack Defense Agreements and Claims;
- (r) any other assets as may be expressly agreed to between the Buyer and the Seller in writing prior to the Closing (which, for certainty, will not result in any adjustment to the Purchase Price); and

- (s) the Real Property Leases and, for greater certainty, all rights, assets and property of any nature or kind owned by Diesel, including any interest of Diesel in the lands and Premises from which the Seller operates, it being understood that at the Closing, Diesel and Seller shall enter into the Diesel IP Transfer and License Back Agreement.

2.3 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS RELATED THERETO ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE BUYER ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO THE SELLER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS OR THE MONITOR, OTHER THAN FOR KNOWING AND INTENTIONAL FRAUD. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS RELATED THERETO AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Seller in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded. The provisions of this Section 2.3 shall survive and not merge on Closing.

2.4 Purchase Price and Payment

- (a) The aggregate purchase price payable by the Buyer to the Seller for the Purchased Assets (the "**Purchase Price**") is the aggregate sum of:
- (i) [REDACTED] (the "**Base Purchase Price**"); *plus*
- (ii) [REDACTED] for the Purchased Equipment (the "**Purchased Equipment Purchase Price**"); *plus*

- (iii) [REDACTED] for the Purchased Inventory and Supplies (the “**Purchased Inventory and Supplies Purchase Price**”) (which is calculated as of December 31, 2019 for the Purchased Inventory and Supplies specifically listed in Schedule 2.1(c)), as may be adjusted upwards or downwards at the Closing based on Section 2.6 hereof; plus
- (iv) [REDACTED] in respect of the prepayments and deposits funded by the Seller under the Assumed Supplier POs (the “**Supplier Prepayment Amount**”), as may be adjusted upwards or downwards at the Closing based on the actual amount of such prepayments and deposits existing as at the Closing (such amount to be certified by the Seller to the Buyer at the Closing); plus
- (v) the assumption by the Buyer of the Assumed Liabilities as contemplated by Section 3.1.

The Buyer has paid to the Monitor, in trust, [REDACTED] (the “**Deposit**”) as a deposit towards the Purchase Price to be held by the Monitor in trust in an interest bearing account, to be applied or returned, as the case may be, in accordance with the terms and conditions of this Agreement.

- (b) Subject to Section 2.4(c) all interest, income and earnings on the Deposit will be for the account of the Buyer (the Deposit and all interest, income and earnings thereon are referred to collectively as the “**Deposit Amount**”). Upon Closing, the Deposit Amount will be credited to the Purchase Price as provided herein.
- (c) If this Agreement is terminated for any reason whatsoever, other than a termination expressly contemplated in Section 2.4(d) only, then the Deposit Amount shall be forfeited by the Buyer to, and become the sole property of, the Seller, as liquidated damages and not as penalty, in addition to any other rights and remedies the Seller may have against the Buyer available at law or in equity.
- (d) If this Agreement is terminated pursuant to any of Section 10.1(a), Section 10.1(b) or Section 10.1(d) only, then the Deposit Amount will be returned to the Buyer within five (5) Business Days following the date of termination of this Agreement and the return of the Deposit Amount shall be the sole and exclusive remedy of the Buyer in respect of any and all such violation or breach of the Seller and termination of the Agreement and the Buyer hereby expressly waives and renounces any other remedies whatsoever, whether at law or in equity, which the Buyer may or would otherwise be entitled to as against the Seller or its affiliates and Representatives.

- (e) At the Closing, the Buyer shall pay to the Seller the Base Purchase Price plus the Purchased Equipment Purchase Price plus the Purchased Inventory and Supplies Purchase Price plus the Supplier Prepayment Amount less the Deposit Amount by way of wire transfer of immediately available funds to such bank account as is designated by the Seller to the Buyer no later than the day prior to the Closing Date, and 100% of the Deposit Amount shall be released by the Monitor and paid to the Seller or as the Seller may otherwise direct.

2.5 Purchase Price Allocation

Prior to the Closing Date, or as soon as practicable following the Closing, the Buyer shall prepare a written allocation of the Purchase Price among the Purchased Assets. Within thirty (30) days following the receipt of the proposed Purchase Price allocation, the Seller shall respond providing either (a) its acceptance of such allocation or (b) any objections. The failure of the Seller to object or accept the proposed Purchase Price allocation within such time period will be deemed to be evidence of its approval thereof. The Buyer and the Seller agree to act in good faith to resolve any differences between them. In the event that agreement cannot be reached, the Parties will refer the matter for determination by arbitration to a senior audit partner at the Toronto office of a nationally recognized accounting firm agreed to by the Parties (the “**Independent Accountant**”), whose decision shall be final. Half of the costs of the Independent Accountant shall be paid by the Seller and the other half of such costs by the Buyer. The Parties agree to execute and file all Tax returns, declarations, reports, statements and other filings on the basis of such allocation.

2.6 Purchased Inventory and Supplies Count

- (a) For the purpose of calculating the Purchased Inventory and Supplies Purchase Price, the Seller and the Buyer shall physically count the Purchased Inventory and Supplies following the close of business on the date that is no later than two days prior to the Closing Date (the “**Inventory Count Date**”) under the supervision of a representative of the Seller and a representative of the Buyer, provided that for any branch of the Seller that will close prior to the Inventory Count Date, the Purchased Inventory and Supplies Count for such branch shall be conducted prior to the closure of such branch. The Purchased Inventory and Supplies as finally determined following such physical count shall be valued in accordance with Schedule 2.1(c) and the Purchased Inventory and Supplies Purchase Price, which was determined as of December 31, 2019 based on the Purchased Inventory and Supplies specifically listed in Schedule 2.1(c), shall be adjusted upwards or downwards accordingly. Notwithstanding the foregoing, for any Specified New Inventory acquired or manufactured on or after January 1, 2020, the value to be used for the upward adjustment to the Purchased Inventory and Supplies Purchase Price attributable to such Specified New Inventory shall be the book value of such Purchased Inventory and Supplies as opposed to the discounted value indicated on Schedule 2.1(c).
- (b) In the event that the Parties cannot agree on the Purchased Inventory and Supplies Purchase Price payable at the Closing, the Buyer shall (a) pay to the Seller in

accordance with Section 2.4 the Purchased Inventory and Supplies Purchase Price as calculated by it (the “**Buyer Purchased Inventory and Supplies Purchase Price**”), and (b) pay to the Monitor in trust an amount equal to the difference between the Buyer Purchased Inventory and Supplies Purchase Price and the Purchased Inventory and Supplies Purchase Price as calculated by the Seller (the “**Disputed Amount**”). The Parties shall, in consultation with the Monitor, then use reasonable efforts to resolve the dispute regarding the Purchased Inventory and Supplies Purchase Price for a period of ten (10) days following the Closing, failing which the dispute shall be referred by the Parties to the Independent Accountant for final determination. Half of the costs of the Independent Accountant shall be paid by the Seller and the other half of such costs by the Buyer. Following final determination by the Independent Accountant, the Monitor shall transfer the Disputed Amount to the Seller and/or the Buyer as directed by the Independent Accountant or as otherwise mutually agreed to by the Parties. The Parties agree that the Monitor shall have no liability in connection with the holding of the Disputed Amount.

2.7 Tax Matters

- (a) All amounts payable by the Buyer to the Seller pursuant to this Agreement are exclusive of any GST/HST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, documentary, filing, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, “**Transfer Taxes**”) arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets from the Seller to the Buyer. The Buyer will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use Commercially Reasonable Efforts to assist the Buyer in mitigating such taxes. If the Seller is required by any Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer will pay such amounts to the Seller concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and Seller will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (b) The Parties will use their Commercially Reasonable Efforts in good faith to minimize (or eliminate) any taxes payable under the GST/HST Legislation and, if applicable, similar acts of other jurisdictions in respect of the Closing by, among other things, making such elections, providing such purchase exemption certificates and taking such steps as may be provided for under all such applicable acts (including, for greater certainty, at the specific request of the Buyer to the Seller, the Buyer filing a joint election in a timely manner under Section 167 of the *Excise Tax Act* (Canada) and the corresponding provisions of the applicable provincial Tax law, if applicable and available), in each case, if requested by the Buyer. If the Buyer requests the Seller to make any such election, apply for any

such certificate, make any such filing or take any such step, then in addition to any other indemnification obligation of the Buyer to the Seller, the Buyer will at all times indemnify and hold harmless the Seller and its Additional Indemnitees against and in respect of any and all Losses, including all amounts assessed (together with any and all interests and penalties) by the Minister of National Revenue (Canada) (the “**Minister**”) or the corresponding Governmental Authority in each other applicable jurisdiction (including all legal and professional fees incurred by the Seller or its shareholders, directors, officers, agents, advisors and/or employees, as a consequence of or in relation to any such assessment) as a consequence of either the Minister or any such other Governmental Authorities determining, for any reason, that either election is unavailable, inapplicable, invalid or not properly made.

- (c) Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Purchased Assets (including real estate Taxes, personal property Taxes and similar Taxes) for the Tax period in which the Closing occurs (the “**Proration Period**”) will be apportioned and prorated between the Seller and the Buyer as of the Closing Date with Buyer bearing the expense of Buyer’s proportionate share of such Taxes which shall be equal to the product obtained by multiplying the total amount of such Taxes by a fraction, the numerator being the number of days in the Proration Period following the Closing Date and the denominator being the total number of days in the Proration Period, and the Seller shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by the Buyer and the Seller, and the Buyer or Seller, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of the Buyer and the Seller.
- (d) Without limiting the provisions of Section 2.2, the Seller shall be entitled to receive from the Buyer all refunds (or credits for overpayments) of Taxes, including any interest paid thereon, by a Governmental Authority, attributable to any tax period ending on or prior to the Closing Date or the portion of any Proration Period ending on and including the Closing Date, net of any costs, fees, expenses or Taxes incurred in obtaining such refunds (or credits). The Buyer and the Seller shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax refunds (or credits) contemplated by this Section 2.7(d). The Buyer shall pay any such Tax refund (or the amount of any such credit) to the Seller within five (5) calendar days after Buyer receives such Tax refund from a Governmental Authority or files a Tax return claiming such credit if payable to the name of the Buyer and, if

payable to the Seller but delivered to the Buyer, shall forthwith deliver such payment to the Seller.

- (e) If requested by the Seller, the Buyer and the Seller shall jointly make and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of the applicable provincial Tax law, if applicable and available, in respect of the Buyer's assumption of the Seller's obligations in respect of any deferred revenue of the Business (and, if such election is made, a portion of the Purchased Assets having a value equal to the elected amount shall be transferred by the Seller to the Buyer for the assumption of such obligations by the Buyer), in either case in prescribed manner and within the prescribed time limits applicable to such election(s).

ARTICLE 3 ASSUMED LIABILITIES AND EXCLUDED LIABILITIES

3.1 Assumed Liabilities

Subject to Closing, in addition to paying the Purchase Price as contemplated by Section 2.4(a), the Buyer agrees to assume, pay, discharge, perform and fulfil, and will indemnify and hold harmless the Seller and its Additional Indemnitees from and against, the debts, commitments, claims, obligations and liabilities of the Seller with respect to the Business and the Purchased Assets, in each case whether direct or indirect, present or future, absolute, accrued or contingent (collectively, the "**Assumed Liabilities**"), including:

- (a) all obligations and liabilities in respect of the Purchased Assets arising on or after the Closing Date;
- (b) all liabilities under or in connection with the Assumed Contracts, including the Assumed Customer POs and the Assumed Supplier POs, and including any warranty claims relating to the Assumed Customer POs;
- (c) all obligations and liabilities of any kind, whether arising prior to, on or after the Closing Date in relation to or in respect of any Purchased Asset or the operation, use or ownership thereto, provided that such obligations or liabilities are not arising from, due to or attributable to (i) any default by the Seller existing prior to Closing (excluding any default arising from the commencement or pendency of the CCAA Proceedings), or (ii) any violation or breach by the Seller of any covenant, representation or warranty of the Seller under this Agreement;
- (d) all obligations and liabilities under Applicable Law from and after the Closing with respect to the storage and retention of personal, financial or other records in respect of or included as the Purchased Assets;
- (e) all liabilities and obligations assumed by the Buyer as described in Section 9.2;

- (f) all Taxes that are specified as liabilities and obligations of the Buyer under Section 2.7; and
- (g) any other obligations and liabilities expressly assumed under this Agreement.

3.2 Excluded Liabilities

Except for those arising from, due to or attributable to any violation or breach by the Buyer of any of its covenants, representations or warranties and except as expressly assumed by the Buyer pursuant to Section 3.1 (including any of Sections 3.1(a) to 3.1(g) inclusive), the Buyer will not assume and will have no obligation to discharge, perform or fulfill any of the following liabilities, debts, obligations, commitments or claims, direct or indirect, whether present or future, absolute, accrued or contingent, of the Seller or exclusively related to the Excluded Assets (collectively, the “**Excluded Liabilities**”):

- (a) all liabilities and obligations of any kind exclusively relating to the Excluded Assets;
- (b) all obligations and liabilities in respect of the Accounts Payable, except to the extent such Accounts Payable arise under a Assumed Supplier PO;
- (c) all product and service warranty claims against the Seller existing or arising prior to the Closing under its existing and past warranty or similar programs with respect to the Business, except to the extent related to a Assumed Customer PO;
- (d) all liabilities and obligations under the DIP Credit Agreement and the Secured Credit Agreement;
- (e) all liabilities and obligations for all Taxes payable or to be collected and remitted by the Seller to any Governmental Authority for periods at or prior to the Closing Date, including any Taxes based upon operation or ownership of the Purchased Assets, any Taxes in respect of any payments to all Persons employed or retained in connection with the Business prior to the Closing Date and any related obligation to withhold or remit Taxes, even though a claim may be made after the Closing Date;
- (f) all liabilities and obligations of the Seller with respect to the Employee Plans, including obligations pursuant to any pension plans of the Seller in respect of any Seller Employee;
- (g) all liabilities and obligations of the Seller in respect of any litigation against the Seller that is pending immediately prior to the Closing; and
- (h) any other obligations or liabilities expressly excluded from the Assumed Liabilities under this Agreement.

The Buyer covenants and agrees that, from and after the Closing Date: (i) it will, at no cost to the Seller, forthwith upon receipt from time to time provide the Seller with all notices, demands and

other communications received by or on behalf of the Buyer in respect of any Excluded Liabilities or Excluded Assets; (ii) it will, at no cost to the Seller, co-operate with the Seller in connection with all reasonable demands under any Excluded Liabilities or Excluded Assets, including providing the Seller with access to all personnel, information, data, documents, agreements and instruments reasonably required by the Seller to the extent relating to any Excluded Liabilities or Excluded Assets; and (iii) the Seller shall be entitled to exercise any rights and remedies that the Seller or the Buyer may have in respect of any of the Excluded Liabilities and Excluded Assets, either by contract, law or in equity. This ending provision of Section 3.2 shall survive and not merge on the Closing.

3.3 Assumption of Contractual Liabilities

- (a) Notwithstanding anything contained in this Agreement or elsewhere, the Buyer will not assume and will have no obligation to discharge any liability or obligation under any Assumed Contract which is not assignable or assumable in whole or in part without a Third Party Consent, unless such Third Party Consent or, as applicable, a CCAA Assignment Order, has been obtained.
- (b) Without limiting the generality of the foregoing, if any of the Assumed Contracts cannot be assigned to or assumed by the Buyer without a Third Party Consent or by way of a novation agreement, or, if applicable, a CCAA Assignment Order (which Third Party Consent, CCAA Assignment Order, agreement or order shall not have been obtained at or prior to the Closing), then notwithstanding anything contained in this Agreement or elsewhere, this Agreement does not constitute an assignment or attempted assignment of any such Assumed Contract if the assignment or attempted assignment would constitute a breach of such Assumed Contract. For greater certainty, in respect of any Assumed Contract, if the consent of any Person is required to assign such Assumed Contract but such consent or CCAA Assignment Order, as applicable, is not obtained prior to Closing, such Assumed Contract shall not form part of the Purchased Assets and (A) the Parties shall use their Commercially Reasonable Efforts to ensure that (i) the necessary consents or approvals to the assignment or transfer of such Assumed Contract to the Buyer are obtained as soon as practicable following Closing and (ii) the Seller is released from all liability under the Assumed Contracts and any related guarantees or indemnities, (B) neither Party shall be in breach of this Agreement as a consequence thereof, (C) no condition to Closing shall be, or be deemed to be, unsatisfied as a consequence thereof, (D) the Purchase Price shall not be, or required to be, adjusted as a consequence thereof and (E) the Closing shall not be delayed or restricted in any way as a consequence thereof. For the avoidance of doubt, the obtaining of any required Third Party Consent to assign the Ford Converter Agreement to Buyer and/or the Buyer's entry into a similar agreement with Ford shall not constitute a term or condition of this Agreement and, subject to the terms and conditions hereof, the Buyer shall be obligated to close the Transaction irrespective of whether any such Third Party Consent is obtained or agreement entered into on or prior to the Closing.

- (c) Notwithstanding anything else contained in this Agreement or elsewhere, the Buyer acknowledges and agrees that the Seller is only required to use Commercially Reasonable Efforts to obtain, or cause to be obtained, at or prior to the Effective Closing Time, any applicable Third Party Consents or, if applicable, CCAA Assignment Orders.
- (d) The Buyer acknowledges that:
 - (i) it shall not be entitled to request any amendment to the terms of any Assumed Contract in connection with any consent or approval to be obtained in connection with the execution and delivery of this Agreement and the consummation of the Transaction;
 - (ii) in connection with the transactions contemplated by this Agreement, one or more of the Assumed Contracts may, among other things, provide the counterparties with a right to terminate in lieu of granting the Third Party Consent, with the right to increase the payment and/or for the loss of rights that are personal to the Seller or its affiliates thereunder; and
 - (iii) nothing in this Agreement shall prohibit or restrict the Seller from requiring a full release from any counterparty in respect of any Assumed Contract or any Assumed Liability.
- (e) Without limiting the Buyer's obligations under Section 11.1, the Buyer will forthwith provide to the Seller and, if requested by the Seller, the requisite counterparties, materials suitable for presentation to such counterparties or any other information, documentation, agreements or support reasonably required by any such counterparties. Furthermore, the Buyer will execute and deliver all necessary acknowledgements and assumption agreements required by any counterparty as a condition to the issuance of its consent and that are commercially reasonable or are otherwise contemplated in the corresponding Assumed Contracts and shall provide all necessary certificates of insurance and any other assurances required under such Assumed Contracts. For greater certainty, the Buyer shall not be required to pay any amount or agree to an amendment to any counterparty to an Assumed Contract as a condition to obtaining any Third Party Consent.
- (f) The Buyer acknowledges that if, despite the Seller's use of Commercially Reasonable Efforts, any Third Party Consent or a CCAA Assignment Order is not obtained in respect of any Assumed Contract, the Seller shall have no liability therefor to the Buyer and such Assumed Contract shall be an Excluded Asset and the liabilities thereunder shall be Excluded Liabilities.
- (g) This Section 3.3 shall survive and not merge on the Closing.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants as follows to the Buyer as of the date hereof and acknowledges and confirms that the Buyer is relying upon the following representations and warranties in completing the Transaction:

4.1 Corporate Power

- (a) The Seller is duly organized and validly existing under the laws of its jurisdiction of organization; and
- (b) Subject to the issuance and entry of the CCAA Approval Order, the Seller has the power, authority and capacity to enter into and perform its obligations under this Agreement, and to own the respective Purchased Assets and to carry on the Business as currently conducted.

4.2 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the Tax Act.

4.3 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Seller. Subject to the issuance of the CCAA Approval Order, this Agreement has been duly and validly executed by the Seller and constitutes a valid and binding obligation of the Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

4.4 No Other Representations and Warranties

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 4, neither the Seller nor any other Person on behalf of the Seller makes any representation or warranty, express or implied, with respect to the Seller, the Purchased Assets, the Business, the Assumed Liabilities or the Transaction.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Corporate Power

The Buyer:

- (a) is a corporation duly organized and validly existing and in good standing under the Applicable Laws of its jurisdiction of incorporation; and
- (b) has the power, capacity and authority to enter into and perform its obligations under this Agreement and carry on business.

5.2 Residence of the Buyer

The Buyer:

- (a) is not a non-resident of Canada for the purposes of the Tax Act;
- (b) is a “Canadian” or “WTO investor” for the purposes of the *Investment Canada Act* (Canada); and
- (c) is not a “state-owned enterprise” for the purposes of the *Investment Canada Act* (Canada).

5.3 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws that would be violated, breached, or under which any default would occur or with notice or the passage of time would be created, as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults that do not materially interfere with the ability of the Buyer to execute and deliver, or perform its obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement.

5.4 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer, if applicable or required. This Agreement has been duly and validly executed by the Buyer, and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and

similar laws affecting creditors generally and by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

5.5 Approvals and Consents

No authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices that do not materially interfere with the ability of the Buyer to execute, deliver or perform its obligations under this Agreement or any other agreement or document to be entered into or delivered by the Buyer under the terms of this Agreement.

5.6 GST/HST Legislation

The Buyer is registered for purposes of the Tax imposed under the GST/HST Legislation, having registration number 852400316.

5.7 Financing and Solvency

The Buyer has available in immediately-available funds on hand, from its working capital and/or currently available unrestricted credit facilities, all the cash that the Buyer shall need at the Closing to consummate the purchase of the Purchased Assets and the Transaction. As of the Closing and immediately after consummating the transactions contemplated by this Agreement, the Buyer will not (i) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable liability on its debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to repay such debts as they become absolute and matured.

5.8 Compliance with Laws

The Buyer is conducting its business and operations in compliance, in all material respects, with all Applicable Laws of each jurisdiction in which its business and operations is carried on. No written notice or warning from any Governmental Authority with respect to any failure or alleged failure of, or necessity for, its business and operations to comply with any Applicable Law has been received by the Buyer nor, to the knowledge of the Buyer, is any such notice or warning proposed or threatened.

5.9 Informed and Sophisticated Buyer

The Buyer is an informed and sophisticated Buyer, and has engaged expert advisors and is experienced in the evaluation and purchase of property and assets and assumption of liabilities such as the Purchased Assets, the Business and the Assumed Liabilities as contemplated hereunder. The Buyer has undertaken such investigations and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an

informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

5.10 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an “as is, where is” basis; (b) it has relied upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of the Seller for the purpose of the Transaction, as well as of the Business, the Purchased Assets and the Assumed Liabilities; (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business and the Assumed Liabilities; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence. The provisions of this Section 5.10 shall survive and not merge on Closing.

5.11 No Brokers

No agent, broker, person or firm acting on behalf of the Buyer is, or will be, entitled to any commission or brokers’ or finders’ fees from the Buyer or from any affiliate of the Buyer, in connection with any of the Transaction.

5.12 No Other Representations and Warranties.

Notwithstanding anything else contained in this Agreement, except for the representations and warranties contained in this Article 5, neither the Buyer nor any other Person on behalf of the Buyer makes any representation or warranty, express or implied, with respect to the Buyer or the Transaction.

ARTICLE 6 OTHER AGREEMENTS

6.1 Conduct Prior to Closing

- (a) Prior to the Closing, the Buyer shall not, and shall cause its affiliates and Representatives not to, contact, or engage in any discussions or otherwise communicate with, any of the Seller’s customers, employees, landlords, clients, suppliers and other Persons with which the Seller has material commercial dealings without obtaining the prior consent of the Seller, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Buyer may contact, engage in any discussions or otherwise communicate with any of the Seller’s customers and suppliers who it has a pre-existing relationship with solely in respect of matters pertaining to the Seller’s pre-existing business and without breaching the provisions of the Non-Disclosure Agreement.
- (b) During the Interim Period, except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to

be unreasonably withheld, conditioned or delayed) or (C) as applicable, in connection with the CCAA Proceedings or otherwise pursuant to any orders or directions of the CCAA Court, the Seller will, in all material respects, conduct the Business relating to the Purchased Assets and deal with the Purchased Assets in the Ordinary Course and in accordance with Applicable Law, including, as may be permitted by the CCAA Court and, as applicable, paying and discharging the liabilities of the Business when due in accordance and consistent with past practice (excluding, for the avoidance of doubt, any Pre-Filing Liabilities). Notwithstanding the foregoing, during the Interim Period the Seller shall be permitted to (i) sell, transfer or liquidate any Excluded Assets, and (ii) rationalize, curtail and/or wind-down its operations at its Premises other than the Newmarket Premises, in each case as it shall deem fit.

- (c) Without limiting the generality of Section 6.1(b), but except, in each case, either (A) in furtherance of or in relation to the Transaction, (B) with the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed) or (C) as applicable, in connection with the CCAA Proceedings or otherwise pursuant to any orders or directions of the CCAA Court, during the Interim Period, the Seller will (in each case only to the extent solely and directly required for the Business as relates to the Purchase Assets) use Commercially Reasonable Efforts (including as disclosed in the Schedules hereto) to:
- (i) in all material respects, keep available the services of the Transferred Employees and preserve current relations with, and the current goodwill of, suppliers, customers, landlords, Governmental Authorities and all other Persons having material business relationships with the Seller;
 - (ii) in all material respects, preserve, protect and maintain the Purchased Assets in the Ordinary Course; and
 - (iii) continue and keep in full force and effect all insurance coverage currently held by the Seller.

6.2 CCAA Proceedings

- (a) Within ten (10) days of the date hereof, the Seller shall promptly serve and file a motion seeking the CCAA Approval Order approving this Agreement and authorizing the Seller to complete the Transaction and vesting the Purchased Assets owned by the Seller in the Buyer free and clear of all Encumbrances other than Permitted Encumbrances in accordance with this Agreement. If applicable, prior to March 20, 2020, or such other date as the Seller and the Buyer may agree, the Seller shall file a motion for the CCAA Assignment Order. The Seller shall diligently pursue such motions on notice to the Buyer, the service list in the CCAA Proceedings and any other person reasonably requested by the Buyer, and shall promptly notify the Buyer and the service list in the CCAA Proceedings of the disposition thereof. Buyer agrees that it will promptly take such actions as are

reasonably requested by the Seller to assist in the filing of each such motion and to obtain entry of each such order.

- (b) The Buyer shall, at its own cost and expense, promptly provide to the Seller all such information and assistance as the Seller may reasonably request to obtain entry of any orders of the CCAA Court (including the orders contemplated in Section 6.2(a)), including assurance of financial ability to perform, making available qualified witnesses to provide affidavit evidence for any hearing before the CCAA Court seeking approval of the Transaction or a CCAA Assignment Order, in each case that may be necessary or appropriate to obtain all requisite orders of the CCAA Court to effectuate the Transaction.
- (c) Upon the written request of the Buyer to the Seller made no later than March 20, 2020, the Seller agrees to use best efforts to seek a CCAA Assignment Order or other relief from the CCAA Court such that the Buyer shall be permitted to occupy the Newmarket Premises for the six (6) month period following the Closing.

6.3 Possession of Purchased Assets; Expenses for Removal

- (a) Subject to all other provisions of this Agreement, title to and beneficial ownership, risk and possession of the Purchased Assets shall pass from Seller to Buyer upon Closing.
- (b) The Buyer shall promptly notify the Seller of any Excluded Assets that may come into the possession or control of the Buyer or its affiliates, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Seller or its affiliates, or to such other Person as the Seller may direct in writing and, for greater certainty, no title or other licence to use shall, or shall be deemed to, vest to the Buyer in respect of any Excluded Assets.
- (c) On the Closing Date, the Seller shall make available to the Buyer possession of the Purchased Assets at the Premises and within thirty (30) days of Closing, the Buyer shall ensure that all such Purchased Assets are removed from the Premises at Buyer's sole cost and expense. The Seller shall provide the Buyer with such reasonable assistance as is requested by the Buyer in order to dismantle, remove, transport or otherwise move any of the Purchased Assets, provided that the Buyer shall be solely responsible and liable for and pay as and when required:
 - (i) any and all costs of dismantling or removing Purchased Assets from the Premises (or their location at Closing) and transporting the Purchased Assets to a new location; and
 - (ii) the cost of repairing any damage caused by dismantling or removal of any of the Purchased Assets from the Premises (or their location at Closing) and transporting the Purchased Assets to a new location.

- (d) The Buyer shall repair and be liable for and indemnify and hold harmless Seller from and against any and all Losses whatsoever caused by or in any way arising out of, directly or indirectly, any dismantling or removal of any Purchased Assets or any failure to dismantle or remove any Purchased Assets.
- (e) To the extent that any Purchased Assets are not removed from any of the Premises by the deadline specified in Section 6.3(c), such Purchased Assets shall be deemed to be Excluded Assets and become the property and responsibility of the Seller without any further liability of the Buyer, and without any adjustment to the Purchase Price.
- (f) The Buyer agrees to use Commercially Reasonable Efforts to dismantle, remove, transport or otherwise move the Purchased Assets in a manner that minimizes disruption to any work that is being carried on at the Premises.

6.4 Access to Information

Until the Effective Closing Time and to the extent permitted by Applicable Law, the Seller shall give to the Buyer's personnel engaged in this Transaction and their accountants, legal advisers, consultants and other Representatives during normal business hours and upon reasonable advance notice, reasonable access to the Premises and shall furnish them with all such information relating to the Purchased Assets as the Buyer may reasonably request in connection with the Transaction. Notwithstanding anything in this Section 6.4 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not disrupt the business or any of the assets of the Seller. The Buyer acknowledges and confirms its representations and warranties in Sections 5.9 and 5.10 and that access to information pursuant to this Section 6.4 is not intended to, and shall not, provide for any due diligence inquiry as a condition to the Closing or otherwise.

6.5 Access to Third Parties

The Seller shall co-operate with the Buyer in arranging any such meetings as the Buyer may reasonably request with: (a) employees of the Seller; (b) customers, suppliers or distributors who have a business relationship with the Seller; and (c) professional advisors who have knowledge of matters relating to the Seller or the Business, it being understood that the Seller shall be entitled to have a representative present at any such meeting.

6.6 Transition Services Arrangements

The Parties agree to the post-Closing transition services arrangements specified in Schedule 6.6 hereto.

ARTICLE 7 CONDITIONS

7.1 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Buyer and may be waived, in whole or in part, by the Buyer in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Seller contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date); provided, however, that for purposes of determining the accuracy of representations and warranties for purposes of this condition, all qualifications as to “materiality” contained in such representations and warranties shall be disregarded, and the Seller must have delivered to the Buyer a signed certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Seller must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to the Closing, and the Seller must have delivered to the Buyer a signed certificate of a senior officer to that effect.
- (c) **Deliverables.** The Seller must have delivered to the Buyer the documents contemplated in Section 8.2, in each case in form and substance satisfactory to the Buyer, acting reasonably.

7.2 Conditions for the Benefit of the Seller

The obligation of the Seller to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Seller and may be waived, in whole or in part, by the Seller in its sole discretion:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date); provided, however, that for purposes of determining the accuracy of representations and warranties for purposes of this condition, all qualifications as to “materiality” contained in such representations and warranties shall be disregarded, and the Buyer must have delivered to the Seller a signed certificate of a senior officer to that effect.
- (b) **Performance of Covenants.** The Buyer must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement to be fulfilled or

complied with by it at or prior to the Closing, and the Buyer must have delivered to the Seller a signed certificate of a senior officer to that effect.

- (c) **Deliverables.** The Buyer must have delivered to the Seller the documents contemplated in Section 8.3, in each case in form and substance satisfactory to the Seller, acting reasonably.

7.3 Mutual Conditions

The obligation of the Parties to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of each of the Seller and the Buyer and may only be waived, in whole or in part, by both Seller and the Buyer:

- (a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement shall be in effect.
- (b) **CCAA Approval Order.** The CCAA Approval Order shall have been issued and entered, and the operation and effect of such order shall not have been stayed, amended, modified, reversed or dismissed as of the Effective Closing Time.
- (c) **Purchased Inventory and Supplies Count.** The Parties shall have completed the Purchased Inventory and Supplies count contemplated in Section 2.6.

7.4 No Frustration of Closing Condition

Neither Buyer nor Seller may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Sections 7.1 to 7.3, as the case may be, to be satisfied if such failure was caused by such Party's or its affiliates' failure to use its reasonable best efforts (or Commercially Reasonable Efforts, to the extent specifically provided) to satisfy the conditions to the consummation of the Transaction contemplated hereby or by any other breach of a representation, warranty, or covenant of such Party hereunder.

ARTICLE 8 CLOSING

8.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP, at 333 Bay Street, Suite 3400, Toronto, Ontario M5H 3S7 at 10:00 a.m. (Toronto time) on the Closing Date, or at such other place (including virtually through electronic exchange of documents), on such other date and at such other time as may be agreed upon in writing by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as of the Effective Closing Time.

8.2 Seller Deliverables at Closing

At Closing, the Seller will deliver or cause to be delivered to the Buyer the following:

- (a) the General Conveyance and Assumption Agreement signed by the Seller;
- (b) if applicable, the elections referred to in Section 2.7, in each case signed by the Seller;
- (c) the certificates referred to in Section 7.1(a) and Section 7.1(b);
- (d) the certificate of the Monitor contemplated by the CCAA Approval Order;
- (e) the Restrictive Covenant Agreement signed by Diesel, the Seller and the other parties thereto (except for the Buyer);
- (f) the Diesel IP Transfer and License Back Agreement signed by Diesel, Seller and their applicable affiliates; and
- (g) all other documents reasonably requested by the Buyer to be entered into or delivered by the Seller at Closing pursuant to the terms of this Agreement.

8.3 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Seller the following:

- (a) the Purchase Price, in the manner set forth in Section 2.4;
- (b) a certificate of status, compliance, good standing or like certificate with respect to the Buyer issued by the appropriate governmental officials of its jurisdiction of incorporation;
- (c) the General Conveyance and Assumption Agreement signed by the Buyer;
- (d) if applicable, the elections referred to in Section 2.7, in each case signed by the Buyer;
- (e) the certificates referred to in Section 7.2(a) and Section 7.2(b);
- (f) the Diesel IP Transfer and License Back Agreement signed by the Buyer; and
- (g) all other documents reasonably requested by the Seller to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

ARTICLE 9 EMPLOYEES

9.1 Employees

- (a) At least fourteen (14) days prior to the Closing Date, the Buyer shall make a written offer of employment, effective as of the Closing Date and contingent upon the Closing, to each of the Seller Employees listed on Schedule 9.1(a) (the “**Offered Employees**”) together with such other Seller Employees determined by the Buyer in its sole discretion, on terms and conditions determined by the Buyer in its sole discretion. Each such Seller Employee who accepts such offer of employment or who otherwise continues his or her employment with the Buyer or its affiliates after the Closing shall be referred to hereinafter as a “Transferred Employee”. Notwithstanding the foregoing, nothing herein shall be construed as to prevent the Buyer, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with applicable law, at any time following the Closing Date.
- (b) Each Transferred Employee shall be given credit by the Buyer for all service with the Seller and its predecessors as is required by statute.
- (c) The Transferred Employees shall participate in the Buyer’s exiting benefit plans on Closing (subject to any required waiting periods) and cease to accrue benefits under all Employee Plans, provided that such Transferred Employees participating in the applicable Employee Plan on the date the claim was incurred, will be eligible for payment under the applicable Employee Plan in accordance with the terms thereof. The Seller shall inform the Transferred Employees in writing that they must make all claims under the Employee Plans no later than thirty (30) days after the Closing Date.
- (d) The Parties agree that nothing in this Section 9.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.
- (e) After the Closing Date, the Buyer shall, and shall cause its affiliates to, cooperate with the Seller to provide such current information regarding the Transferred Employees on an ongoing basis as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Transferred Employees under any applicable employee benefit or Employee Plan that continues to be maintained by the Seller or its affiliates. The Buyer shall, and shall cause its affiliates to, permit Transferred Employees to provide such assistance to the Seller as may reasonably be required in respect of claims against the Seller or its affiliates, whether asserted or threatened, to the extent that, in the Seller’s opinion, (i) a Transferred Employee has knowledge of relevant facts or issues, or (ii) a Transferred Employee’s assistance is reasonably necessary in respect of any such claim.

9.2 Employee Liability

The Buyer will assume and be responsible for:

- (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date;
- (b) all liabilities for vacation and sick pay and entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date;
- (c) all severance payments, payments for notice of termination or in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of the termination by the Buyer of the employment of any Transferred Employee from and after the Closing Date;
- (d) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees from and after the Closing Date; and
- (e) all employment-related claims, penalties, contributions, premiums and assessments in respect of the Business to the extent relating to the Transferred Employees and arising out of matters which occur from and after the Closing Date.

ARTICLE 10 TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Seller and the Buyer,
- (b) by the Seller, on the one hand, or the Buyer, on the other hand, if the Closing has not occurred on or before April 30, 2020 (the "**Sunset Date**"); *provided, however* that if the Closing shall not have occurred on or before the Sunset Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer or the Seller, then the breaching Party may not terminate this Agreement pursuant to this Section 10.1(b);
- (c) by the Seller, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 7.2 or 7.3 by the Sunset Date and such violation or breach has not been waived by the Seller or cured within fifteen (15) days after written notice thereof from the Seller to the Buyer, unless the Seller is in material breach of its obligations under this Agreement; and

- (d) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 7.1 or 7.3 by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within fifteen (15) days after written notice thereof from the Buyer to the Seller, unless the Buyer is in material breach of its obligations under this Agreement.

10.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall become void and of no further force and effect, except as contemplated in Sections 1.11, 2.4 and 5.10 and Article 11, each of which shall survive termination. Nothing in this Section 10.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

10.3 Notice to the Monitor

A copy of any notice or agreement of termination in this Article 10 shall be concurrently provided to the Monitor at the time of delivery to the other Party.

ARTICLE 11 GENERAL MATTERS

11.1 Further Assurances

- (a) Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use Commercially Reasonable Efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable courts to the Parties, the Parties shall use their Commercially Reasonable Efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the Transaction, including using Commercially Reasonable Efforts to satisfy or waive the conditions precedent to the obligations of the Parties hereto.
- (b) Without limiting the generality of the foregoing, following the Closing:
 - (i) the Seller will forward and transfer to the Buyer, as soon as is commercially reasonable and practicable, any payments, documents, information, communications or correspondence which the Seller or any affiliate thereof may receive from time to time that solely and directly relates to the Purchased Assets or the Assumed Liabilities and which

should have properly been paid, provided or delivered to the Buyer, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer;

- (ii) the Buyer will forward and transfer to the Seller, as soon as is commercially reasonable and practicable, any payments which the Buyer or any affiliate thereof may receive from time to time in respect of any Excluded Asset or Excluded Liability which should have properly been paid, provided or delivered to the Seller, and that any payments so received by it or any affiliate thereof will be held in trust pending such transfer; and
 - (iii) the Buyer shall permit the Seller and its agents reasonable access to the historical records and other documentation relating to the Purchased Assets, the Business (including the Books and Records), the Assumed Liabilities and Seller Employees (subject to the Seller agreeing to appropriate confidentiality requirements), where required by the Seller in connection with any legal, administrative or other similar inquiry or proceeding.
- (c) Without limiting the generality of the foregoing, the Buyer shall, if requested by the applicable Persons and/or counterparties in connection with the granting of any Third Party Consent, execute all such guarantees, indemnities, security documentation and other assurances or documentation as may be reasonably requested or required by such Persons and/or counterparties (including, for greater certainty, in connection with the full release of the Seller and its affiliates).

11.2 Third Party Beneficiaries

Except as otherwise provided in Sections 2.7, 3.1 and 11.3, the Parties intend that this Agreement will not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties to this Agreement and the Monitor to the extent specifically provided for herein and no Person, other than the Parties to this Agreement and the Monitor, will be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Seller acts as trustee and agent on behalf of each of its Additional Indemnitees and holds for their benefit their rights under Section 2.7, 3.1 and 11.3 in respect of indemnified Losses only. Each Party agrees that the other Parties may enforce the indemnity for and on behalf of such Additional Indemnitees and, in such event, the indemnifying party will not in any proceeding to enforce the indemnity by or on behalf of such Additional Indemnitees assert any defence thereto based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defence. The Parties to this Agreement reserve their right to vary or rescind the rights at any time and in any way whatsoever granted by or under this Agreement to any Person (other than the Monitor) who is not a Party to this Agreement, without notice to or consent of that Person, including any of its Additional Indemnitees.

11.3 Confidentiality and Public Statements

- (a) The Parties acknowledge that the Non-Disclosure Agreement remains in full force and effect in accordance with its terms, which are incorporated herein by reference, and the Parties agree to be bound thereby in the same manner and to the same extent as if the terms of the Non-Disclosure Agreement had been set forth herein in full.
- (b) All press releases, notices to third parties (including employees, customers and suppliers of the Business) and all other publicity concerning the Transaction or any matter contemplated or referenced by this Agreement (including the existence of, the terms and conditions of, the status of the Transaction, all of which constitute Confidential Information) shall be jointly planned and coordinated by the Parties and no Party shall, directly or indirectly, allow, permit or otherwise enable or assist in any such matter without the express prior written approval of the other Party, each acting reasonably.
- (c) Notwithstanding Section 11.3(a), the Buyer shall be entitled to disclose Confidential Information to its Representatives who have a need to know for the sole purpose of the Transaction (including any requisite review and approval thereof).
- (d) Without limitation to any rights or remedies of the Seller against the Buyer, its affiliates or any of their respective Representatives, the Buyer shall be principally liable for any and all breaches of the terms of this Section 11.3 by its affiliates or its or their Representatives. In the event of a breach of the terms of this Section 11.3, the Buyer shall indemnify, defend and hold harmless the Seller and each of its Additional Indemnitees for any and all Losses whatsoever incurred by the Seller or its Additional Indemnitees as a result of such breach.

Notwithstanding the foregoing, in connection with the CCAA Proceedings: (i) this Agreement may be filed by the Seller with the CCAA Court; and (ii) the Transaction may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law, including preparation and filing of reports and other documents by the Monitor and other professional advisors and consultants of the Seller with the CCAA Court, as applicable or required, containing references to the Transaction and the terms of such Transaction as may reasonably be necessary to obtain the CCAA Approval Order and to complete the Transaction contemplated by this Agreement or to comply with its obligations to the CCAA Court under Applicable Laws.

11.4 Privacy Laws

- (a) For the purpose of this Section 11.4, “**Personal Information**” means information about an identifiable individual but excludes an individual’s name, position name or title, business telephone number, business address, business e-mail, business fax number and other similar business information collected, used or disclosed to contact an individual in their capacity as an official or employee of an

organization. For greater certainty, “Personal Information” shall include all health and medical information and records.

- (b) Prior to the Closing, the Buyer will not use any Personal Information of any Person (including the Seller Employees) disclosed to the Buyer by the Seller pursuant to or in connection with this Agreement (the “**Disclosed Personal Information**”) for any purpose other than those related to the performance of this Agreement and the completion of the Transaction.
- (c) Each of the Parties acknowledges and confirms that the disclosure of Disclosed Personal Information is necessary for the purposes of determining if the Parties will proceed with the Transaction, and that the disclosure of Disclosed Personal Information relates solely to the carrying on of the Business and the completion of the Transaction.
- (d) The Buyer undertakes, after the Closing, to comply at all times with Applicable Laws as it pertains to privacy which govern the collection, use and disclosure of Personal Information, including in respect of the Disclosed Personal Information and all Personal Information of the Seller Employees.
- (e) The Buyer covenants and agrees that where the Parties do not complete or proceed with the Transaction, the Buyer will, if such information is still in the custody of or under the control of the Buyer, either, at the Buyer’s option, destroy (and promptly provide to the Seller an officer’s certificate executed by a senior officer of the Buyer confirming same) such information or return it to the Seller.

11.5 Survival

None of the representations, warranties or covenants of any of the Parties set forth in this Agreement shall survive Closing, except for the covenants in Sections 1.11, 2.3, 2.4, 2.5, 2.6, 2.7, 3.1, 3.2, 3.3, 5.9, 5.10, 5.11, 5.12, 6.6, 9.1, 9.2 and 10.2, as well as Article 11 and any other covenant that by its express terms is to be performed following the Closing, in each case solely to the extent they are to be performed or operate by their express terms after the Closing.

11.6 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or other Representative of the respective Parties hereto, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transaction. In addition, under no circumstance shall any of the Parties, their respective affiliates or theirs or their affiliates’ Representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

11.7 Expenses

Each of the Seller and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation of this Agreement and the completion of the Transaction.

11.8 Time of the Essence

Time will be of the essence in this Agreement.

11.9 Successors and Assigns

- (a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns.
- (b) Neither this Agreement, nor any of the rights or obligations hereunder, will be assignable or transferable by any Party without the prior written consent of the other Party, not to be unreasonably withheld or delayed.

11.10 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by e-mail, with confirmed transmission and receipt or the date of transmission by electronic transmission (in each case, if sent during normal business hours of the recipient, and if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested. All notices not delivered personally or by e-mail will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

- (a) If to the Buyer at: Drive Products Inc.
1665 Shawson Drive
Mississauga, Ontario L4W 1T7

Attention: Robert Edmonds / Gregory Edmonds
E-mail: redmonds@driveproducts.com /
gedmonds@driveproducts.com

with a copy to: McMillan LLP
181 Bay Street, Suite 4400
Toronto, Ontario M5J 2T3

Attention: J.R. Beaudrie
E-mail: jr.beaudrie@mcmillan.ca

- (b) If to the Seller at: Del Equipment Inc.
210 Harry Walker Parkway North
Newmarket, ON L3Y 7B4
- Attention: Doug Lucky / Paul Martin
E-mail: dlucky@delequipment.com /
pmartin@delquipment.com
- with a copy to: Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7
- Attention: Christopher Armstrong
E-mail: carmstrong@goodmans.ca
- (c) If to the Monitor at: MNP Ltd., solely in its capacity as Monitor in the CCAA
Proceedings of DEL Equipment Inc. and not in its personal
capacity
111 Richmond Street West, Suite 300
Toronto, ON M5H 2G4
- Attention: Sheldon Title
E-mail: sheldon.title@mnp.ca
- with a copy to: Goldman Sloan Nash & Haber LLP
480 University Ave., Suite 1600
Toronto, ON M5G 1V2
- Attention: Jennifer Stam
Email: stam@gsnh.com

Any Party may change its address or other information for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address or such change information.

11.11 Specific Performance

The Buyer acknowledges and agrees that the Seller would be damaged irreparably in the event the Buyer does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that the Seller may have under law or equity, the Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

11.12 Counterparts, Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same

instrument. Execution of this Agreement may be made by facsimile signature, by email, PDF or other electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

SELLER

DEL EQUIPMENT INC.

Per:



Name: Doug Lucky
Title: Chief Restructuring Officer

BUYER

DRIVE PRODUCTS INC.

Per:

Name: Gregory Edmonds
Title: Chief Executive Officer

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

SELLER

DEL EQUIPMENT INC.

Per: _____
Name: Doug Lucky
Title: Chief Restructuring Officer

BUYER

DRIVE PRODUCTS INC.

Per: _____ *Edmonds* *2/24/2020*
Name: Gregory Edmonds
Title: Chief Executive Officer

SCHEDULE 1.1(r)
CCAA APPROVAL ORDER

[Attached.]

Court File No. CV-19-629552-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY, THE 27 TH
)	
JUSTICE HAINEY)	DAY OF FEBRUARY, 2020

**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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Del Equipment Inc. (the “**Applicant**” or “**DEL**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Purchase Agreement**”) between the Applicant and Drive Products Inc. (the “**Purchaser**”) dated as of February ●, 2020, and (ii) vesting in the Purchaser all of the Applicant’s right, title and interest in and to the Purchased Assets, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn February ●, 2020 (the “**Lucky Affidavit**”), the second report (the “**Second Report**”) of MNP Ltd. in its capacity as the Court-appointed monitor of DEL (the “**Monitor**”), and on hearing the submissions of counsel for the Monitor, counsel for the Applicant, and those other parties present as indicated on the counsel sheet, and on reading the affidavit of service of ● sworn February ●, 2020, filed:

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

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 Purchase Agreement or the Lucky Affidavit, as applicable.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Applicant is hereby authorized and approved, with such minor amendments to the Purchase Agreement as the Applicant and the Purchaser may agree to with the consent of the Monitor. The Applicant is 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 Monitor's certificate to the Applicant and the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets 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 this Court dated October 22, 2019 or any other Order of this Court in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Alberta), the *Personal Property Security Act* (Saskatchewan), the *Personal Property Security Act* (New Brunswick), or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted 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 and Encumbrances, from and after delivery of the Monitor's Certificate, the net proceeds

from the sale of the Purchased Assets (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets and all Claims and Encumbrances shall attach to the Net Proceeds 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 Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof to the Applicant and the Purchaser.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant and the Purchaser or their respective counsel regarding the satisfaction of the Purchase Price and the fulfillment or waiver of conditions to closing under the Purchase Agreement and shall incur no liability with respect to the delivery of the Monitor’s Certificate.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant’s records pertaining to the Applicant’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 Applicant.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) or other applicable legislation in respect of the Applicant and any bankruptcy or receivership order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the entering into of the Purchase Agreement and 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 Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

10. **THIS COURT ORDERS** that the Confidential Supplement be sealed, kept confidential and not form part of the public record until the Monitor files the Monitor's Certificate with the Court or upon further Order of this Court.

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 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order.

**SCHEDULE A
FORM OF MONITOR'S CERTIFICATE**

Court File No. CV-19-629552-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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.**

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 22, 2019, MNP Ltd. was appointed as the monitor (the “**Monitor**”) of Del Equipment Inc. (the “**Applicant**”) in proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada).
- B. Pursuant to an Order of the Court dated February 27, 2020 (the “**Approval and Vesting Order**”), the Court approved the asset purchase agreement dated as of February ●, 2020 (the “**Purchase Agreement**”) between the Applicant and Drive Products Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of all of the Applicant'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 Monitor to the Applicant and 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 the Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Applicant and the Purchaser.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets pursuant to the Purchase Agreement.
2. The conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable.
3. The Transaction has been completed to the satisfaction of the Applicant and the Purchaser.
4. This Certificate was delivered by the Monitor at _____ [a.m/p.m.] on _____, 2020.

MNP LTD., in its capacity as Court-appointed Monitor of Del Equipment Inc. and not in its personal or corporate capacity



Per: _____
Name:
Title:

SCHEDULE 1.1(dd)

DIESEL IP TRANSFER AND LICENSE BACK AGREEMENT

Trademarks

The following 3 registrations were located in the name of Diesel Equipment Limited:

No.	Trademark	Status	Security
1	D E L	Registered App 308952 App 13-NOV-1967 Reg TMA162548 Reg 02-MAY-1969	None
2	DEL & DESIGN 	Registered App 397220 App 23-APR-1976 Reg TMA225480 Reg 20-JAN-1978	None
3	DIESEL EQUIPMENT LIMITED & DESIGN 	Registered App 397221 App 23-APR-1976 Reg TMA225481 Reg 20-JAN-1978	None

Domain Names

Domain Name: DELEQUIPMENT.COM

Creation Date: 1998-05-19

Registry Expiry Date: 2021-05-18

Registrar: Network Solutions, LLC

Domain Name: DELEQUIPMENT.CA
Creation Date: 2018-10-30
Registry Expiry Date: 2020-10-30
Registrar: Go Daddy Domains Canada, Inc.

SCHEDULE 1.1(mm)
EXCLUDED CUSTOMER PURCHASE ORDERS

REDACTED

SCHEDULE 1.1(qq)**EXCLUDED LITIGATION**

1. The Gin-Cor Agreements and Claims and the Mack Defense Agreements and Claims, including any claims by the Seller as against Gin-Cor Industries Inc., Mack Defense, LLC and their respective affiliates in connection with the \$874,107.08 paid by Mack Defense, LLC to Gin-Cor Industries Inc. in respect of certain work and services performed by Seller as detailed in the Affidavit of Douglas Lucky sworn October 20, 2019.

SCHEDULE 1.1(uu)

GENERAL CONVEYANCE AND ASSUMPTION AGREEMENT

[Attached.]

GENERAL CONVEYANCE AND ASSUMPTION AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, 2020.

B E T W E E N:

DEL EQUIPMENT INC., a corporation incorporated under the laws of the Province of Ontario

(the “**Seller**”)

- and -

DRIVE PRODUCTS INC., a corporation organized under the laws of the Province of Ontario

(the “**Buyer**”)

RECITALS:

- A. On October 22, 2019, the Seller commenced proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and sought and obtained an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) among other things, appointing MNP Ltd. as monitor in the CCAA proceedings (the “**Monitor**”).
- B. On February ●, 2020, the Seller and the Buyer entered into an asset purchase agreement (the “**Purchase Agreement**”) pursuant to which the Buyer proposed to acquire all of the Seller’s right, title and interest in and to the Purchased Assets (the “**Transaction**”).
- C. Pursuant to an order of the Court dated February ●, 2020, the Transaction was approved and the Court ordered that the Purchased Assets shall vest absolutely in the Buyer free and clear of all liens, claims and encumbrances (subject to the Permitted Encumbrances) upon delivery by the Monitor of the Monitor’s Certificate.
- D. In view of the foregoing, the Seller and the Buyer have agreed to enter into this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Buyer (the “**Parties**”) hereby covenant and agree as follows:

1. Definitions

Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto in the Purchase Agreement.

2. Conveyance

Effective as of the Effective Closing Time and subject to the terms and conditions of the Purchase Agreement, the Seller hereby conveys, assigns, transfers and delivers to the Buyer all of the Seller's right, title and interest in and to the Purchased Assets.

3. Acceptance of Purchased Assets

The Buyer hereby accepts the conveyance, assignment and transfer of the Purchased Assets on and subject to the terms of the Purchase Agreement.

4. Assumption of Liabilities

Effective as of the Effective Closing Time and subject to the terms and conditions of the Purchase Agreement, the Buyer hereby assumes, and agrees to fulfil, perform, pay and discharge when due, the Assumed Liabilities.

5. Successor and Assigns

This Agreement will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns. Neither this Agreement, nor any of the rights or obligations hereunder, will be assignable or transferable by any Party without the prior written consent of the other Party, not be to unreasonably withheld or delayed.

6. Governing Law

This Agreement shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein (including, as applicable, the CCAA), without regard to the conflicts of law principles thereof, and shall be treated in all respects as an Ontario contract. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the Court with respect to any and all disputes arising out of or in connection with this Agreement.

7. Execution by Counterparts

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Delivery of any executed signature page of this Agreement by telecopier, facsimile or electronic mail shall be as effective as delivery of a manually executed signature page of this Agreement.

8. Further Assurances

Each of the Parties hereto shall, from time to time hereafter and upon any reasonable request of the other, do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts and things as may be reasonably required or necessary to more effectually implement and carry out the conveyance, sale, assignment, grant and transfer of the Purchased Assets to the Buyer in accordance with the provisions hereof and of the Purchase Agreement.

9. Paramountcy

This Agreement is made pursuant to the terms of the Purchase Agreement and is subject to all of the terms and conditions set forth in the Purchase Agreement. The Parties hereto acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended to the minimum extent necessary to eliminate any such conflict, inconsistency or ambiguity.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

DEL EQUIPMENT INC.

By: _____
Name:
Title:

DRIVE PRODUCTS INC.

Per: _____
Name:
Title:

SCHEDULE 1.1(rrr)
PERMITTED ENCUMBRANCES

None.

SCHEDULE 1.1(uuu)**PREMISES**

1. 210 Harry Walker Parkway, Newmarket, Ontario L3Y 7B4 (the “**Newmarket Premises**”)
2. 1655 Hymus Blvd, Dorval, Quebec H9P 1J5
3. 83 Caledonia Road, Moncton, New Brunswick E1H 2E6
4. #12 3939-54 Ave SE, Calgary, AB T2C 2L2
5. 10571 178 Street, Edmonton, AB T5S 2K4
6. 1963 Kingsway Avenue, Port Coquitlam, BC V3C 1S9

SCHEDULE 1.1(gggg)
RESTRICTIVE COVENANT AGREEMENT

[Attached.]

RESTRICTIVE COVENANTS AGREEMENT

THIS AGREEMENT is made effective as of the ____ day of _____, 2020.

B E T W E E N :

PAUL MARTIN, an individual resident in the Province of Ontario
(the “**Principal**”)

- and -

DEL EQUIPMENT INC., a corporation incorporated under the laws of the Province of Ontario

(the “**Seller**”)

- and -

DIESEL EQUIPMENT LIMITED, a corporation incorporated under the laws of the Province of Ontario

(“**Diesel**”)

- and -

DRIVE PRODUCTS INC., a corporation incorporated under the laws of the Province of Ontario

(the “**Buyer**”)

RECITALS:

- A. On October 22, 2019, the Seller commenced proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and sought and obtained an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) among other things, appointing MNP Ltd. as monitor in the CCAA proceedings (the “**Monitor**”).
- B. Pursuant to an asset purchase agreement dated February ●, 2020 between the Buyer and the Seller (the “**Purchase Agreement**”), the Buyer agreed to purchase from the Seller all of the Seller’s right, title and interest in and to the Purchased Assets (the “**Transaction**”).
- C. Pursuant to an order of the Court dated February ●, 2020, the Transaction was approved and the Court ordered that the Purchased Assets shall vest absolutely in the Buyer upon delivery by the Monitor of the Monitor’s Certificate.

- 2 -

- D. Pursuant to Section 8.1 of the Purchase Agreement, it is a condition of the closing of the Transaction that the Seller deliver all documents contemplated by Section 8.2 of the Purchase Agreement to the Buyer, including, among other things, a restrictive covenants agreements substantially in the form of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties to this Agreement, the Parties agree as follows:

1. Definitions

Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings given to them in the Purchase Agreement. In this Agreement the following terms shall have the following corresponding meanings:

“**Agreement**” “this Agreement”, “the Agreement”, “hereof”, “herein”, “hereto”, “hereby”, “hereunder” and similar expressions mean this means this restrictive covenants agreement as the same may be supplemented, amended, restated or supplemented from time to time, including all schedules and all instruments amending or restating this Agreement. All references to “Sections” mean and refer to the specified section of this Agreement.

“**DHI**” means Del Hydraulics, Inc.

“**Confidential Information**” has the meaning given to it in Section 3.

“**Governmental Authority**” means any government, regulatory authority, governmental department, agency, commission, board, panel, tribunal, Crown corporation or court or other law, rule or regulation-making entity having or purporting to have jurisdiction on behalf of any nation, or province, territory or state or other subdivision thereof or any municipality, district or other subdivision thereof.

“**Parties**” means, collectively, the Buyer, the Seller, Diesel and the Principal, and “**Party**” means any of them.

“**Person**” means any individual, sole proprietorship, limited or unlimited liability corporation, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, body corporate, joint venture, trust, pension fund, union, Governmental Authority, and a natural person including in such person’s capacity as trustee, heir, beneficiary, executor, administrator or other legal representative.

“**Purchase Agreement**” has the meaning given to it in Recital B.

“**Restricted Business**” means truck and body up-fitting operations, including any business that engineers, designs, manufactures and sells special truck bodies and related equipment, and work-ready vehicles.

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“**Territory**” means throughout Canada.

“**Time Period**” means the period beginning on the Closing Date and ending on the third (3rd) anniversary of the Closing Date.

2. **Rules of Interpretation**

In this Agreement:

- (a) **Time** – Time is of the essence in and of this Agreement.
- (b) **Headings** – The descriptive headings preceding Sections of this Agreement are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content of such Sections. The division of this Agreement into Sections shall not affect the interpretation of this Agreement.
- (c) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including without limitation” or “includes without limitation”.
- (d) **Plurals and Gender** – The use of words in the singular or plural, or referring to a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to such persons or circumstances as the context otherwise permits.

3. **Non-Competition and Non-Solicitation**

Each of the Principal, the Seller and Diesel covenants and agrees with the Buyer that they will not, and will cause each of their affiliates which now exist or come into existence at any time during the Time Period to not, at any time during the Time Period, directly or indirectly, individually or in partnership or jointly or in conjunction with any Person, whether as principal, agent, shareholder, employee, advisor, consultant, trustee or in any other manner whatsoever, anywhere within the Territory:

- (a) engage in or assist others in engaging in the Restricted Business;
- (b) have an interest in or lend money to any Person that engages directly or indirectly in the Restricted Business in any capacity, including as a partner, shareholder, lender, employee, principal, agent, trustee or consultant;
- (c) intentionally interfere in any material respect with the business relationships of which they are aware (whether formed before or after the date of this Agreement) between the Buyer and customers or suppliers of the Buyer;
- (d) solicit, hire or engage the services of any employee or consultant of the Buyer or its affiliates or persuade or attempt to persuade any such employee or consultant to terminate his or her employment or relationship, as the case may be, with the Buyer or its affiliates; provided that this provision shall not prevent the Principal,

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the Seller or Diesel from hiring any such person who has no longer been employed or retained by the Buyer or any of its affiliates for at least one (1) year prior to the earlier of the commencement of (A) any employment discussions between the Principal, the Seller or Diesel and such person; and (B) any solicitation by the Principal, the Seller or Diesel.

Notwithstanding this Section 3, nothing in this Agreement shall (i) restrict or prohibit DHI from carrying on its business (which relates to the manufacture and distribution of pneumatic valves and shifters for trucks in the United States and Canada) or prevent the Principal or Diesel from assisting DHI in its business or from having an interest in or lending money to DHI, including as a partner, shareholder, lender, employee, principal, agent, trustee or consultant; (ii) be deemed to prevent or prohibit the Principal, the Seller or Diesel from owning, directly or indirectly, shares in a public company as a passive investment, so long as neither the Principal, the Seller nor Diesel owns more than 2% of the outstanding shares thereof; (iii) restrict or prohibit in any way the liquidation or other sale of any assets of the Seller that are Excluded Assets that existed on the Closing Date; or (iv) restrict or prohibit Diesel in any way with respect to the lease or sale of any of its owned real property.

4. Restrictions Reasonable

Each of the Principal, the Seller and Diesel acknowledges that the provisions hereof are reasonable in order to protect the business and proprietary interests of the Buyer and constitute a material inducement to the Buyer to enter into the Purchase Agreement and consummate the Transaction contemplated by the Purchase Agreement.

5. Enforcement and Severability

If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable: (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Person or circumstance shall not be affected thereby; and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6. Remedies

Each of the Principal, the Seller and Diesel acknowledges that a breach or threatened breach by them or the non-performance of certain of the covenants or promises contained herein by them may cause serious and irreparable harm to the Buyer and that any remedy at law, including any award of money damages, may be inadequate. Accordingly, the Principal, the Seller and Diesel agree and accept that the Buyer may, in addition to any other claim for relief, enforce the provisions of this Agreement by injunction, restraining order or other equitable relief and the Principal, the Seller and Diesel agree not to plead sufficiency of damages as a defence in any proceeding for interim and permanent injunctive or other equitable relief and agrees that such equitable relief may be sought in any proceedings to enforce the provisions of this Agreement.

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7. Non-Waiver

The failure of the Principal, the Seller, Diesel or the Buyer, or any of them, to require the performance of any term or condition of this Agreement, or the waiver by the Principal, the Seller, Diesel or the Buyer, or any of them, of any breach of this Agreement, shall not prevent a subsequent enforcement of such term or any other term and shall not be deemed to be a waiver of any subsequent breach.

8. Amendments

This Agreement may be altered or amended in any of its provisions when any such changes are reduced to writing and signed by the Parties hereto, but not otherwise.

9. Successors and Assigns

This Agreement may not be assigned by any Party hereto without the prior written consent of the other Party hereto. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

10. Governing Law

This Agreement shall in all respects be governed by, construed and determined in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (including, as applicable, the CCAA), without regard to the conflicts of law principles thereof, and shall be treated in all respects as an Ontario contract. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the Court with respect to any and all disputes arising out of or in connection with this Agreement.

11. Counterparts

This Agreement may be signed in one or more counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Delivery of any executed signature page of this Agreement by telecopier, facsimile or electronic mail shall be as effective as delivery of a manually executed signature page of this Agreement.

[SIGNATURE PAGES TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first written above.

Witness

Paul Martin

[Signature Page of Restrictive Covenants Agreement]

DEL EQUIPMENT INC.

Per: _____
Name:
Title:

[Signature Page of Restrictive Covenants Agreement]

DIESEL EQUIPMENT LIMITED

Per: _____
Name:
Title:

[Signature Page of Restrictive Covenants Agreement]

DRIVE PRODUCTS INC.

Per: _____
Name:
Title:

7035048

[Signature Page of Restrictive Covenants Agreement]

SCHEDULE 2.1(c)
PURCHASED INVENTORY AND SUPPLIES

[Attached.]

REDACTED

SCHEDULE 6.6**TRANSITION SERVICES**

For the one (1) year period following the Closing (or for such other period as the Parties may otherwise agree), the Buyer agrees, at the written request of the Seller from time to time, to provide the following services to the Seller on the terms and conditions set forth below:

- (a) the Buyer agrees (i) to collect, demand and receive amounts owing in respect of any Receivables on behalf of and in trust for the Seller, (ii) to promptly notify the Buyer of the receipt of any such Receivables, and (iii) to pay any such Receivables to the Seller or as the Seller may otherwise direct, [REDACTED]

[REDACTED]
; and

- (b) the Buyer agrees to complete on behalf of the Seller any outstanding work in process of the Seller under or in respect of any purchase order or agreement of the Seller that is an Excluded Customer PO at a labour rate of [REDACTED] (plus applicable Taxes) per hour, plus the cost of materials. The Buyer further agrees to provide a warranty in favour of the Seller and the customer under any such purchase order or agreement in respect of its workmanship for a period of one year from the date of delivery to the end customer.

**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

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p> <p>AFFIDAVIT OF DOUGLAS LUCKY (Sworn February 22, 2020)</p> <p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p>Christopher G. Armstrong LSO# 55148B carmstrong@goodmans.ca</p> <p>Andrew Harmes LSO# 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>	
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Court File No. CV-19-629552-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY, THE 27 TH
)	
JUSTICE HAINEY)	DAY OF FEBRUARY, 2020

**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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Del Equipment Inc. (the "**Applicant**" or "**DEL**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Purchase Agreement**") between the Applicant and Drive Products Inc. (the "**Purchaser**") dated as of February 21, 2020, and (ii) vesting in the Purchaser all of the Applicant's right, title and interest in and to the Purchased Assets, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn February 22, 2020 (the "**Lucky Affidavit**"), the second report (the "**Second Report**") of MNP Ltd. in its capacity as the Court-appointed monitor of DEL (the "**Monitor**"), and on hearing the submissions of counsel for the Monitor, counsel for the Applicant, and those other parties present as indicated on the counsel sheet, and on reading the affidavit of service of ● sworn February ●, 2020, filed:

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

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 Purchase Agreement or the Lucky Affidavit, as applicable.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Applicant is hereby authorized and approved, with such minor amendments to the Purchase Agreement as the Applicant and the Purchaser may agree to with the consent of the Monitor. The Applicant is 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 Monitor's certificate to the Applicant and the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets 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 this Court dated October 22, 2019 or any other Order of this Court in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Alberta), the *Personal Property Security Act* (Saskatchewan), the *Personal Property Security Act* (New Brunswick), or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted 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 and Encumbrances, from and after delivery of the Monitor's Certificate, the net proceeds

from the sale of the Purchased Assets (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets and all Claims and Encumbrances shall attach to the Net Proceeds 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 Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof to the Applicant and the Purchaser.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant and the Purchaser or their respective counsel regarding the satisfaction of the Purchase Price and the fulfillment or waiver of conditions to closing under the Purchase Agreement and shall incur no liability with respect to the delivery of the Monitor’s Certificate.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant’s records pertaining to the Applicant’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 Applicant.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) or other applicable legislation in respect of the Applicant and any bankruptcy or receivership order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the entering into of the Purchase Agreement and 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 Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

10. **THIS COURT ORDERS** that the confidential supplement to the Second Report be sealed, kept confidential and not form part of the public record, unless otherwise ordered by further Order of this Court.

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 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order.

**SCHEDULE A
FORM OF MONITOR'S CERTIFICATE**

Court File No. CV-19-629552-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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.**

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 22, 2019, MNP Ltd. was appointed as the monitor (the "**Monitor**") of Del Equipment Inc. (the "**Applicant**") in proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada).
- B. Pursuant to an Order of the Court dated February 27, 2020 (the "**Approval and Vesting Order**"), the Court approved the asset purchase agreement dated as of February 21, 2020 (the "**Purchase Agreement**") between the Applicant and Drive Products Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of all of the Applicant'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 Monitor to the Applicant and 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 the Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Applicant and the Purchaser.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets pursuant to the Purchase Agreement.
2. The conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable.
3. The Transaction has been completed to the satisfaction of the Applicant and the Purchaser.
4. This Certificate was delivered by the Monitor at _____ [a.m/p.m.] on _____, 2020.

MNP LTD., in its capacity as Court-appointed Monitor of Del Equipment Inc. and not in its personal or corporate capacity

Per: _____
Name:
Title:

**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: CV-19-629552-00CL

Applicant

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>APPROVAL AND VESTING ORDER (February 27, 2020)</p>
<p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p>
<p>Christopher G. Armstrong LSO#: 55148B carmstrong@goodmans.ca</p>
<p>Andrew Harmes LSO#: 73221A aharmes@goodmans.ca</p>
<p>Tel: (416) 979-2211 Fax: (416) 979-1234</p>
<p>Lawyers for Del Equipment Inc.</p>

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Court File No. CV-19-629552-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 27 TH
)	
JUSTICE HAINEY)	DAY OF FEBRUARY, 2020

**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

STAY EXTENSION, KERP AND LITIGATION PROTOCOL APPROVAL ORDER

THIS MOTION, 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 February 22, 2020 (the "**Lucky Affidavit**"), and the Exhibits thereto, and the Second Report (the "**Second Report**") of MNP Ltd. in its capacity as monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and those other parties present as indicated on the counsel sheet,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Applicant's Notice of Motion, the Motion Record and the Second Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

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2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of this Court made in the within proceedings dated October 22, 2019 (as amended, the “**Initial Order**”) or the Lucky Affidavit, as applicable.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including 11:59 p.m. (Toronto time) on May 29, 2020, and that all other terms of the Initial Order shall remain in full force and effect during the Stay Period.

KEY EMPLOYEE RETENTION PROGRAM

4. **THIS COURT ORDERS** that the key employee retention program (the “**KERP**”) described in the Lucky Affidavit is hereby authorized and approved *nunc pro tunc*, and the Applicant (and any other person that may be appointed to act on behalf of the Applicant, including without limitation, any trustee, liquidator, receiver, interim receiver, receiver manager or other person acting on behalf of any such person) is hereby authorized to perform the obligations under the KERP, including making all payments to the Eligible Employees of amounts due and owing under the KERP in accordance with the terms and conditions of the KERP.
5. **THIS COURT ORDERS** that the Applicant is hereby authorized to execute and deliver such documents as may be necessary to give effect to the KERP, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.
6. **THIS COURT ORDERS** that the confidential supplement be sealed in its entirety, kept confidential and not form part of the public record, unless otherwise ordered by this Court.

LITIGATION PROTOCOL

7. **THIS COURT ORDERS** that the Litigation Protocol, a copy of which is attached as Exhibit “B” to the Lucky Affidavit, is hereby approved, and shall govern the conduct and resolution of the Payment Dispute (including, for greater certainty, the conduct and

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resolution of the Set-Off Dispute and, if applicable, the Claim Amount Dispute (each as defined in the Litigation Protocol)).

8. **THIS COURT ORDERS** that the Applicant, the Monitor or Gin-Cor may, on reasonable notice to the other parties, move before the Court for advice and directions regarding the implementation of the Litigation Protocol.

CLAIMS OFFICER

9. **THIS COURT ORDERS** that Andrew Diamond, or such other person as may be appointed by the Court from time to time on the application of the Applicant or the Monitor (the “**Claims Officer**”), is hereby appointed as the claims officer for the resolution of the Claim Amount Dispute in accordance with the Litigation Protocol
10. **THIS COURT ORDERS** that the Claims Officer shall determine the Claim Amount Dispute in accordance with the Litigation Protocol, as applicable, and shall provide written reasons. The Claims Officer shall determine all procedural matters which may arise in respect of his determination of the Claim Amount Dispute, including the manner in which any evidence may be adduced. The Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before the Claims Officer (including the costs of the Claims Officer) shall be paid.
11. **THIS COURT ORDERS** that the Monitor, the Applicant or Gin-Cor may, within ten (10) days of such party receiving notice of the Claims Officer’s determination of the Claim Amount Dispute, appeal such determination by serving and filing a notice of motion with this Court.
12. **THIS COURT ORDERS** that if no party appeals the determination of the Claim Amount Dispute by the Claims Officer within the time set out in paragraph 11, above, the decision of the Claims Officer in determining the Claim Amount Dispute shall be final and binding upon the Applicant, the Monitor, and Gin-Cor, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer’s final determination.

PAYMENT OF THE ACCOUNTS OF CLAIMS OFFICER

13. **THIS COURT ORDERS** that the accounts of the Claims Officer shall be delivered to the Monitor on a monthly basis or in such other intervals as the Monitor may agree, and shall be reviewed by the Monitor, who shall approve the reasonable fees and expenses of the Claims Officer incurred in the carrying out of his role.
14. **THIS COURT ORDERS** that upon approval of the Claims Officer's account by the Monitor, such account shall promptly be paid by the Applicant.
15. **THIS COURT ORDERS** that nothing in this Order shall prevent the Claims Officer from making a cost award against or in favour of any party to the Claim Amount Dispute, and such cost award may include an order that the fees and expenses of the Claims Officer must be paid by a party to the Claim Amount Dispute, provided however that (i) the Applicant shall remain obligated to pay the accounts of the Claims Officer rendered and approved in accordance with this Order, and (ii) upon payment of any such cost award by any party to the Claim Amount Dispute, any amount paid by such party on account of the fees and disbursements of the Claims Officer incurred in the Claim Amount Dispute shall be paid to the Applicant as reimbursement for its payment of such fees and disbursements.

DIRECTIONS

16. **THIS COURT ORDERS** that the Claims Officer may, at any time, and with such notice as this Court may require, seek directions from the Court with respect to this Order.

PROTECTIONS FOR CLAIMS OFFICER

17. **THIS COURT ORDERS** that the Claims Officer shall incur no liability or obligation as a result of his or her appointment or in acting as a Claims Officer pursuant to the provisions of this Order. No proceeding or enforcement process in any court or tribunal shall be commenced against or in respect of a Claims Officer, except with the prior leave of this Court granted in the within proceedings.

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RESIDUAL ASSETS

18. **THIS COURT ORDERS** that the Applicant, in consultation with the Monitor, is hereby authorized to continue to explore opportunities for the sale of its property and assets that are not subject to the Transaction (as defined in the Lucky Affidavit) (the “**Residual Assets**”) and, with the prior approval of the Monitor, to enter into and complete any transaction for the Residual Assets (a “**Residual Asset Transaction**”) for proceeds equal to or less than \$250,000 provided that the Applicant shall seek this Court’s approval for any Residual Asset Transaction in excess of such amount.

GENERAL

19. **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, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
20. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are 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.
-

**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: CV-19-629552-00CL

Applicant

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>STAY EXTENSION, KERP AND LITIGATION PROTOCOL APPROVAL ORDER (February 27, 2020)</p>
<p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p>Christopher G. Armstrong LSO#: 55148B carmstrong@goodmans.ca</p> <p>Andrew Harmes LSO#: 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>

**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: CV-19-629552-00CL

Applicant

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

MOTION RECORD
(Motion returnable February 27, 2020)

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Andrews Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for Del Equipment Inc.