

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

MOTION RECORD
(Returnable October 1, 2024)

September 23, 2024

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Lawyers for TKC Metal Recycling Inc.

TO: THE SERVICE LIST

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.
B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

SERVICE LIST

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar

Email : kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes

Email: grhodes@millerthomson.com
Tel: 416.597.4321

Lawyers for TKC Metal Recycling Inc. and 2183015 Ontario Inc.

COZEN O'CONNOR LLP

Bay Adelaide Centre – West Tower
333 Bay Street, Suite 1100
Toronto, ON M5H 2R2

Steven Weisz

Email: sweisz@cozen.com
Tel: 647.417.5334

Dilina Lallani

Email: dlallani@cozen.com
Tel: 647.417.5349

Lawyers for the Proposal Trustee, BDO Canada Limited

BDO CANADA LIMITED

25 Main Street West
Suite 805
Hamilton, Ontario L8P 1H1

Chris Mazur

Email: cmazur@bdo.ca
Tel: 416.369.3795

Angelo Consoli

Email: aconsoli@bdo.ca
Tel: 905.524.1008

Proposal Trustee

SCARFONE HAWKINS LLP

One James St. S., 14th Flr.
P.O. Box 926, Depot 1
Hamilton, ON L8N 3P9

Danielle Iampietro

Email: iampietro@shlaw.ca
Tel: 905.526.4384

Barry Yellin

Email: byellin@shlaw.ca
Tel: 905.523.5878

Lawyers for 1000909688 Ontario Inc.

SPIZZIRRI LAW PROFESSIONAL CORPORATION

2 Morneau Shepell Centre
Suite 900
895 Don Mills Rd.
Toronto, ON M3C 1W3

Frank Spizzirri

Email: frank@spizzirrilaw.ca
Tel: 647.243.5897

Lawyers for Tooling Management Group LLC

CANADA REVENUE AGENCY

Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Tel: 416.973.0942

Alt: 647.256.1663

Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

DEPARTMENT OF JUSTICE

120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Kevin Dias

Email: kdias@justice.gc.ca

Tel: 647.256.7360

Fozia Chaudary

Email: fozia.chaudary@justice.gc.ca

Tel: 647.256.7347

Counsel to the Canada Revenue Agency

MINISTRY OF FINANCE

33 King Street West
Oshawa, Ontario, Canada
L1H 8H5

Email: insolvency.unit@ontario.ca

TRIPLE M METAL LP

1 Kenview Blvd.
Suite 101
Brampton, ON L6T 5E6

Mike Barichello

Email: mbarichello@triplemmetal.com

Tel: 905.793.7084 x3240

GIAMPAOLO GROUP INC.
Suite 301 - 1 Kenview Blvd.
Brampton, ON L6T 5E6 Canada

Andre Kuyntjes
Email: akuyntjes@gg-inc.ca
Tel: 905.793.7086 x3204

Representative for the Landlord

THE TORONTO-DOMINION BANK
Financial Restructuring Group
3140 Dufferin Street
Toronto ON M6A 2T1

Yael Couderc
Email: yael.couderc@td.com
Tel: 416.785.5276

RCAP LEASING INC.
5575 North Service Road
Suite 300
Burlington, Ontario L7L 6M1

Email: rcap.collections@rcapleasing.com
csc@rcapleasing.com

VW CREDIT CANADA INC.
1340 Pickering Parkway
Suite 500
Pickering, ON L1V 0C4

Email: vciccmisc@vwcredit.com

ED LEARN FORD LINCOLN (2017) LTD.
375 Ontario Street
PO Box 24040
St. Catharines, Ontario L2R 7P7

MITSUBISHI HC CAPITAL CANADA LEASING INC.
410-1100 Burloak Drive
Burlington, Ontario L7L 6B2

ROYAL BANK OF CANADA

10 York Mills Road

3rd Floor

Toronto, Ontario M2P 0A2

Email Service List

kmahar@millerthomson.com; grhodes@millerthomson.com; sweisz@cozen.com;
dlallani@cozen.com; aconsoli@bdo.ca; cmazur@bdo.ca; kdias@justice.gc.ca;
fozia.chaudary@justice.gc.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca;
iampietro@shlaw.ca; byellin@shlaw.ca; mbarichello@triplemetal.com; frank@spizzirrilaw.ca;
akuyntjes@gg-inc.ca; vcicmsc@vwcredit.com; rcap.collections@rcapleasing.com;
csc@rcapleasing.com; insolvency.unit@ontario.ca; yael.couderc@td.com

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

INDEX

TAB	DOCUMENT
1.	Notice of Motion (returnable October 1, 2024)
2.	Affidavit of Kenneth Baird sworn September 23, 2024
Exhibits to the Affidavit of Kenneth Baird sworn September 23, 2024	
Exhibit A	First Affidavit of Kenneth Baird, sworn August 22, 2024 (without exhibits)
Exhibit B	Certificate of Filing Notice of Intention to Make a Proposal
Exhibit C	Sale Process Order dated August 22, 2024
Exhibit D	Ancillary Order dated August 22, 2024
Exhibit E	Advertisement
Exhibit F	Redacted Sale Agreement
3.	Draft Approval and Vesting Order
4.	Blackline of Model Order with Draft Approval and Vesting Order
5.	Draft Ancillary Order

TAB 1

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

**NOTICE OF MOTION
(RETURNABLE OCTOBER 1, 2024)**

The Applicant, TKC Metal Recycling Inc. (the “**Company**”), will make a Motion to a Judge of the Ontario Superior Court of Justice (Hamilton) (the “**Court**”) on October 1, 2024, at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];

In writing as an opposed motion under subrule 37.12.1(4);

In person;

By telephone conference;

By video conference.

at the following location

via Zoom videoconference (the details of which will be provided by the Court at a later date).

THE MOTION IS FOR

1. An Approval and Vesting Order (the “**Approval and Vesting Order**”) substantially in the form attached at Tab 3 to the Motion Record, among other things:

- (a) Approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Company and Triple M Metal LP (the “**Purchaser**”) dated September 23, 2024 (the “**Sale Agreement**”);
- (b) Vesting in the Purchaser all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) free and clear from any Encumbrances (as defined in the Approval and Vesting Order); and
- (c) Sealing the Confidential Appendices to the Second Report of BDO Canada Limited (“**BDO**”), in its capacity as proposal trustee of the Company (in such capacity, the “**Proposal Trustee**”), to be filed (the “**Second Report**”) until the earlier of (1) the closing of the Transaction and (2) further Order of the Court; and

2. An Order (the “**Ancillary Order**”) substantially in the form attached at Tab 5 to the Motion Record, among other things:

- (a) Abridging the time for service of this Notice of Motion and the Company’s Motion Record, if necessary, so that the motion is properly returnable on October 1, 2024,

and dispensing with service on any persons other than those served;

- (b) Extending the time to file a proposal by forty-five (45) day from October 9, 2024 to and including November 23, 2024 in accordance with section 50.4(9) of the *Bankruptcy and Insolvency Act* (“**BIA**”);
- (c) Authorizing the Proposal Trustee, by and on behalf of the Company, following the closing of the Transaction and payment of all outstanding professional fees secured by the Administration Charge (as defined in the Order of Justice Parayeski dated August 22, 2024) to make distributions from available funds to:
 - (1) 1000909688 Ontario Inc. (the “**Lender**”) up to the amount of the indebtedness owing to the Lender as at the date of the distribution, and
 - (2) The Toronto-Dominion Bank (“**TD**”) up to the amount of the indebtedness owing to TD as at the date of the distribution (together, the “**Distributions**”);
- (d) Approving the Second Report of the Proposal Trustee, to be filed (the “**Second Report**”), and the activities and conduct described therein; and
- (e) Approving the fees and disbursements of the Proposal Trustee and its counsel, Cozen O’Connor LLP, as set out in the fee affidavit of Chris Mazur, to be filed (the “**BDO Fee Affidavit**”) and the fee affidavit of Dilina Lallani, to be filed (the “**Cozen Fee Affidavit**”) and collectively with the BDO Fee Affidavit, the “**Fee**”

Affidavits”), respectively; and

3. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

I. Background of the Proposal Proceedings

4. TKC is a scrap metal recycling company, incorporated under the *Business Corporations Act* (Ontario) with a registered office at 20 Cushman Road, St. Catharines, Ontario L2M 6S8, Canada (the “**Property**”).

5. On July 26, 2024 the Company initiated proceedings (the “**Proposal Proceedings**”) under section 50.4(1) of the BIA by filing a Notice of Intention to Make a Proposal (“**NOI**”). BDO was appointed as Proposal Trustee in respect of the Proposal Proceedings.

6. On August 22, 2024, the Court granted two orders:

(a) A Sale Process Order that approved the sale process and bidding procedures (the “**Sale Process**”) in respect of the Company’s business, and authorized and directed the Company and the Proposal Trustee to carry out the Sale Process; and

(b) An Ancillary Order that, among other things:

(i) Granted an Administration Charge in the amount of \$200,000;

(ii) Granted a Directors’ Charge in the amount of \$200,000;

(iii) Granted a forty-five (45) day extension of time to file a proposal to and including October 9, 2024 in accordance with section 50.4(9) of the BIA;

and

- (iv) Approved the Proposal Trustee's First Report.

II. The Sale Process

7. The Sale Process was conducted by the Proposal Trustee, in consultation with the Company, in accordance with the Sale Process Order.
8. The Proposal Trustee prepared an advertisement (the "**Advertisement**"), which provided a summary of the Company's business and assets (the "**Assets**"), and disseminated same to potential bidders. The Advertisement was also placed in the Financial Post and advertised weekly in the Insolvency Insider.
9. Prospective bidders who executed a confidentiality agreement were (i) provided access to an electronic data room containing financial and other confidential information of the Company, and (ii) invited to attend the Property to undertake a site visit. Thirteen (13) potential bidders executed a non-disclosure agreement, twelve (12) accessed the electronic data room, and eight (8) attended the Property for a site visit.
10. The bid deadline was 3:00 p.m. on Thursday, September 5, 2024 (the "**Bid Deadline**").
11. Seven (7) prospective purchasers submitted bids on the Bid Deadline.
12. The Purchaser's bid was for substantially all of the Company's Assets and met the bid requirements in the Sale Process. The Proposal Trustee, in consultation with the Company, determined that the Purchaser's bid was the Successful Bid.

13. The Company, with the assistance of the Proposal Trustee and their respective legal advisors, negotiated the Sale Agreement with the Purchaser for the Purchased Assets.

III. RELIEF SOUGHT

A. Approval and Vesting Order

(i) Approval of Sale Agreement

14. The Company is requesting approval of the Sale Agreement and Transaction contemplated therein, whereby, subject to the approval of the Court, the Purchaser will acquire the Purchased Assets. Capitalized terms, which are not otherwise defined herein have the meaning ascribed to them in Sale Agreement.

15. The key terms of the Sale Agreement include the following:

(a) The Purchaser will acquire all of the Company's right, title and interest in and to the Purchased Assets, which comprise of the following as defined in the Sale Agreement:

(i) The Inventory;

(ii) The Machinery, Equipment & Office Furniture;

(iii) The Assigned Contracts; and

(iv) The Intangible Assets;

(b) The Purchased Assets are sold on an "as is, where is" basis;

(c) Upon closing of the Transaction the Company's right, title and interest in and to

the Purchased Assets is to vest absolutely in the Purchaser free and clear of any Encumbrances other than the Permitted Encumbrances, if any;

- (d) The employees of the Company are to be terminated immediately prior to closing of the Transaction;
- (e) As a condition precedent in favour of the Purchaser, among others, the Company shall have materially complied with Items 7, 8, 16 and 25 of Inspection Order # 23-102454A of the St. Catharines Fire Services by the Closing Date;
- (f) The Transaction is anticipated to occur on the Business Day immediately following the expiry of the 10-day appeal period of the Approval and Vesting Order or such other date as agreed to in writing by the Parties; and
- (g) The Outside Date to complete the Transaction is October 31, 2024.

16. The transaction contemplated by the Sale Agreement meets the criteria set out in section 65.13(4) of the BIA.

17. The Proposal Trustee conducted a fair, efficient and transparent Sale Process in accordance with the Sale Process Order and broadly advertised the Company's Assets in an effort to obtain the best price in consideration of all creditors.

18. The Lender supports the Transaction contemplated in the Sale Agreement.

(ii) Sealing of Confidential Appendices

19. The Sale Agreement has been redacted to withhold the Purchase Price and the amount of

the Deposit. The Proposal Trustee will be including in its Second Report certain Confidential Appendices, including the unredacted Sale Agreement, the bid summaries, and an appraisal relating to certain Assets (the “**Confidential Appendices**”), which are commercially sensitive.

20. As part of the Approval and Vesting Order, the Company is requesting the Court to seal the Confidential Appendices until the earlier of (1) the closing of the Transaction; and (2) further Order of the Court.

21. If the Transaction fails to close, it is likely that disclosure of the Purchase Price to third parties would negatively impact the integrity of any future sale efforts for the Assets, including by setting a sale price ceiling. Similarly, disclosing the summary of the bids and the appraisal would also negatively impact the integrity of any future sale efforts should the Transaction fail to close.

B. Ancillary Order

(i) Extension of Time

22. Currently, the stay of proceedings under the NOI will expire on October 9, 2024. TKC is seeking an extension of time to file a proposal for forty-five (45) days or until November 23, 2024 (the “**Extension**”) to allow the Company time to close the Transaction, if approved, and consider whether it can put forth a proposal to its creditors and the proposed terms of a proposal.

23. It is anticipated that the Transaction will close prior to October 31, 2024.

24. TKC is acting in good faith and with due diligence in seeking to preserve and realize value for the benefit of all of its stakeholders.

25. No creditor will be materially prejudiced if the extension applied for is granted. The Extension is supported by the Lender and the Proposal Trustee.

(ii) Authorizing Distributions

26. The Company seeks an Order from the Court authorizing the Proposal Trustee, by and on behalf of the Company, to make Distributions after payment of all outstanding professional fees secured by the Administration Charge and any other priority claim, first to the Lender until the Lender is repaid in full and second to TD until TD is repaid in full.

27. The Lender is the Company's first ranking secured creditor, which relates to a general security agreement that was granted to Meridian over all classes of collateral except consumers goods that was assigned to the Lender along with the underlying indebtedness owing to Meridian. Meridian registered its security under the *Personal Property Security Act* ("PPSA") and that registration was assigned to the Lender.

28. TD provided the Company with a VISA credit card with a maximum limit of \$44,000, which the Company uses in its business to cover certain expenses. TD registered under the PPSA and executed a Postponement of the Lender's registration.

29. The Proposal Trustee has completed a security review in respect of the Lender's and TD's security.

(iii) Approval of Second Report, Conduct, Activities and Fees

30. The Proposal Trustee is requesting approval of its Second Report and its conduct and activities set out therein.

31. The Proposal Trustee is also requesting approval of its and its counsel's fees and disbursements, as set out in the Fee Affidavits. The Company has reviewed the fees and disbursements and is of the view that they are reasonable in the circumstances.

C. General

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

33. Sections 50.4(9), 65.13, and 183 of the BIA;

34. Section 137 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended;

35. The equitable and inherent jurisdiction of the Court; and

36. 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:

37. Affidavit of Kenneth Baird sworn September 23, 2024, and the exhibits annexed thereto;

38. Second Report of the Proposal Trustee, including the Fee Affidavits, to be filed; and

39. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 23, 2024

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Jaclyn Tarola LSO #89915Q
jtarola@millerthomson.com
Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF TKC METAL
RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

Proceeding Commenced at Hamilton

**NOTICE OF MOTION
(returnable October 1, 2024)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Jaelyn Tarola LSO #89915Q
jtandola@millerthomson.com
Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

TAB 2

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

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

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.

AFFIDAVIT OF KENNETH BAIRD
(Sworn September 23, 2024)

I, KENNETH BAIRD, of the City of St. Catharines in the Province of Ontario, **MAKE**
OATH AND SAY AS FOLLOWS:

1. I am a Director and the President of TKC Metal Recycling Inc. (“**TKC**” or the “**Company**”). As such, I have knowledge of the matters to which I depose in this affidavit. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true.
2. This Affidavit is sworn in connection with the Company’s filing of a notice of intention to make a proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) and its current motion for:
 - (a) An Approval and Vesting Order (the “**Approval and Vesting Order**”), substantially in the form attached at Tab 3 to the Motion Record, among other

things:

- (i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Company and Triple M Metal LP (the “**Purchaser**”) dated September 23, 2024 (the “**Sale Agreement**”);
 - (ii) vesting in the Purchaser all of the Company’s right, title and interest in and to the purchased assets (as defined in the Sale Agreement, the “**Purchased Assets**”) free and clear from any Encumbrances (as defined in the Approval and Vesting Order); and
 - (iii) sealing the Confidential Appendices to the Second Report of BDO Canada Limited (“**BDO**”), in its capacity as proposal trustee of the Company (in such capacity, the “**Proposal Trustee**”), to be filed (the “**Second Report**”) until the earlier of (1) the closing of the Transaction and (2) further Order of the Court; and
- (b) An Order (the “**Ancillary Order**”), substantially in the form attached at Tab 5 to the Motion Record, among other things:
- (i) extending the time to file a proposal from October 9, 2024 to and including November 23, 2024;
 - (ii) authorizing the Proposal Trustee, for and on behalf of the Company, following the closing of the Transaction and payment of all outstanding professional fees secured by the Administration Charge (as defined in the Order of Justice Parayeski dated August 22, 2024 in these proceedings

(the “**Proposal Proceedings**”) to make distributions from available funds to:

(1) 1000909688 Ontario Inc. (the “**Lender**”), up to the amount of the indebtedness owing to the Lender as at the date of the distribution, and

(2) The Toronto-Dominion Bank (“**TD**”), up to the amount of the indebtedness owing to TD as at the date of the distribution (together, the “**Distributions**”);

(iii) approving the Second Report and the activities and conduct described therein; and

(iv) approving the fees and disbursements of the Proposal Trustee and its counsel, Cozen O’Connor LLP, as set out in the fee affidavit of Chris Mazur, to be filed (the “**BDO Fee Affidavit**”) and the fee affidavit of Dilina Lallani, to be filed (the “**Cozen Fee Affidavit**”, and collectively with the BDO Fee Affidavit, the “**Fee Affidavits**”), respectively.

3. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

I. INTRODUCTION

A. BACKGROUND AND THE PROPOSAL PROCEEDINGS

4. A detailed background of the Company is more fully set out in my first Affidavit sworn August 13, 2024 (the “**First Baird Affidavit**”). A copy of the First Baird Affidavit, without exhibits, is attached as **Exhibit “A”**.
5. TKC is a scrap metal recycling company, incorporated under the *Business Corporations Act* (Ontario) on March 7, 2017, with a registered office at 20 Cushman Road, St. Catharines, Ontario L2M 6S8, Canada (the “**Property**”).
6. The Company purchases and processes various types of ferrous (containing iron) and non-ferrous (without iron) scrap metals, including electronic waste. The processing system uses industrial equipment, some of which the Company leases from third parties.
7. On July 26, 2024 (the “**NOI Filing Date**”), the Company initiated these Proposal Proceedings under section 50.4(1) of the BIA by filing the NOI. BDO was appointed the Proposal Trustee in the Proposal Proceedings. A copy of the Company’s certificate of filing an NOI is attached as **Exhibit “B”**.
8. The NOI filing was prompted due to the Company’s ongoing liquidity challenges and inability to meet their liabilities as they became due.
9. The principal purpose of the Proposal Proceedings is to create a stabilized environment to allow the Company to run a Sale Process to solicit bids for the Company’s business and assets, with the intention of maximizing realizations for all stakeholders.
10. The Proposal Proceedings were commenced with the support and consent of the

Company's primary secured creditor, the Lender, and pursuant to a forbearance agreement between the Lender and the Company.

11. On August 22, 2024, on a motion by the Company, the Court granted two orders:
 - (a) a Sale Process Order (the "**Sale Process Order**") that, among other things, approved the sale process and bidding procedures (the "**Sale Process**") in respect of the Company's business, and authorized and directed the Company and the Proposal Trustee to carry out the Sale Process; and
 - (b) an ancillary order (the "**August 22 Ancillary Order**") that, among other things:
 - (i) granted an Administration Charge in the amount of \$200,000;
 - (ii) granted a Directors' Charge in the amount of \$200,000;
 - (iii) granted a forty-five (45) day extension of time to file a proposal to and including October 9, 2024 in accordance with section 50.4(8) of the BIA; and
 - (iv) approved the Proposal Trustee's First Report.
12. A copy of the Sale Process Order and August 22 Ancillary Order are attached as **Exhibit "C"** and **Exhibit "D"**, respectively.

B. THE SALE PROCESS AND BIDDING PROCEDURES

13. The Sale Process was developed by the Company, in consultation with the Proposal Trustee in respect of the Company's assets ("**Assets**"), which are comprised of the following:

Lot #	Description
Lot 1	Machinery and Equipment
Lot 2	Inventory
Lot 3	Office furniture and equipment
Lot 4	Leased Assets
Lot 5	Intangible Assets
Lot 6	The Company's interest, if any, in the Lease Agreement

14. Potential bidders were invited to bid on all or part of the Assets. Any sale was to be completed on an “as is, where is” basis.

15. On August 9, 2024, the Proposal Trustee prepared an advertisement (the “**Advertisement**”) that summarized the Company’s Assets and the Sale Process. A copy of the Advertisement is attached as **Exhibit “E”**.

16. The Proposal Trustee posted the Advertisement in the Financial Post as well as in Insolvency Insider with weekly releases beginning on Monday, August 12, 2024. I understand that approximately 9,000 people receive the Insolvency Insider and can view the Advertisement.

17. In addition to the publications, the Proposal Trustee specifically reached out to fifteen (15) industry players as well as eleven (11) auctioneers to participate in the Sale Process. I assisted the Proposal Trustee in developing the list of potential bidders in the industry.

18. A total of thirteen (13) potential bidders executed a non-disclosure agreement and were granted access to an electronic data room created by myself and the Proposal Trustee.

19. Twelve (12) potential bidders accessed the data room, and eight (8) potential parties attended the Property to undertake a site visit.
20. The Sale Process provided that bids must be submitted by Thursday, September 5, 2024 at 3:00 p.m. (the “**Bid Deadline**”), and thereafter the successful bidder would be selected by the Proposal Trustee, with the assistance of the Company.
21. The Company received seven (7) bids at the Bid Deadline. The Purchaser’s bid was for substantially all of the Company’s Assets excluding Lot 4 above (the Leased Assets) and met the bid requirements. The Proposal Trustee, in consultation with the Company, determined that the Purchaser’s Bid was the Successful Bid.

II. RELIEF REQUESTED

A. APPROVAL AND VESTING ORDER

(i) Approval of Sale Agreement and Transaction

22. After determining that the Purchaser’s Bid was the Successful Bid, the Company, with the assistance of the Proposal Trustee and their respective legal advisors, negotiated the Sale Agreement with the Purchaser for the Purchased Assets. A copy of the Sale Agreement, with the Purchase Price and the amount of the Deposit redacted as explained below, is attached as **Exhibit “F”**. Capitalized terms in this section of the Affidavit have the meaning ascribed to them in the Sale Agreement.
23. The Company seeks approval of the Transaction contemplated by the Sale Agreement in the form of the Approval and Vesting Order.
24. The key terms of the Sale Agreement include the following:

- (a) The Purchaser will acquire all of the Company's right, title and interest in and to the Purchased Assets, which comprise of the following as defined in the Sale Agreement:
 - (i) The Inventory;
 - (ii) The Machinery, Equipment & Office Furniture;
 - (iii) The Assigned Contracts; and
 - (iv) The Intangible Assets;
- (b) The Purchased Assets are sold on an "as is, where is" basis;
- (c) Upon closing of the Transaction the Company's right, title and interest in and to the Purchased Assets is to vest absolutely in the Purchaser free and clear of any Encumbrances other than the Permitted Encumbrances, if any;
- (d) The employees of the Company are to be terminated immediately prior to Closing of the Transaction;
- (e) As a condition precedent in favour of the Purchaser, among others, the Company shall have materially complied with Items 7, 8, 16 and 25 of Inspection Order # 23-102454A of the St. Catharines Fire Services by the Closing Date;
- (f) The Transaction is anticipated to close: (i) the business day immediately following the expiry of the 10-day appeal period of the Approval and Vesting Order, or (ii) such other date as may be agreed to in writing by the parties; and

(g) The Outside Date to complete the Transaction is October 31, 2024.

25. The Company is diligently working on fulfilling the conditions in favour of the Purchaser set out in the Sale Agreement and I am of the view that the Company will be able to do so to allow for the closing of the Transaction.

(ii) Sealing of Confidential Appendices

26. The Second Report will contain confidential appendices including the unredacted Sale Agreement, a summary of the bids and an appraisal relating to certain of the assets (the “**Confidential Appendices**”).

27. As part of the Approval and Vesting Order, the Company is requesting the Court to seal the Confidential Appendices until the earlier of (1) the closing of the Transaction; and (2) further Order of the Court.

28. The Sale Agreement has been redacted to withhold the Purchase Price and the amount of the Deposit, which are commercially sensitive. If the Transaction fails to close, it is likely that disclosure of the Purchase Price and the Deposit to third parties would negatively impact the integrity of any future sale efforts, including by setting a sale price ceiling. Similarly, disclosing the summary of the bids and the appraisal would also negatively impact the integrity of any future sale efforts should the Transaction fail to close.

B. ANCILLARY ORDER

(i) Extension of Time to file a Proposal to November 23, 2024

29. Under the BIA, the stay of proceedings under the NOI will expire on October 9, 2024. The Company is seeking an extension of time to file a proposal for forty-five (45) days up to and including November 23, 2024 (the “**Extension**”) to allow the Company time to

close the Transaction, if approved, and consider whether it can put forward a proposal to its creditors and the terms of such a proposal.

30. It is anticipated that the Transaction will close prior to the Outside Date of October 31, 2024.
31. I am of the view that the Company is acting in good faith and with due diligence in seeking to preserve and realize value for the benefit of all of its stakeholders.
32. I am of the view that no creditor will be materially prejudiced if the Extension is granted.
33. I understand that the Extension is supported by the Lender and Proposal Trustee.

(ii) *Authorizing Distributions*

34. The Company seeks an Order from the Court authorizing the Proposal Trustee, by and on behalf of the Company, to make Distributions after payment of all outstanding professional fees secured by the Administration Charge and any other priority claim, first to the Lender until the Lender is repaid in full and second to TD until TD is repaid in full.
35. The Lender is the Company's first ranking secured creditor, which relates to a general security agreement that was granted to Meridian over all classes of collateral except consumer goods, which was assigned to the Lender along with the underlying indebtedness owing to Meridian. Meridian registered its security under the *Personal Property Security Act* ("PPSA") and that registration was assigned to the Lender.
36. On July 12, 2024, the Lender demanded repayment of the indebtedness owing to it from the Company, which as at July 10, 2024 was \$2,206,341.96.

37. TD provided the Company with certain VISA credit cards with a maximum limit of \$44,000 which the Company uses in its business to cover certain expenses. TD holds a general security agreement from the Company and has registered its security under the PPSA and executed a Postponement of the Lender's registration.
38. I understand that the Proposal Trustee has completed a security review in respect of the Lender's and TD's security and that the Proposal Trustee will report to the Court on the validity of their security in the Second Report.

(iii) Approval of Second Report, Conduct, Activities and Fees

39. The Proposal Trustee is requesting approval of its Second Report and its conduct and activities set out therein.
40. The Proposal Trustee is also requesting approval of the fees and disbursements incurred by it and its counsel as set out in the Fee Affidavits.
41. I have reviewed the accounts rendered by the Proposal Trustee and its counsel and am of the view that the fees and disbursements are reasonable in the circumstances.


III. CONCLUSION

42. I make this Affidavit in support of the Company's Motion for the Approval and Vesting Order and the Ancillary Order, and for no other or improper purpose or delay.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 23rd day of
September, 2024, in accordance with O.
Reg. 431/20 Administering Oath or
Declaration Remotely.



Commissioner for Taking Affidavits



KENNETH BAIRD

This is Exhibit "A" referred to in the Affidavit of Ken Baird sworn by Ken Baird of the City of St. Catharines, before me at the City of Toronto, in the Province of Ontario, on September 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GINA RHODES

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

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

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.

AFFIDAVIT OF KENNETH BAIRD
(Sworn August 13, 2024)

MILLER THOMSON LLP
40 King Street West, Suite 5800
Toronto Ontario
M5H 3S1, Canada

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Lawyers for TKC Metal Recycling Inc.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

**AFFIDAVIT OF KENNETH BAIRD
(Sworn August 13, 2024)**

I, KENNETH BAIRD, of the City of Thorold, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a Director and the President of TKC Metal Recycling Inc. (“**TKC**” or the “**Company**”). As such, I have knowledge of the matters to which I depose in this affidavit. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true.
2. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.
3. This affidavit is sworn in connection with the Company’s filing of a notice of intention (“**NOI**”) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) and its current motion for:

- (a) an order (the “**Ancillary Order**”), substantially in the form attached at Tab 3 to the Motion Record, among other things:
- (1) granting an administration charge in the amount of \$200,000 (the “**Administration Charge**”) in favour of BDO Canada Limited (“**BDO**”), in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), counsel for the Proposal Trustee and counsel for the Company;
 - (2) granting a directors’ and officers’ charge in the amount of \$200,000 (the “**Directors’ Charge**”);
 - (3) extending the time to file a proposal to October 9, 2024; and
 - (4) approving the First Report of the Proposal Trustee (the “**First Report**”) and the activities and conduct of the Proposal Trustee detailed therein; and
- (b) an order (the “**Sale Process Order**”) substantially in the form attached at Tab 4 to the Motion Record, among other things, approving the sale process and bidding procedures (the “**Sale Process**”) in respect of the Company’s assets and/or business, and authorizing and directing the Company and the Proposal Trustee to carry out the Sale Process.

I. BACKGROUND OF THE COMPANY

A. THE PROPOSAL PROCEEDINGS

4. On July 26, 2024 (the “**NOI Filing Date**”), TKC initiated proceedings (the “**Proposal Proceedings**”) under section 50.4(1) of the BIA by filing the NOI. A copy of the Company’s certificate of filing of an NOI is attached hereto as **Exhibit “A”**. BDO was appointed as the Proposal Trustee in the Proposal Proceedings.
5. The NOI filing was prompted due to the Company’s ongoing liquidity challenges and inability to meet their liabilities as they become due.
6. The principal purpose of the Proposal Proceedings is to create a stabilized environment to allow the Company to run a Sale Process to solicit bids for the Company’s business and assets, with the intention of maximizing realizations for all stakeholders.
7. These Proposal Proceedings were commenced with the support and consent of the Company’s primary secured creditor, 1000909688 Ontario Inc. (the “**Lender**”), and pursuant to a forbearance agreement between the Lender and the Company, as discussed in more detail below.

B. THE BUSINESS AND OPERATIONS

8. TKC is a scrap metal recycling company, incorporated under the *Business Corporations Act* (Ontario) on March 7, 2017 with a registered office at 20 Cushman Road, St. Catharines, Ontario L2M 6S8, Canada (the “**Cushman Road Property**”). A copy of the Company’s corporate profile report is attached hereto as **Exhibit “B”**.
9. TKC purchases and processes various types of ferrous (containing iron) and non-ferrous (without iron) scrap metals, including electronic waste. TKC acquires scrap metals from

various sources including, without limitation, from individuals, contractors constructing or demolishing commercial buildings, plumbers and electricians working with copper piping, and car dealerships getting rid of car parts.

10. The processing system uses industrial equipment, some of which the Company leases from third parties (the “**Equipment Leases**”). The Company buys scrap, processes it and ships it to customers typically within 30 days in order to receive payment.
11. TKC is a cash business, which operates mainly by way of verbal agreements with its customers.

(i) The Cushman Road Property

12. TKC operates its business out of the Cushman Road Property pursuant to the lease agreement (the “**Lease**”) dated May 12, 2017 between TKC and Giampaolo Investments Limited (the “**Landlord**”) with a term of twenty-one years less one day.
13. The term of the Lease expires on May 11, 2038. During the first five years of the lease the base rent was \$6,705.83 per month. The Lease provides that on each five year anniversary, the annual basic rent will be adjusted. An amending agreement was prepared by the Landlord but was not executed by the Landlord and the Company. Notwithstanding that the amending agreement was not executed, the Landlord increased the base rent to \$24,166.00 per month at the end of the five years and the Company has been making these basic rent payments.

(ii) The Licences

14. TKC holds two licences that are needed to operate their business: (i) a Salvage Yard Business Licence; and (ii) an Ontario Motor Vehicle Industry Council Licence (“**OMVIC Licence**”). These licences are renewed annually.
15. The Salvage Yard Business Licence was issued by the Regional Municipality of Niagara pursuant to the municipal by-laws on March 31, 2024 and expires on March 31, 2025. A copy of the Salvage Yard Business Licence is attached hereto as **Exhibit “C”**.
16. The OMVIC Licence, a copy of which is attached hereto as **Exhibit “D”**, was issued in accordance with the *Motor Vehicle Dealers Act*, which permits TKC to purchase used motor vehicles. The OMVIC Licence was issued on July 15, 2024 and expires on August 8, 2025.

C. EMPLOYEES AND PAYROLL

17. TKC has a total of 12 employees, comprised of 6 hourly and 6 salaried. Of the 6 hourly employees, 3 are part-time. There are also 3 independent contractors.
18. Payroll for TKC is administered through ADP, a third party payroll administrator on a biweekly basis. The last payroll occurred on August 9, 2024 and employees were paid for their time for the period July 26, 2024 to August 9, 2024.
19. TKC does not sponsor, administer, or otherwise have any registered or unregistered pension plans for their employees.
20. To the best of my knowledge, TKC is current on payroll and source deduction remittances.

D. THE COMPANY'S FINANCIALS

(i) Financial Statements

21. The Company's year-end is December 31. A copy of the Company's unaudited balance sheet as at December 31, 2023 is attached hereto as **Exhibit "E"**. As at December 31, 2023, the Company's current assets total approximately \$1,998,526.
22. As at December 31, 2023, the Company's current liabilities total approximately \$4,260,874.

(ii) PPSA Registration

23. Attached hereto as **Exhibit "F"**, is a certified copy of the Ontario Personal Property Security Registration System Enquiry Response Certificate in respect of TKC, current to July 28, 2024 (the "**PPSA Search**").
24. The majority of the registrations on the PPSA Search relate to the Equipment Leases.
25. Other than the Lender, which is discussed under the heading "Senior Secured Creditor of the Company" herein, the only other registration that is registered over all classes of collateral except consumer goods is in favour of the TD Bank and it relates to certain credit cards that the Company uses in its business.

(iii) Senior Secured Creditor of the Company

26. There is a PPSA registration on the PPSA Search that was in favour of Meridian Credit Union Limited ("**Meridian**") over all classes of collateral except consumers goods, which relates to a general security agreement that was held by Meridian. Meridian assigned its debt and security to the Lender on or about June 13, 2024 and the PPSA registration was also assigned to the Lender.

27. Thereafter, on or about June 17, 2024, the Lender advanced a working capital loan to the Company. The amount owing under the working capital advance is approximately \$48,734.62, plus interest.

28. On July 12, 2024, the Company received a Demand for Repayment and a Notice of Intention to Enforce Security under section 244(1) of the BIA from the Lender. The amount of indebtedness owed to the Lender as at July 10, 2024 was \$2,206,341.96.

(iv) Harmonized Sales Tax

29. The Company has a balance of approximately \$104,000 of outstanding Harmonized Sales Tax (“**HST**”). I understand that the Company, with the assistance of the Proposal Trustee, will request an HST trust examination during these Proposal Proceedings.

(v) Unsecured Creditors

30. The Company has unsecured liabilities owing to various companies in the amount of approximately \$1,600,000.

II. FINANCIAL CIRCUMSTANCES AND RESTRUCTURING EFFORTS TO DATE

31. I started this business in 2017 with my two sons, and together we successfully grew the business. The Company was profitable through 2022 year-end. The Company started having financial difficulties about a year ago.

32. The Company’s business is largely dependent on two factors: (i) the equipment used to process the scrap metals; and (ii) scrap commodity prices.

33. In or around late 2023, the Company suffered a major equipment failure that is used as part of the processing the scrap metals. Once repaired, another part of the shears failed, causing

the Company to incur more costs to repair and replace same. This also caused delays in processing and shipping scrap, which resulted in delayed payments.

34. In addition, while commodity prices have fluctuated over the years, they have been on a significant decline for about a year. Scrap commodity prices decreased by approximately \$100 per net ton over a 3-month period in 2023, during a time when the Company committed to a fixed pricing on a large-scale project.
35. This also had the snowball effect of Meridian placing the Company into its special accounts department with only a \$600,000 operating line.
36. The Company's revenues have continued to decline since the beginning of 2024 due to, among other things, soft market conditions, weak consumer demand, and scrap commodity pricing.
37. As a result, the Company has been unable to continue to meet its ongoing obligations, including to the Lender, subject to the Forbearance Agreement described below.

A. The Forbearance Agreement

38. On July 22, 2024, the Company, the Lender, and myself and my wife, Tracey Baird, as the Guarantors, entered into a forbearance agreement (the "**Forbearance Agreement**"), whereby the Lender agreed to forbear from enforcing its rights and remedies against the Company on the terms of the Forbearance Agreement.
39. The terms of the Forbearance Agreement contemplate the Company's intention to commence the within Proposal Proceedings.
40. The key terms of the Forbearance Agreement include, among other things:

- (a) The Morgan Investments Group Inc. is appointed as monitor to report to the Lender and the Proposal Trustee on the business and affairs of the Company;
- (b) The Company will provide the Lender with a Cash Flow Forecast (as defined below);
- (c) The Company will pay the Lender a forbearance fee to be added to the indebtedness owed;
- (d) The Company will pay a monthly maintenance fee to the Lender;
- (e) The Company will obtain the Lender's prior written consent prior to commencing the Proposal Proceedings; and
- (f) The Forbearance Agreement expires on August 31, 2024, unless amended in writing on the consent of the Lender.

41. The Company obtained the Lender's consent to commence these Proposal Proceedings and the Lender's sign off on the relief being sought in this motion.

III. RELIEF SOUGHT

A. ANCILLARY ORDER

(i) Administration Charge

42. The Company seeks a first-ranking charge on all of its property, in priority to all other charges in the maximum amount of \$200,000 (the "**Administration Charge**") to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company incurred in connection with services rendered to the Company in connection with these Proposal Proceedings.

43. It is critical to the success of the Company's realization efforts to have the Administration Charge in place to ensure that the restructuring professionals who have rendered services prior to and after the commencement of the Proposal Proceedings are protected with respect to their fees and disbursements. The professionals that are the beneficiaries of the Administration Charge have significantly contributed, and will continue to contribute, to advancing the objectives of these Proposal Proceedings.
44. The Company has worked with the Proposal Trustee and the other restructuring professionals to estimate the proposed quantum of the Administration Charge and I believe it to be reasonable and appropriate in the circumstances when considering amounts accrued and owed to certain of the restructuring professionals.

(ii) Directors' Charge

45. The Applicants seek a Directors' Charge on the Company's Property in favour of the Company's current officers and directors in priority to all other charges other than the Administration Charge up to a maximum amount of \$200,000.
46. To ensure the ongoing stability of the Company's business during the Proposal Proceedings, they require the continued participation of their officers and directors. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring.
47. The Company does not have a directors' and officers' insurance policy.

48. The Company's ordinary course operations give rise to potential director or officer liability, including for employee source deductions and sales tax. The Directors' Charge is intended to address potential claims that may be brought against directors and officers.
49. The quantum of the Directors' Charge was developed with the assistance and support of the Proposal Trustee. The Company is of the view that the quantum of the Directors' Charge is reasonably necessary at this time to address circumstances that could lead to potential directors' liability.

(iii) Extension of Time to File Proposal

50. Under the BIA, the stay of proceedings under the NOI will expire on August 26, 2024. TKC is seeking an extension of time to file a proposal for 45 days or until October 9, 2024 (the "**Extended Stay Period**") to allow the Company and the Proposal Trustee the time necessary to undertake the Sale Process and return to Court to approve the successful bid.
51. The Sale Process represents the best possibility for a transaction that will result in funds being available for distribution to both the secured and the unsecured creditors of the Company.
52. TKC has prepared and filed a 13-week cash flow forecast (the "**Cash Flow Forecast**"), with the assistance of the Proposal Trustee, in connection with the NOI and which covers the period July 29, 2024 to November 1, 2024. A copy of the Cash Flow Forecast is attached here to as **Exhibit "G"**.

- 53. The Cash Flow Forecast demonstrates that TKC will have sufficient liquidity to fund the Proposal Proceedings and undertake the proposed Sale Process during the Extended Stay Period.
- 54. TKC is acting in good faith and with due diligence in seeking to preserve and realize value for the benefit of all of its stakeholders.
- 55. I am of the view that no creditor will be materially prejudiced if the Extended Stay Period is granted. The Extended Stay Period is supported by the Lender and the Proposal Trustee.
- 56. If the Extended Stay Period is granted, TKC will likely be able to complete the Sale Process and it will enhance the prospect of TKC making a viable proposal to its creditors, with a view to maximizing recovery for all stakeholders in the circumstances.

(iv) Approval of the First Report

- 57. In connection with the Company’s motion, I understand that the Proposal Trustee is preparing its First Report and has requested that the Company seek approval of the same.

B. SALE PROCESS ORDER

- 58. The Company, with the assistance of the Proposal Trustee, commenced the Sale Process in respect of the Company’s assets (“**Assets**”), which comprise of the following:

Lot #	Description
Lot 1	Machinery and Equipment
Lot 2	Inventory
Lot 3	Office furniture and equipment

Lot 4	Leased Assets
Lot 5	Intangible Assets
Lot 6	The Company’s interest, if any, in the Lease Agreement

59. These Assets have not been previously marketed to the public. Potential bidders are invited to bid on all or part of the Assets.
60. Any sale of the Assets will be completed on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Proposal Trustee or the Vendor or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant sale or auction agreement(s) with the Successful Bidder(s).
61. The Sale Process is being undertaken by the Proposal Trustee with the assistance of the Company. A copy of the Sale Process is attached hereto as **Exhibit “H”**.
62. The Proposal Trustee prepared an advertisement (the “**Teaser**”), summarizing the Company’s Assets and the Sale Process that advertised in the Financial Post on August 9, 2024. The Teaser is also being advertised in Insolvency Insider with weekly releases beginning on Monday, August 12, 2024. A list of potential prospective purchasers has been developed by the Company and provided to the Proposal Trustee.
63. Any potential bidder that executes a confidentiality agreement prepared by the Proposal Trustee, will be provided access to an electronic data room containing financial and other confidential information about the Company’s Assets.

64. Bids must be submitted by Thursday, September 5, 2024 at 3:00 p.m. (the “**Bid Deadline**”).

The successful bidder will be selected by the Proposal Trustee, with the assistance of the Company (the “**Successful Bidder(s)**”). In the event that multiple bids are received, the Proposal Trustee, in consultation with the Company, may invite bidders to participate in an auction, conducted by the Proposal Trustee in which case the Proposal Trustee shall set the guidelines for the auction and advise the parties of the lead bid in advance of the auction.

65. A further motion will be brought after the conclusion of the Sale Process to seek an approval and vesting order in respect of the sale of the Assets to the Successful Bidder(s).

IV. CONCLUSION

66. I make this Affidavit in support of the Company’s Motion as described herein, and for no other or improper purpose or delay.

SWORN before me at the City of St. Catharines, in the Province of Ontario, this 13th day of August 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely.

DocuSigned by:
Gina Rhodes
BF006048D668407...
Commissioner for Taking Affidavits
GINA RHODES

DocuSigned by:
Kenneth Baird
7BF19A340CEB418...

KENNETH BAIRD

This is Exhibit "B" referred to in the Affidavit of Ken Baird sworn by Ken Baird of the City of St. Catharines, before me at the City of Toronto, in the Province of Ontario, on September 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GINA RHODES



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 07 - Hamilton
Court No. 32-3109134
Estate No. 32-3109134

In the Matter of the Notice of Intention to make a proposal of:

TKC Metal Recycling Inc.

Insolvent Person

BDO CANADA LIMITED / BDO CANADA LIMITÉE

Licensed Insolvency Trustee

Date of the Notice of Intention:

July 26, 2024

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: July 26, 2024, 12:58

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

Canada

This is Exhibit "C" referred to in the Affidavit of Ken Baird sworn by Ken Baird of the City of St. Catharines, before me at the City of Toronto, in the Province of Ontario, on September 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GINA RHODES



District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

THE HONOURABLE MR.)
JUSTICE PARAYESKI) THURSDAY, THE 22nd
DAY OF AUGUST, 2024

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

SALE PROCESS ORDER

THIS MOTION, made by TKC Metal Recycling Inc. (the “**Company**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*, (i) approving the sale process and bidding procedures (the “**Sale Process and Bidding Procedures**”) substantially in the form attached hereto as Schedule “A”; and (ii) authorizing and directing BDO Canada Limited, in its capacity as Proposal Trustee (the “**Proposal Trustee**”) was heard this day in the Ontario Superior Court of Justice (Hamilton).

ON READING the Notice of Motion, the Affidavit of Kenneth Baird sworn August 13, 2024 and the exhibits thereto (the “**Baird Affidavit**”), and the First Report of Proposal Trustee, dated August 14, 2024, and on being advised that the secured creditors who are likely affected by the charge created herein were given notice, and on hearing the submissions of counsel for the Company and counsel for the Proposal Trustee, and those other parties present, no one else

appearing although duly served as appears from the Affidavit of Service of Kim Sellers, sworn August 14, 2024, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record of the Company are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Sale Process and Bidding Procedures.

APPROVAL OF THE SALE PROCESS AND BIDDING PROCEDURES

3. **THIS COURT ORDERS** that the Sale Process and Bidding Procedures attached hereto as **Schedule "A"** to this Order and the procedures contemplated therein be and are hereby approved.
4. **THIS COURT ORDERS** that the Proposal Trustee is authorized and directed to take such steps on behalf of the Company, as it deems necessary or advisable to carry out and perform its obligations under the Sale Process and Bidding Procedures.
5. **THIS COURT ORDERS** that the Sale Process and Bidding Procedures may be amended and the timelines prescribed therein may be extended by the Proposal Trustee with the approval of the Company and the Company's secured lender, 1000909688 Ontario Inc., or further order of the Court.

6. **THIS COURT ORDERS** that the Proposal Trustee and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process and Bidding Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Proposal Trustee in performing its obligations under the Sale Process and Bidding Procedures as determined by this Court.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Proposal Trustee and the Company are hereby authorized and permitted to disclose personal information of identifiable individuals to prospective bidders in the Sale Process and Bidding Procedures and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (as defined in the Sale Process and Bidding Procedures). Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Property and if it does not complete a purchase of the Property, shall return all such information to the Company or in the alternative shall destroy all such information and certify such destruction to the Company and Proposal Trustee. The purchaser of any Property shall be entitled to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company and shall return all other personal information to the Company or ensure that all other personal information is destroyed.

8. **THIS COURT ORDERS** that the Proposal Trustee and its counsel be and are hereby authorized but not obligated, to serve or distribute this Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the Sale Process and Bidding Procedures to any Person or interested party that the Proposal Trustee considers appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Company, the Proposal Trustee 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 Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that each of the Company or the Proposal Trustee shall 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.

11. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



(Signature of judge, officer or registrar)

Issued and entered electronically by

Local Registrar
45 Main St East
Hamilton, ON
L8N 2B7

Schedule A - Sale Process and Bidding Procedures

Schedule "A"

SALE PROCESS AND BIDDING PROCEDURES

TKC METAL RECYCLING INC.

Background

1. On July 26, 2024, TKC Metal Recycling Inc. (the "**Vendor**" or the "**Company**") filed a notice of intention to make a proposal to its creditors under the *Bankruptcy and Insolvency Act*, naming BDO Canada Limited ("**BDO**") as proposal trustee (the "**Proposal Trustee**") in the proceedings (the "**NOI Proceedings**").
2. The Company operates from leased premises at 20 Cushman Road, St. Catharines, Ontario (the "**Leased Premises**"), which is subject to a lease agreement which commenced May 12, 2017 and expiring May 11, 2038 (the "**Lease Agreement**").

Disclaimer

3. These Sale Process and Bidding Procedures (the "**Bidding Procedures**") have been prepared by BDO, solely in its capacity as Proposal Trustee, in consultation with the Company, from information obtained from the Company and other sources, all of which have not been independently verified by BDO (the "**Information**") to assist the Company with the sales process.
4. This Information is being provided to Bidders for reference purposes only and to assist them in conducting their evaluation of the Assets (as defined below) of the Company. By receiving this Information or other information concerning the sale of the Company's Assets, each Bidder accepts and acknowledges that:
 - (a) BDO makes no representations or warranties as to the accuracy or completeness of the Information and this Information does not purport to be all-inclusive or to necessarily contain all the information that a Bidder may require in connection with its investigation of the Company and/or Assets. Nothing contained herein should be relied upon as a representation. The Proposal Trustee expressly advises that the prospective Bidder acknowledges by virtue of submitting a Bid to purchase, that the prospective Bidder is not and could not reasonably rely on this information in arriving at its decision to purchase the Assets. Each prospective Bidder must rely upon its own inspection and investigation in order to satisfy itself as to title, liens, encumbrances, description, fitness for purpose, quantity, condition, quality, value or any other matter of thing whatsoever;
 - (b) Neither this document, nor its delivery to any prospective Bidder, shall constitute an offer to sell or the solicitation of an offer to buy the Assets;
 - (c) BDO has not independently verified any of the information contained herein. BDO shall have no liability for any representations (expressed or implied) contained in, or for any omission from, the Bidding Procedures and related documents or for any other written or oral communications transmitted to prospective Bidders in the course of their evaluation of the Assets;

- (d) In all cases, the recipient hereof and any Bidder shall conduct its own due diligence at its own expense and risk; BDO is under no obligation to provide the Bidder with access to any Information about the Company;
- (e) Under no circumstances shall any of the employees, or former employees of the Company be contacted directly or indirectly: (i) to answer any questions regarding the Sale Process, (ii) to answer any questions regarding the possible acquisition of the Assets; or (iii) to request additional information or Information regarding the contents of any of the Information previously obtained, without the prior written permission of the Company and BDO;
- (f) The Information contained herein, as well as any future information obtained in the course of any investigation and/or inspection of the Company, is confidential and may not be copied, reproduced, or distributed to any other persons external to the Bidder's organization at any time, except for the purposes of obtaining professional advice; and
- (g) The highest or any proposal shall not necessarily be accepted by the Vendor. Further, nothing contained in the Invitation for Bids or herein precludes the Vendor from entering into an agreement to sell any or all Assets prior to the Bid Deadline (as defined herein), and furthermore, nothing herein shall prevent the Vendor from withdrawing this Invitation for Bids at any time and for any reason without liability to the Vendor.

5. Unless otherwise noted, all denominations are in CAD dollars.

Assets for Sale

6. The Vendor is inviting Bids for the Assets or any parts thereof. For purposes of the following bidding procedures (these "**Bidding Procedures**"), the property subject to sale and these Bidding Procedures will comprise the following asset categories (collectively, the "**Assets**"):

Lot # Note (1)	Description
Lot 1	Machinery and Equipment
Lot 2	Inventory
Lot 3	Office furniture and equipment
Lot 4	Leased Assets - Note (2)
Lot 5	Intangible Assets
Lot 6	The Company's interest, if any, in the Lease Agreement for the Leased Premises

Note (1): Bidders are asked to allocate a purchase price for each unit independently;

Note (2): Assets included therein are subject to lease and may be removed from the process at any time and may not be available for sale;

Caution: The Assets listed are for INFORMATION PURPOSES ONLY. Neither the Company nor the Proposal Trustee provide any representations or warranties as to the accuracy or completeness of the Information.

For greater certainty, the Assets do not consist of bank accounts, any deposits, accounts receivable or any third party owned assets located at the Leased Premises (collectively, the “**Excluded Assets**”).

Bidding Procedures

7. These Bidding Procedures shall govern the invitation by the Vendor for Bids for all or part of the Assets and the selection by the Vendor of one or more Successful Bids (as defined below).
 1. **As is, Where is sets for Sale**
 8. Any sale of the Assets will be completed on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Proposal Trustee or the Vendor or their respective agents, professionals, advisors, or otherwise, except to the extent set forth in the relevant sale or auction agreement(s) with the Successful Bidder(s).
 2. **Access to Review Assets**
 9. Interested parties that wish to review the Assets are required to contact Mr. Ken Baird at ken@tkcmetalrecycling.com with a copy via email to aconsoli@bdo.ca and a tour of the Assets will be arranged during regular business hours.
 3. **Bidding Deadlines**
 10. All Bids (as defined below) must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by the Proposal Trustee no later than **3:00 p.m. (Toronto time) on Thursday September 5, 2024** (the “**Bid Deadline**”). A Bid received by the Proposal Trustee after the Bid Deadline may not be accepted.
 11. Written copies of all Bids shall be delivered via e-mail or by personal delivery so that they are received by the Proposal Trustee by the Bid Deadline at:

BDO Canada Ltd.
25 Main St. West, Suite 805
Hamilton, ON L8P 1H1

Attention: Angelo Consoli

Email: aconsoli@bdo.ca

4. **Bid Requirements**

12. In order to participate in these Bidding Procedures, a party submitting a Bid (a “**Bidder**”) must deliver a Bid to the Proposal Trustee by the Bid Deadline, which satisfies each of the following conditions (a “**Bid**”):
- (a) Identification: Identification of the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction.
 - (b) Form and Content. A Bid must conform with the terms and conditions set out herein and must be submitted in the Form of Offer attached hereto as **Appendix A**. In addition, the Proposal Trustee will provide a standard asset purchase agreement (“**APA**”) in the data room, which will be used as the basis to complete the purchase and sale.
 - (c) Deposit. Each Bid must be accompanied by a refundable deposit equal to 15% of the proposed purchase price of the Assets bid on. The refundable deposit will be paid by way of certified cheque payable to “BDO Canada Ltd., Proposal Trustee of TKC Metal Recycling Inc.”.
 - (d) Closing Date. A Bid must contain a binding commitment by the Bidder to close on the terms and conditions set forth therein as soon as practicable after satisfaction or waiver of all conditions and the receipt of Court approval and a covenant to use commercial best efforts to satisfy all conditions (the “**Closing Date**”).
 - (e) Irrevocable. A Bid must be irrevocable and capable of acceptance until at least September 26, 2024.
 - (f) Contingencies. A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence.
 - (g) Acknowledgment of Bidding Procedures. By submitting a Bid, a Bidder shall be deemed to irrevocably waive its right to pursue any claim in any way related to the submission of its Bid or these Bidding Procedures.
 - (h) No Representations and Warranties. By submitting a Bid, the Bidder acknowledges to and in favour of the Proposal Trustee and the Vendor that the Bidder has conducted its own investigations and inspections of the Assets and all matters and things connected with or in any way related to the Assets, that the Bidder has satisfied itself with respect to the Assets, that the Bidder has relied entirely upon its own investigation and inspections in entering into this agreement, that the Bidder is purchasing the Assets on an “as is, where is” basis upon execution of a final APA, that the Bidder will accept the Assets in their present state, condition and location and the Bidder hereby acknowledges that the Proposal Trustee and the Vendor has made no representations, warranties, statements or promises save and except as are contained herein with respect to any matter or thing whatsoever, including, without limitation, as to title, description, fitness for purpose, merchantability, quantity or the condition of any matter or thing whatsoever. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or

implied pursuant to the Sale of Goods Act (Ontario) do not apply to the sale of the Assets and have been waived by the Bidder. Except as expressly set out herein, no adjustments shall be allowed to the Bidder for any changes in condition, quality or quantity of the Assets. The Bidder acknowledges that the Proposal Trustee and the Vendor is not required to inspect or count, or provide any inspection or counting, of the Assets or any parts thereof and the Bidder shall be deemed, at its own expense, to have relied entirely upon its own inspection and investigation of the Assets. The Bidder acknowledges that it shall be the Bidder's sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of the APA, including, without limitation, any approvals with respect to assets subject to lease or any of the Assets which are not assignable without the consent or other action of a third party (or parties). The Bidder will satisfy itself with respect to any successor employer liability.

- (i) Other Information. A Bid shall contain other information reasonably requested by the Proposal Trustee and Vendor.
 - (j) No Personal or Corporate Liability. The Bidder acknowledges that BDO shall have no personal or corporate liability under these Bidding Procedures. In the event that the sale of any Lot(s) is enjoined by Order of a Court of competent jurisdiction or where any Lot(s) of assets subject to a Bid or any part thereof is removed from the control of the Vendor by any means or process, or where any Lot(s) of assets subject to a proposal or any part thereof is redeemed by a party entitled thereto at law, on or prior to the Closing Date, the Agreement (as defined below) shall be terminated at the option of the Vendor without any penalty or liability whatsoever to the Vendor or Bidder.
13. Each Bidder shall comply with all reasonable requests for additional information by the Proposal Trustee regarding such Bidder and its contemplated transaction.
- 5. Selection of Successful Bid**
14. The successful bid (the "**Successful Bid**") shall be determined by the Proposal Trustee, in consultation with the Company and the Company's secured creditors. The highest Bid shall not necessarily be accepted by the Vendor.
15. In the event that multiple Bids are received, the Proposal Trustee, in consultation with the Company, may invite Bidders to participate in an auction, conducted by the Proposal Trustee in which case the Proposal Trustee shall set the guidelines for the auction and advise the parties of the lead Bid in advance of the auction.
16. The Proposal Trustee shall inform the successful bidder or bidders (the "**Successful Bidder(s)**") that their Bid was accepted as soon as is reasonably possible after the Bid Deadline.
- 6. Sale Approval**
17. As soon as practicable after determination of the Successful Bid, the Company or Proposal Trustee, as applicable, will make a motion to the Court (the "**Approval Motion**") for an

approval and vesting order in respect of the Successful Bid and the underlying purchase agreement (the “**Final APA**”).

7. Proposal Trustee’s Reservation of Rights

18. In addition to the other reservations of rights set out herein, the Proposal Trustee and Vendor reserves the right in its reasonable discretion to: (i) waive strict compliance with any one or more of the Bid requirements specified herein; (ii) extend any deadline set forth in these Bidding Procedures, including the Closing Date, for up to 15 days, without further notice; (iii) reject any or all Bids; (iv) accept partial Bids or request an amended Bid to be submitted; and (v) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures.

8. Closing the Successful Bid

19. The Vendor and the Successful Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Successful Bid(s) as soon as possible in accordance with the APA and following Court approval. Notwithstanding the foregoing, in the event that there is more than one Successful Bid, the Vendor reserves the right to impose a condition in each Successful Bid that its obligation to complete the sale transaction contemplated by each Successful Bid is conditional upon the completion of the transaction(s) contemplated by each other Successful Bid.

9. Return of Deposit

20. All Deposits shall be held in a non-interest bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with this Section 9.
21. Deposits of all Bidders other than the Successful Bidder(s) shall be returned to such Bidder(s) two (2) business days after the day on which one or more Successful Bidder(s) is selected.
22. The Deposit(s) of the Successful Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. If the Successful Bidder(s) fails to consummate the transaction(s) contemplated by the Successful Bid(s) by the Closing Date because of a breach or failure to perform on the part of such Successful Bidder(s), the Vendor shall be entitled to retain the Deposit of the applicable Successful Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Successful Bidder(s). The Deposit of the Successful Bidder(s) shall otherwise be returned to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s).
23. In the event that a Deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.

10. General

24. The notification by the Vendor of acceptance of a Bid shall constitute a binding agreement between the Vendor and Bidder in accordance with the terms of the Bid (the

“Agreement”), and these Terms and Conditions shall be deemed to be a part of the resulting Agreement.

25. All stipulations herein as to time shall be of the essence.
26. The Assets shall be and remain at the risk of the Vendor as its interest may appear until closing. Pending completion of the sale, the Vendor shall hold all insurance policies or proceeds thereof in trust for itself, the Bidder and others as their respective interests may appear. In the event of loss or theft or of substantial damage to the Assets subject to a proposal, then the Vendor, at its option, may elect, by giving notice in writing to the Bidder that it intends to take the proceeds payable under the existing insurance policies on the Assets and terminate the Agreement. In this event, the Agreement shall be automatically terminated and deemed null and void and the deposit returned without interest or deduction and the Bidder shall have no other claim or cause of action against the Vendor or its principals.
27. If the Vendor does not exercise the above noted option, the Bidder may either have the proceeds of the insurance, if any, and complete the purchase and sale, or may cancel the Agreement and have all moneys paid returned without interest but shall have no other claim or cause of action against the Vendor or its principals.
28. After acceptance, if the successful Bidder defaults in completing the transaction, all payments made to the Vendor shall be forfeited, and the Assets may be sold or resold by the Vendor in such manner and on such Terms and Conditions as the Vendor, in its sole discretion, determines, and the deficiency, if any, on such sale or resale, together with all charges attending the same or occasioned by the defaulting Bidder, shall be the responsibility of such Bidder and shall be paid forthwith by such Bidder to the Vendor.
29. The Vendor shall remain in possession of the Assets until the purchase is completed and title to any Assets shall not pass to the Bidder, nor shall it be entitled to possession of the same, until the purchase price and taxes, respectively, have been paid in full.
30. From and after the time of closing on the Closing Date, the Assets purchased shall be at the risk of the Bidder.
31. Any notices, requests, demands or other communications to be given under this Agreement (herein referred to as “Notice”) shall be in writing and shall be either e-mailed, hand delivered, faxed or mailed (prepaid registered mail) and addressed as follows:

As to the Bidder: at the address set forth in its Bid.

As to the Vendor:

BDO Canada Limited in its capacity as
Proposal Trustee of TKC Metal Recycling Inc.
Suite 805, 25 Main Street West,
Hamilton, Ontario, L8P 1H1
Email: aconsoli@bdo.ca
Attention: Angelo Consoli

Notice shall be effective upon personal delivery or email.

32. Each Bidder, if so requested by the Vendor prior to closing, will represent and warrant to the Vendor that it is not a “non-resident person” as defined in the Investment Canada Act, nor is it a “non-resident person” of Canada within the meaning of S. 116 of the Income Tax Act (Canada).
33. Any term and condition herein which the Vendor might otherwise insist upon may be waived at the sole discretion of the Vendor, in whole or in part, and a Bidder will be bound by any such waiver.
34. Unless otherwise specifically stated herein, all obligations of the parties contained in these Bidding Procedures shall survive the completion of the sale(s).
35. The validity and interpretation of these Bidding Procedures, and of each provision and part thereof, and the Agreement shall be governed by the laws of the Province of Ontario.
36. In the case of a sale, unless otherwise agreed directly as between the Bidder and the landlord of the Leased Premises, the Bidder agrees to have the purchased assets removed from the Leased Premises within 15 days of completion of the sale and agrees to take responsibility for and make reparations for any damage caused to the premises when removing the purchased assets and shall indemnify the Vendor for any liability or expenses incurred arising from the removal or failure to remove purchased assets. The premises shall be left in a clean, broom swept condition, with all electrical wires and air/water/other lines removed and/or capped to the buss bar/nearest wall, all bolts “blown off”, and all pits created by the removal of machines filled in with gravel.
37. All applicable federal and provincial taxes in connection with the sale including sales tax and goods and services tax, if any, shall be over and above the tendered purchase price and shall be in all cases the responsibility of the Bidder.

APPENDIX A

FORM OF OFFER FOR THE PURCHASE OF THE ASSETS OF TKC METAL RECYCLING INC.

TO:

TKC Metal Recycling Inc.
20 Cushman Road
St. Catharines, Ontario, L2M 6S8
Email: ken@tkcmetalrecycling.com
Attention: Ken Baird

BDO Canada Limited
25 Main St. W., Suite 805
Hamilton, ON L8P 1H1
aconsoli@bdo.ca
Attention: Angelo Consoli

1. _____

Name of Bidder

2. _____

Address of Bidder

3. _____

E-mail and telephone number of Bidder

4. _____

Name, firm and e-mail of Bidder's Solicitor

5. The Bidder hereby offers to purchase the following assets subject to the Terms and Conditions of Sale pursuant to which this offer is being submitted (as identified by Lot number):

Lot #	Description	Purchase Price Allocation
Lot 1	Machinery and Equipment	
Lot 2	Inventory	
Lot 3	Office furniture and equipment	
Lot 4	Leased Assets	
Lot 5	Intangible Assets	
Lot 6	The Company's interest, if any, in the Lease Agreement	
	Total Purchase Price	

6. The Purchase Price payable by the Bidder for the Assets shall be the sum of _____ (\$ _____) Canadian dollars payable as follows:

a. The sum of _____ (\$ _____) by certified cheque / bank draft / money order payable to BDO Canada Limited – in Trust, as a deposit being 15% of the amount tendered pending completion of the purchase agreement arising from the acceptance hereof by the Vendor, (to be returned to the Bidder if the offer is not accepted), to be released as credit against the purchase price upon completion of the purchase agreement, or returned to the bidder in the event of termination in accordance with the terms hereof for any reason not attributable to the default of the Bidder:

b. The sum of _____ (\$ _____) more or less, and subject to adjustments by certified cheque / bank draft / money order on the closing date.

7. The undersigned agrees its Bid is subject to the Bidding Procedures issued by Vendor in connection with this transaction, a copy of which the undersigned acknowledges having received and reviewed. The Bidder represents to the Vendor it is not, a non-Canadian person as defined in the Investment Canada Act, nor is it a “non-resident person” of Canada within the meaning of section 116 of the *Income Tax Act* (Canada). The foregoing representations shall survive closing.

DATED: _____

Witness Name (Print)

Bidder Name (Print)

Witness Signature

Bidder Signature

Title: _____

Authorized officer or person

I have authority to bind the corporation

IN THE MATTER OF NOTICE OF INTENTION TO MAKE
A PROPOSAL OF TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceeding Commenced at Hamilton

SALE PROCESS ORDER

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO#: 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Lawyers TKC Metal Recycling Inc.

This is Exhibit "D" referred to in the Affidavit of Ken Baird sworn by Ken Baird of the City of St. Catharines, before me at the City of Toronto, in the Province of Ontario, on September 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'GR', is centered on the page.

Commissioner for Taking Affidavits (or as may be)

GINA RHODES



District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE MR.)

THURSDAY, THE 22nd

JUSTICE PARAYESKI)

DAY OF AUGUST, 2024

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

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.

ORDER

Re: Administration Charge, Directors' Charge, Extension of Time to File Proposal and
Approval of Proposal Trustee's First Report and Conduct

THIS MOTION, made by TKC Metal Recycling Inc. (the "**Company**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, *inter alia*, (i) granting an Administration Charge (as defined below) in the amount of \$200,000; (ii) granting a Directors' Charge (as defined below) in the amount of \$200,000; (iii) granting a forty-five (45) day extension of time to file a proposal extending the stay of proceedings to and including October 9, 2024 in accordance with the BIA; and (iv) approving the Proposal Trustee's First Report, was heard this day in the Ontario Superior Court of Justice (Hamilton).

ON READING the Notice of Motion, the Affidavit of Kenneth Baird sworn August 13, 2024 and the exhibits thereto (the "**Baird Affidavit**"), and the First Report of BDO Canada Limited ("**BDO**") dated August 14, 2024 (the "**First Report**"), in its capacity as proposal trustee of the Company (in such capacity, the "**Proposal Trustee**"), and on being advised that the secured

creditors who are likely affected by the charge created herein were given notice, and on hearing the submissions of counsel for the Company and counsel for the Proposal Trustee, and those other parties present, no one else appearing although duly served as appears from the Affidavit of Service of Kim Sellers, sworn August 14, 2024, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record of the Company are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Baird Affidavit or the First Report, as applicable.

ADMINISTRATION CHARGE

3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company on a bi-weekly basis.
4. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time and for this purpose, the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice (Hamilton).

5. **THIS COURT ORDERS** that, pursuant to Section 64.2 of the BIA, the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all of the Company’s current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate including all proceeds thereof (the “**Property**”), which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 9 and 11 herein.

DIRECTORS’ INDEMNIFICATION AND CHARGE

6. **THIS COURT ORDERS** that the Company shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Company after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or willful misconduct.

7. **THIS COURT ORDERS** that the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for the indemnity provided in paragraph 6 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 9 and 11 herein.

8. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Company's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 6 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge, shall be as follows:

- (a) First – Administration Charge (to a maximum amount of \$200,000); and
- (b) Second – Directors' Charge (to a maximum amount of \$200,000).

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and the Directors' Charge (together, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

11. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and

encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

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

EXTENSION OF THE PROPOSAL PERIOD

13. **THIS COURT ORDERS** that the time for the filing of a proposal by the Company is hereby extended in accordance with section 50.4(9) of the BIA by a period of forty-five (45) days up to and including October 9, 2024.

APPROVAL OF FIRST REPORT AND ACTIVITIES

14. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Proposal Trustee described therein are hereby approved, provided that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize in any way such approval.

GENERAL

15. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, the service of

documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol and shall be accessible by selecting the Company’s name from the engagement list at the following URL <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/TKCMetal>.

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

17. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other

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

18. **THIS COURT ORDERS** that the Proposal Trustee shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Proposal Trustee shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to these proceedings. Notwithstanding the foregoing, the Proposal Trustee shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

GENERAL


19. **THIS COURT ORDERS** that the Company or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that each of the Company or the Proposal Trustee shall 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.

22. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without the need for entry and filing.



(Signature of judge, officer or registrar)

Issued and entered electronically by

Local Registrar
45 Main St East
Hamilton, ON
L8N 2B7

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

Proceeding Commenced at Hamilton

ORDER

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO#: 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Lawyers TKC Metal Recycling Inc.

This is Exhibit "E" referred to in the Affidavit of Ken Baird sworn by Ken Baird of the City of St. Catharines, before me at the City of Toronto, in the Province of Ontario, on September 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GINA RHODES

**REQUEST FOR OFFERS TO PURCHASE
THE ASSETS OR BUSINESS OF
TKC METAL RECYCLING INC**

BDO CANADA LIMITED in its capacity as Trustee in the Proposal of TKC Metal Recycling Inc (“**TKC**” or the “**Company**”), invites written offers, on behalf of TKC, to purchase the Company’s assets or business. TKC operates a scrap metal recycling facility located in St. Catharines, Ontario, and buys and sells all types of ferrous and nonferrous scrap metals including electronic waste throughout North America.

This invitation should not be construed as a sale by tender.

All offers will be considered on an individual basis as and when received, and should be received by no later than 3:00 p.m. on Thursday, September 5, 2024.

Information regarding the assets may be obtained from the Trustee by contacting Angelo Consoli at 289-678-0230 or aconsole@bdo.ca



BDO CANADA LIMITED
Business Restructuring and Turnaround Services
25 Main Street West, Suite 805
Hamilton, Ontario L8P 1H1

This is Exhibit "F" referred to in the Affidavit of Ken Baird sworn by Ken Baird of the City of St. Catharines, before me at the City of Toronto, in the Province of Ontario, on September 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GINA RHODES

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”) made this 23rd day of September, 2024 (the “**Effective Date**”) between:

TKC METAL RECYCLING INC.
(hereinafter called the “**Vendor**”)

– and –

TRIPLE M METAL LP
(hereinafter called the “**Purchaser**”)

RECITALS:

- A. WHEREAS** the Vendor filed a Notice of Intention to Make a Proposal dated July 26, 2024 (as hereinafter defined), and BDO Canada Limited was appointed as Trustee in the Proposal (the “**Proposal Trustee**”);
- B. AND WHEREAS** pursuant to the Order of the Honourable Justice Parayeski of the Ontario Superior Court of Justice (Hamilton) (the “**Court**”) dated August 22, 2024, the Vendor sought and obtained approval from the Court to run a sale process (the “**Sale Process**”) to be conducted by the Proposal Trustee, with the assistance of the Vendor, to solicit interest in a sale of all, or substantially all, of the assets and/or business operations of the Vendor;
- C. AND WHEREAS** pursuant to the Sale Process, the Proposal Trustee has reviewed and evaluated all bids received and has identified the Purchaser’s bid for the Purchased Assets (as is hereinafter defined) as the Successful Bid on the terms set out in this Agreement;
- D. AND WHEREAS**, subject to the Court issuing the Approval and Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, all of the Vendor’s right, title and interest in and to the Purchased Assets (as is hereinafter defined), subject to and in accordance with the terms and conditions set forth in this Agreement;

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

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

“**Agreement**” means this Agreement, including any Schedule to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement.

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter. Applicable Law also includes, where appropriate, any interpretation of the law (or any part) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“**Approval and Vesting Order**” means an order made by the Court, in form and substance satisfactory to the Parties, acting reasonably, among other things, approving and authorizing the Transaction and vesting in the Purchaser all of the right, title and interest of the Vendor in and to the Purchased Assets, free and clear of any Encumbrances, substantially in the form attached as **Schedule “A”**.

“**Assigned Contracts**” means the leases, contracts and Licences listed in **Schedule “B”**.

“**Assumed Liabilities**” means those Liabilities set out in Section 2.3.

“**Books and Records**” means all books, records, files and papers used or intended for use in connection with the ownership of the Purchased Assets, including title documentation, manuals, sales and advertising materials, and all other documents and data (technical or otherwise) relating to the Purchased Assets, and all copies and recordings of the foregoing;

“**Business Day**” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto.

“**Business Records**” means all books, records, files and documents relating to the business of the Vendor which are required by the Purchaser to carry on the business, including those relating to customers and potential customers, suppliers and sales, and service records of the Vendor.

“**Canadian Dollars**” means the lawful currency of Canada.

“**Closing**” means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement.

“**Closing Date**” means the Business Day immediately following the expiry of the 10-day appeal period of the Approval and Vesting Order or such other date as may be agreed to in writing by the Purchaser and the Vendor.

“**Closing Time**” means the time of closing on the Closing Date provided for in Section 4.1.

“**Contract Assumed Liabilities**” has the meaning given in Section 3.1.

“**Court**” has the meaning given in the Recitals.

“**Deposit**” has the meaning given in Section 2.6.

“**Encumbrance**” means any security interest, lien, claim, charge, right of retention, deemed trust, judgement, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, outstanding work order, deficiency notice, adverse claims, mortgage or right of a third party or by any board or association of insurance underwriters (including any contractual rights such as purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease) and including notice or other registrations in respect of any of the foregoing.

“**Excluded Assets**” has the meaning given in Section 2.2.

“**Governmental Entity**” means any federal, provincial, or municipal court, board, tribunal, arbitrator or arbitral panel, administrative agency or commission or other governmental or regulatory agency, ministry, department, bureau or authority including, for clarity, any of the foregoing having or claiming to have jurisdiction over all or a part of the Purchased Assets or the Transaction.

“**HST**” means the harmonized sales tax imposed under the *Excise Tax Act (Canada)*.

“**Intangible Assets**” means the intangible assets listed in **Schedule “C”**.

“**Inventory**” means the inventory located at the Property as at the Closing Date.

“**Law**” means common law, order, judgment, decree, law, statute, ordinance, instrument, code, constitution, treaty, rule, regulation or other requirement of any Governmental Entity.

“**Lease Agreement**” means the lease agreement between Giampaolo Investments Limited and the Vendor in respect of the Property dated May 12, 2017.

“**Liabilities**” means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and taxes other than HST.

“**License**” means any license, permit, authorization, approval or other evidence of authority issued or granted to, conferred upon, or otherwise created for the Vendor by any Governmental Entity.

“**Machinery, Equipment & Office Furniture**” means the machinery, equipment, and office furniture located at the Property as at the Closing Date (unless located offsite as noted on Schedule “D”) and listed in **Schedule “D”**.

“**Notice of Intention to Make a Proposal**” means the Notice of Intention to Make a Proposal dated July 26, 2024 filed by the Vendor under the *Bankruptcy and Insolvency Act*.

“**Outside Date**” means October 31, 2024, or such later date as the Parties may mutually agree in writing.

“**Party**” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns; “**Parties**” means every Party.

“**Permitted Encumbrances**” means all security interests and other interests arising exclusively from the Assumed Liabilities and Assumed Contract Liabilities, each as listed in **Schedule “E”**.

“**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

“**Property**” means the property municipally referred to as 20 Cushman Road, St. Catharines, Ontario and leased to the Vendor under the Lease Agreement.

“**Purchased Assets**” has the meaning given in Section 2.1.

“**Purchase Price**” has the meaning given in Section 2.5.

“**Purchaser**” has the meaning given in the Recitals.

“**Solicitor of the Proposal Trustee**” means Cozen O’Connor LLP.

“**Supply Agreement**” means the supply agreement between the Vendor and the Purchaser dated May 12, 2017.

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement.

“**Vendor**” has the meaning given in the Recitals.

“**Vendor’s Solicitor**” means Miller Thomson LLP.

1.2 Headings and Table of Contents

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

1.4 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

1.5 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement:

- (a) All dollar amounts referred to in this Agreement are stated in Canadian Dollars; and,
- (b) Any payment contemplated by this Agreement shall be made by wire transfer to the offices of the Vendor’s solicitors, or as the Vendor may direct in writing.

1.6 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.7 Certain Rules of Interpretation

- (a) The expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and,
- (b) “including” or “includes” means “including (or includes) but is not limited to” and is not to be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it.

1.8 Performance on Business Days

If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.

1.9 Section and Schedule References

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections or Schedules of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

Schedule "A"	–	Approval and Vesting Order
Schedule "B"	–	Assigned Contracts
Schedule "C"	–	Intangible Assets
Schedule "D"	–	Machinery, Equipment & Office Furniture
Schedule "E"	–	Permitted Encumbrances
Schedule "F"	–	Allocation of Purchase Price

ARTICLE 2 PURCHASE OF ASSETS

2.1 Agreement to Purchase and Sell Purchased Assets

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer and the Purchaser shall purchase on the Closing Date, effective as of the Closing Time, all of the Vendor's right, title and interests in, to and under or relating to the following assets (collectively, the "**Purchased Assets**"), all free and clear of all Encumbrances (other than Permitted Encumbrances, if any):

- (a) The Inventory;
- (b) The Machinery, Equipment & Office Furniture;
- (c) The Assigned Contracts; and
- (d) The Intangible Assets.

2.2 Excluded Assets

The Purchased Assets shall not include any of the following (collectively, the "**Excluded Assets**"), including:

- (a) the benefit of any contracts, agreements and understandings to which the Vendor is a party other than the Assigned Contracts;
- (b) all cash on hand, cash equivalents and bank deposits;
- (c) all accounts receivable, notes receivable and other debts due or accruing due to the Vendor; and
- (d) any other asset that is not a Purchased Asset.

For greater certainty, the Purchase Price will not be adjusted or set off against for any Excluded Assets.

2.3 Assumed Liabilities

The Purchaser agrees to assume as of the Closing Time, only the Vendor's Liabilities relating to

- (a) the Purchased Assets arising and accruing in respect of the period after the Closing Time and not related to any default existing at, prior to or as a consequence of Closing; and
- (b) any other liability which the Purchaser agrees in writing to assume on or before the Closing Date.

(collectively, the "**Assumed Liabilities**").

Notwithstanding the forgoing and for an abundance of clarity, any item (i) not otherwise listed in this Section 2.3 and (ii) any item which is described in Section 2.4 shall be for all purposes deemed to not be an Assumed Liability.

2.4 Excluded Liabilities

The Purchaser shall not assume and shall not be liable for any debts, Liabilities (other than HST which may be applicable on the Purchase Price or in accordance with the provisions of Section 2.10, below) or other obligations of the Vendor.

2.5 Amount of Purchase Price

The purchase price payable by the Purchaser for the Purchased Assets (the "**Purchase Price**") shall be [REDACTED] plus (ii) the cure costs arising under Section 3.2(c), if any, and plus/minus (iii) the Purchase Price Adjustment arising under Section 2.8. The Purchase Price shall be subject to Section 2.10 below.

2.6 Deposit

The Proposal Trustee, on behalf of the Vendor, is holding a deposit provided by the Purchaser (the "**Deposit**") in the amount of [REDACTED] in trust in an account to be released only in accordance with the provisions of this Section 2.6. The Purchaser authorizes the Proposal Trustee to disburse the Deposit in accordance with the following provisions:

- (a) if the purchase and sale of the Purchased Assets is completed in accordance with the terms of this Agreement, then the Deposit and all accrued interest, if any, shall be released from trust and applied towards payment of the Purchase Price;

- (b) if the purchase and sale of the Purchased Assets is not completed due solely to a material default by the Purchaser which is not cured, then the Deposit and all accrued interest, if any, shall be forfeited by the Purchaser as liquidated damages (and not as a penalty) in full satisfaction of any and all claims and Liabilities that the Vendor or the Proposal Trustee may have against the Purchaser in respect of such default or otherwise pursuant to this Agreement; and
- (c) if the purchase and sale of the Purchased Assets is not completed for any other reason or the Approval and Vesting Order is successfully appealed, then the Deposit and any accrued interest, if any, shall be returned forthwith to the Purchaser.

2.7 Payment of Purchase Price

The Purchase Price shall be paid and satisfied by the Purchaser at the Closing as follows:

- (1) the Deposit shall be held by the Proposal Trustee in trust until the Closing Date, after which, such amount shall be paid as above noted in Section 2.6(a);
- (2) the balance of the Purchase Price, net of the Deposit and subject to any adjustments contemplated by this Agreement, shall be paid by way of wire transfer to the Proposal Trustee on the Closing Date; and,
- (3) the cure costs arising under Section 3.2(c), if any, as of the Closing Date.

Notwithstanding anything to the contrary in this Agreement, the Proposal Trustee shall holdback [REDACTED] of the Purchase Price pending final resolution of the purchase price adjustment contemplated by Section 2.8 to account for a scenario whereby the Parties fail to reach an agreement as to the amount of the purchase price adjustment, as described in Section 2.8, and/or if there is a dispute between the Parties with respect to such purchase price adjustment. The Proposal Trustee shall provide payment to either the Vendor or the Purchaser, as the case may be, following the final determination of such purchase price adjustment.

2.8 Purchase Price Adjustment

On the Closing Date, a physical count and valuation of the Inventory will be completed by the Parties to determine the quantity of scrap by grade. If, as at the Closing Date, the value of the Inventory is greater than \$150,000.00, the Purchase Price shall be increased by the amount above \$150,000.00, on a dollar for dollar basis. If, as at the Closing Date, the value of the Inventory is less than \$150,000.00, the Purchase Price shall be reduced by the amount below \$150,000.00 on a dollar for dollar basis. The valuation of the Inventory shall be undertaken based on pricing in the Supply Agreement, including the resolution of any disputes thereto.

2.9 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets as agreed to by the Parties and set forth in **Schedule "F"** and such allocation shall be adopted for the purposes of all tax returns and filings respectively made by the Parties or on their behalf.

2.10 HST Election

At the Closing, and if available at law, the Vendor and the Purchaser shall execute jointly an election under Section 167 of the *Excise Tax Act* (Canada) to have the sale of the Purchased Assets take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the reporting period in which the sale of the Purchased Assets takes place. In the event the election is not available at law, the Purchaser shall pay and the Vendor shall collect the applicable HST payable on the sale of the Purchased Assets.

ARTICLE 3 ASSIGNMENT AND ASSUMPTION OF CONTRACTS

3.1 Assignment of Assigned Contracts

- (a) On or prior to the granting of the Approval and Vesting Order, the Purchaser may, in its sole discretion, designate any contract to which the Vendor is a party to become an Assigned Contract.
- (b) Subject to Section 3.2, on Closing the Vendor shall be deemed to have assigned the benefit of any Assigned Contract and the Purchaser shall be deemed to have assumed, all of the Vendor's Liabilities relating to such Assigned Contract arising and accruing in respect of the period after Closing and not related to any default existing at, prior to or as a consequence of the Closing or of the assignment of such Assigned Contract (the "**Assumed Contract Liabilities**"), in each case without payment of any additional consideration.

3.2 Consent Required Contracts

- (a) Nothing in this Agreement shall be construed as an agreement to assign any contract that requires consent to assign same, unless the consent, approval or waiver required to assign such contract has been given or an assignment order has been made by the Court.
- (b) The Parties shall use reasonable commercial efforts to obtain the consents, approvals and waivers required for the assignment of the contracts that are designated as Assigned Contracts. The Purchaser shall be under no obligation to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any consent, approval or waiver for any contract that requires consent to assign.
- (c) Upon request by the Purchaser, and at the Purchaser's sole expense in respect of the Motion and any cure costs arising from the assignment of a contract under any assignment order granted by the Court, the Vendor shall seek to obtain an assignment order, should the Parties not otherwise obtain any of the consents provided for in Section 3.2(b) above.

ARTICLE 4
CLOSING ARRANGEMENTS

4.1 Closing

The Closing shall take place at 4:00 p.m. EST on the Closing Date at the offices of the Solicitors for the Proposal Trustee, or at such other time on the Closing Date or such other place as may be agreed in writing by the Vendor and the Purchaser.

4.2 Vendor's Closing Deliveries

At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) The election referred to in Section 2.10 executed by the Vendor, if applicable;
- (b) A certificate of an officer of the Vendor, dated as of the Closing Date, confirming that (i) all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date and (ii) that each of the conditions precedent in Section 6.3 of this Agreement have been fulfilled, performed or waived as of the Closing Date;
- (c) The Vendor's Books and Records in its care, control and/or possession related to the Purchased Assets;
- (d) A Court certified copy of the Approval and Vesting Order and the vesting certificate relating thereto;
- (e) All such assignments, instruments of transfer, deeds, assurances, consents, registrations, and other documents executed by the Vendor as reasonably requested by the Purchaser in respect of transferring the Purchased Assets to the Purchaser and registrations in connection therewith; and,
- (f) Such other agreements, documents and instruments as may be reasonably requested by the Purchaser to complete the Transaction.

4.3 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor the following documents and payments:

- (a) The payments referred to in Section 2.7;
- (b) The election referred to in Section 2.10 executed by the Purchaser, if applicable;
- (c) A certificate of an officer of the Purchaser, dated as of the Closing Date, confirming that (i) all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date and (ii) that each of the conditions precedent in Section

6.1 of this Agreement have been fulfilled, performed or waived as of the Closing Date; and

- (d) Such other agreements, documents and instruments as may be reasonably requested by the Vendor or the Vendor's Solicitors to complete the Transaction.

4.4 Transfer of right, title and interest

The Parties hereby agree and acknowledge that the Purchaser shall be entitled to possession of the Purchased Assets, in accordance with the Approval and Vesting Order, upon payment of the Purchase Price in accordance with this Agreement.

ARTICLE 5 EMPLOYEE MATTERS

5.1 Employee Liability

The Vendor shall, immediately prior to the Closing Time, terminate the Employees, and the Vendor shall retain (i) any and all Liabilities related to such Employees, including but not limited to payment for salary, wages, bonuses, vacation pay, commissions and other compensations accruing prior to the Closing Date, and (ii) any and all Liabilities for any severance payments, damages for wrongful dismissal, back pay orders, indemnities in lieu of notice, any amounts that are could become due pursuant to Applicable Law, including without limitation the *Employment Standards Act* (Ontario), the *Occupational Health and Safety Act* (Ontario), common law and all related costs in respect of the termination of the employment of any such Employee terminated on or before the Closing Date, whether such Liabilities materialize before, during or after the Closing Date.

ARTICLE 6 CONDITIONS OF CLOSING

6.1 Purchaser's Conditions

The Purchaser shall not be obliged to complete the Transaction unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties*: The representations and warranties of the Vendor in Section 7.2 shall be true and correct at the Closing Time.
- (b) *Vendor's Compliance*: The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing and not have been breached in any material respect and

shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in this Agreement.

- (c) *Books and Records*: The Vendor shall have caused to be delivered to the Purchaser all Books and Records in its care, control and/or possession at the Closing Time.
- (d) *No Litigation*: There shall be no litigation or proceedings pending or threatened against any of the Parties hereto, or involving the Vendor's business or any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.
- (e) *Fire Inspection Order*: Items 7, 8, 16 and 25 of Inspection Order # 23-102454A of the St. Catharines Fire Services shall be materially complied with by the Closing Date.
- (f) *Approval and Vesting Order*: The Approval and Vesting Order shall have been obtained and shall not have been appealed, stayed, varied or set aside.

6.2 Condition Not Fulfilled

If any condition in Section 6.1 has not been fulfilled at or before the Closing Time, then the Purchaser in its sole discretion may either:

- (a) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement and the Deposit shall be promptly returned to the Purchaser, with interest, if any; or,
- (b) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfillment of any other condition set out in Section 6.1. Any waiver by the Purchaser must be in writing and delivered to the Vendor's Solicitors.

6.3 Vendor's Conditions

The Vendor shall not be obliged to complete the Transaction unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties*: The representations and warranties of the Purchaser in Section 7.1 shall be true and correct at the Closing;
- (b) *Purchaser's Compliance*: The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and not have been breached in any material respect and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing Time all the documents contemplated in this Agreement;

- (c) *Approval and Vesting Order*: The Approval and Vesting Order shall have been obtained and shall not have been appealed, stayed, varied or set aside;
- (d) *No Litigation*: There shall be no litigation or proceedings pending or threatened against any of the Parties hereto, or involving the Vendor's business or any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.

6.4 Conditions Not Fulfilled

If any condition in Section 6.3 shall not have been fulfilled at or before the Closing Time, then the Vendor in its sole discretion may either:

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement and, unless the condition that was not fulfilled was contained in Subsection 6.3(a) and 6.3(b), the Deposit thereon shall be promptly returned to the Purchaser and the Purchaser shall be released from all obligations under this Agreement; or,
- (b) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfillment of any other condition in Section 6.3. Any waiver by the Vendor must be in writing and delivered to the Purchaser.

6.5 Mutual Conditions

The obligations of the Parties under this Agreement are subject to the following mutual conditions precedent, it being understood that the following conditions are included for the benefit of the Parties, and may be waived, in whole or in part, in writing by the Parties at any time:

- (a) any security charging the Purchased Assets shall not have been reinstated or redeemed prior to the Closing Date; and
- (b) there shall be in effect no order, injunction, judgment, decree, ruling, writ, assessment, or arbitration award of the Court or other court of competent jurisdiction or of a relevant Governmental Authority prohibiting the consummation of the transactions contemplated hereby and which has not been withdrawn or terminated.

**ARTICLE 7
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the Transaction and acknowledging that the Vendor is entering into this Agreement in reliance upon

the representations and warranties of the Purchaser set out in this Section 7.1, the Purchaser represents and warrants to the Vendor as follows:

- (a) *Incorporation and Power*: The Purchaser is, or will be at the Closing Time, a limited partnership duly constituted under the laws of the jurisdiction of its constitution and is duly organized, validly subsisting and in good standing under such laws;
- (b) *Due Authorization*: The Purchaser has, or will have at the Closing Time, all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the Transaction and such other agreements and instruments have been, or will have been at the Closing Time, duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) *Enforceability of Obligations*: This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;
- (d) *HST/GST*: The Purchaser is a “registrant” under Part IX of the *Excise Tax Act* (Canada) and its registration number is 822465357RZ0001 or the Purchaser will be such a “registrant” at the Closing Time and will notify the Vendor of its registration number prior to such time;

7.2 Representations and Warranties of the Vendor

As a material inducement to the Purchaser’s entering into this Agreement and completing the Transaction and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 7.2, the Vendor represents and warrants to the Purchaser as follows:

- (a) *Non-Residency*: The Vendor is not a non-resident of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada);
- (b) *Authority to Sell*: Subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the right, power and authority to sell the Purchased Assets and to perform all other obligations contemplated in this Agreement, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order;
- (c) *Approval and Vesting Order*: Subject to obtaining the Approval and Vesting Order, on Closing, all of the Vendor’s right title and interests 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 including, without limiting the generality of the foregoing: (i) any encumbrances or charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system and, for greater certainty, declaring that all encumbrances affecting or relating to the Purchased Assets are expunged and discharged (other than the Permitted Encumbrances);

- (d) *HST/GST*: The Vendor is a “registrant” under Part IX of the *Excise Tax Act* (Canada) and its registration number is 724904727 RT0001;
- (e) *Offers*: There are no outstanding agreements to sell the Purchased Assets to another party other than the Purchaser;
- (f) *Location of Purchased Assets*: Unless explicitly described in this Agreement, all Purchased Assets are located at the Property,
- (g) *Encumbrances*: Subject to obtaining the Approval and Vesting Order, there are no Permitted Encumbrances other than those listed in **Schedule “E”**.

7.3 Survival of Representations and Warranties

The representations and warranties of the Purchaser and Vendor contained herein, respectively, or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing until three (3) months thereafter.

7.4 “As is, Where is”

- (a) The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is”, basis as they shall exist on the Closing Date, subject only to the representations and warranties contained herein. No representation, warranty or condition is expressed or can be implied as to title, liens, description, fitness for any particular purpose, merchantability, condition or quality in respect of any other matter or thing whatsoever.
- (b) The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to this Agreement.
- (c) The description of the Purchased Assets and Assumed Liabilities contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Vendor. Except as otherwise explicitly set forth in Section 6.2 no representation, warranty or condition has been given by the Vendor concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical

financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.

- (d) Any documents, materials and information provided by the Vendor and/or the Proposal Trustee to the Purchaser with respect to the Purchased Assets or Assumed Liabilities (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Vendor and/or the Proposal Trustee have not made and are not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Vendor and/or the Proposal Trustee and their respective affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information. The Purchaser further acknowledges that the use of the documents may not be possible without the Purchaser obtaining reliance or other assurances from the author of such documents directly and further that the documents may be subject to copyright or other property rights which may preclude their use by the Purchaser in whole or in part.

ARTICLE 8 **RISK OF LOSS**

8.1 Risk of Loss

Until the Closing, the Purchased Assets shall remain at the risk of the Vendor. In the event that the Purchased Assets, or any part thereof, are lost, stolen or materially damaged by fire or other hazard or is appropriated, expropriated or seized by any Governmental Authority, a “**Loss Event**” from the date of this Agreement until the Closing Time, provided that the Vendor shall promptly give written notice and particulars to the Purchaser of any Loss Event, and the Parties shall agree on an adjustment to the Purchase Price to account for such loss, damage, destruction, appropriation, expropriation or seizure. Notwithstanding the foregoing, the Purchaser may elect, at its sole option, in writing to the Vendor that it will either:

- (a) accept the proceeds of any insurance available or actually paid to the Vendor and apply same in respect of the Purchase Price and otherwise complete the Transaction in accordance with the terms set out in this Agreement; or
- (b) if such loss, damage, destruction, appropriation, expropriation or seizure is materially adverse to the Purchaser, as determined by the Purchaser, acting reasonably, then the Purchaser, at its sole discretion, may terminate this Agreement.

The Purchaser shall have five (5) Business Days after receiving notice from the Vendor of a Loss Event to make its election in accordance with subsection 8.1(a) and 8.1(b) above. For the purposes of this section, damage to the Purchased Assets shall be considered material if the amount of such damage is equal to or greater than \$250,000.

In the event that this Agreement is terminated in accordance with subsection 8.1(b) above, the Deposit all accrued interest, if any, shall forthwith be returned to the Purchaser, without deduction.

In the event that amount of a Loss Event is less than \$250,000, the Transaction shall be completed in accordance with the terms of this Agreement and the Purchase Price shall be adjusted accordingly or at the Purchaser's option, the Purchaser shall receive any insurance proceeds payable in connection with said damage as and when they become available.

From and after Closing, the Purchased Assets shall be at the risk of the Purchaser.

ARTICLE 9 **OTHER POST-CLOSING MATTERS**

9.1 Non-Merger

Each Party hereby agrees that all provisions of this Agreement, other than the conditions in Article 6, shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

9.2 Further Assurances

Each Party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other Party may reasonably require, for the purposes of giving effect to this Agreement.

9.3 Retention of Business Records

The Purchaser shall maintain the Business Records for three (3) years following the closing of this transaction and shall provide access to the Vendor, the Proposal Trustee (in the event the Proposal Trustee is appointed trustee in bankruptcy or receiver of the Vendor), or Canada Revenue Agency (in the event of an audit) as required.

ARTICLE 10 **TERMINATION**

10.1 Grounds for Termination

This Agreement may be terminated on or prior to the Closing Date:

- (a) by either Party upon written notice to the other Party if: (i) the motion for the Approval and Vesting Order is contested and the expiry of any appeal period of the Approval and Vesting Order has not occurred by 12:00 p.m. EST on the Outside Date, (ii) the motion for the Approval and Vesting Order is not contested and the Approval and Vesting Order has not been obtained by 12:00 p.m. EST on the

Outside Date, or (iii) the Court declines at any time to grant the Approval and Vesting Order; in each case for reasons other than a breach of this Agreement by the Party proposing to terminate the Agreement;

- (b) by the mutual written agreement of the Vendor and the Purchaser, provided however that if this Agreement has been approved by the Court, any such termination shall require either the consent of the Proposal Trustee or approval of the Court;
- (c) by written notice from the Purchaser to the Vendor in accordance with Section 8.1 (Risk of Loss);
- (d) by written notice from the Purchaser to the Vendor if there has been a material breach by the Vendor of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and such breach has rendered the satisfaction of any condition in Section 6.1 impossible by the Outside Date;
- (e) by written notice from the Vendor to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor and such breach has rendered the satisfaction of any condition in Section 6.3 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendor is not in breach of any of their obligations under this Agreement. In this case, the Vendor shall be entitled to retain the Deposit in accordance with 2.6(b); and
- (f) by the Purchaser, on the one hand, or by the Vendor, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

ARTICLE 11
GENERAL

11.1 Expenses

Each Party shall be responsible for its own legal and other expenses (including all HST imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Transaction and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

11.2 Announcements

Except as required by law, all public announcements concerning the Transaction provided for in this Agreement or contemplated by this Agreement shall be jointly approved as to form, substance and timing by the parties to this Agreement after consultation, which approval shall not be unreasonably withheld, delayed or conditioned.

11.3 Notices

- (a) Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax or other similar means of electronic communication, in each case to the applicable address set out below:

- (i) **TKC Metal Recycling Inc.**
20 Cushman Road
St. Catharines, ON L2M 6S8

Attention: Ken Baird (President)
Email: ken@tkcmetalrecycling.com

With a copy to:

Miller Thomson LLP
40 King Street West, Suite 5800
Toronto, ON M5H 3S1

Attention: Kyla Mahar and Gina Rhodes
Emails: kmahar@millerthomson.com/grhodes@millerthomson.com

and

BDO Canada Ltd.
25 Main St. West, Suite 805
Hamilton, ON L8P 1H1

Attention: Chris Mazur / Angelo Consoli
Email: cmazur@bdo.ca / aconsoli@bdo.ca

and

Cozen O'Connor LLP

40 Temperance Street, Suite 2700
Toronto, ON M5H 0B4

Attention: Steve Weisz
Email: sweisz@cozen.com

(ii) if to the Purchaser, to:

Triple M Metal LP
Suite 101 – 1 Kenview Blvd.
Brampton, Ontario L6T 5E6

Attention: Mike Barichello and Andre Kuyntjes
Email: mbarichello@triplemetal.com and akuyntjes@gg-inc.ca

- (b) Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed *or* sent before 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth (5th) Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (c) Any Party may from time to time change its address under this Section by notice to the other Party given in the manner provided by this Section.

11.4 Time of Essence

Time shall be of the essence of this Agreement in all respects.

11.5 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

11.6 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, 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.

11.7 Amendments and Waiver

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with, in the case of the Purchaser, the prior authorization of its board of directors. No waiver by either Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

11.8 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.9 Language

The Parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux presents ont exige que le present contrat et tous contrats, documents ou afferents aux presents soient rediges en langue anglaise.

11.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as an Ontario contract. Any action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby or thereby may be brought in the courts of the Province of Ontario and each party irrevocably submits and agrees to attorn to the exclusive jurisdiction of such courts in any such action or proceeding.

11.11 Successors and Assigns

No party to this Agreement shall have the right to assign any of its rights and obligations hereunder without the prior written consent of the other party hereto which consent shall not be

unreasonably withheld. The Purchaser may assign its rights and obligations under this Agreement to an affiliate of the Purchaser, provided that the Purchaser remains liable, jointly, with such affiliate for all the obligations of the Purchaser hereunder. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

11.12 No Third-Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns or as specifically referred to herein.

11.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or email PDF form and the Parties adopt any signatures received by a receiving fax machine or email PDF as original signatures of the Parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other Party an original of the signed copy of this Agreement which was so faxed or emailed.

[Signature Page Follows]

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

TKC METAL RECYCLING INC.

DocuSigned by:
By: *Kenneth Baird*
Name: Ken Baird
Title: President

I have authority to bind the corporation.

**TRIPLE M METAL LP
By its General Partner
Triple M Metal Corp.**

Signed by:
By: *Mike Barichello*
Name: Mike Barichello
Title: VP Finance

I have authority to bind the corporation.

SCHEDULE "A"
Approval and Vesting Order

District of: ON
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

THE HONOURABLE
JUSTICE ●

)
)
)

TUESDAY, THE 1ST
DAY OF OCTOBER, 2024

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

APPROVAL AND VESTING ORDER

THIS MOTION, made by TKC Metal Recycling (the “**Company**”) in connection with its Notice of Intention to Make a Proposal (“**NOI**”), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between the Company and Triple M Metal LP (the “**Purchaser**”) dated September 23, 2024, (ii) vesting in the Purchaser the Company’s right, title and interest in and to Purchased Assets as defined in the Sale Agreement (the “**Purchased Assets**”) and (iii) sealing the Confidential Appendices annexed to the Second Report of BDO Canada Limited (“**BDO**”), in its capacity as proposal trustee of the Company (in such capacity, the “**Proposal Trustee**”) dated September ●, 2024 (the “**Second Report**”), was heard this day in the Ontario Superior Court of Justice (Hamilton).

ON READING the Notice of Motion, the Affidavit of Kenneth Baird sworn September 23, 2024 and the exhibits thereto (the “**Second Baird Affidavit**”), and the Second Report, and on being advised that the secured creditors who are likely affected by the sale were given notice, and on hearing the submissions of counsel for the Company and counsel for the Proposal Trustee, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of • sworn September •, 2024, filed,

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

2. **THIS COURT ORDERS** that upon the delivery of a Proposal Trustee’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Proposal Trustee’s Certificate**”), all of the Company’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Parayeski dated August 22, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*

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

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

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

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

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

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Company;

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

7. **THIS COURT ORDERS** that the Confidential Appendices to the Second Report are hereby sealed and shall not form part of the public record until the earlier of (a) closing of the Transaction and (b) further Order of the Court.

8. **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 Proposal Trustee and its 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 Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Schedule A – Form of Proposal Trustee’s Certificate

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. Pursuant to the Notice of Intention to Make a Proposal (“**NOI**”) filed by TKC Metal Recycling Inc. (the “**Company**”), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* R.S.C. 2985, c. B-3, as amended (the “**BIA**”), BDO Canada Limited was appointed as the proposal trustee (the “**Proposal Trustee**”) of the Company.

B. Pursuant to an Order of the Court dated ●, 2024, the Court approved an asset purchase agreement (the “**Sale Agreement**”) between the Company and Triple M Metal LP (the “**Purchaser**”) dated September 23, 2024, and provided for the vesting in the Purchaser of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price (as defined in the Sale Agreement) for the Purchased Assets; (ii) that the conditions to Closing as set out in Article ● of the Sale Agreement have been satisfied or

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

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article • of the Sale Agreement have been satisfied or waived by the Company and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ October ____, 2024.

BDO CANADA LIMITED, in its capacity as Proposal Trustee of TKC Metal Recycling Inc., and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

Proceeding Commenced at Hamilton

**APPROVAL AND VESTING ORDER
(dated October 1, 2024)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Jaclyn Tarola LSO #89915Q
jtandola@millerthomson.com
Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

SCHEDULE "B"
Assigned Contracts, Leases and Licences

1. Lease Agreement
2. Salvage Yard Business Licence #NR00013.
3. Ontario Motor Vehicle Industry Council (OMVIC) approved dealership.

[Note: Schedule to be updated prior to the Closing Date]

SCHEDULE "C"
Intangible Assets

1. Historic (last two years) of data about Vendor's scrap sales and purchases, including but not limited to information stored on software used by Vendor (including Mayer).

SCHEDULE "D"
Machinery, Equipment & Office Furniture

[Note: Schedule to be updated prior to the Closing Date]

TKC Metal Recycling Inc
Lot 1 - Machinery & Equipment

ASSET DESCRIPTIONS	SERIAL NUMBER	NOTES
2012 Volvo L90G Wheel Loader c/w solid tires	VCE0L90GH00003306	13266 hours
2015 GMC Sierra 2500 SLE crew Cab TRUCK	1GT12YEG1FF604309	228000 KMs
2021 GENSCO # DTX340 ALLIGATOR SHEAR	340239	
2017 GP30N FORKLIFT c/w bolzani rotating fork clamp	AT13G01861	3882 hours
2006 LIEBHERR # A 944 C HD LITRONIC CRANE	WLHZ0194PZK031055	29499 hours
Batman Grapple for Liebherr BMG2-150-M40C		
2007 Granutech car crusher	1M9AU4027T179017	7300 hours
2019 SENNEBOGEN # 825Mc/w bateman MAG-BMG16-075-M36C	825.0.3376	4735 hours
2021 Volvo #VNR 64T300 transport truck	4V4WC9EHXMN281080	
2003 HYSTER# H110XM FORK LIFT	K005V06056A	15999 hours
2021 Mattrix 48' 5 axle drop deck dump trailer	2M9DS9597NB182502	
2008 Peterbilt Lugger Truck	2NPRLN0X98M743790	7764 engine hours
RS 130 RECYCLING CAT CUTTER C/W AGGREGATE 3.3 FOR CUTTER- 110 VOLT C/W 30' CORD		
SEDA T-REC XXL 13 RIM MACHINE MODIFIED TO 208 3 PHASE POWER		
Vortex de-pollution centre 5 pump Combi Cabinet with 5 pumps		
2019 Fano 3 axle scow (purchased from Regional Haulage)		
Tank Farm- 3 STEEL TANKS + 2 PLASTIC		
Warehouse racking - 4 rows as per drawing 21K0573D1-1		
Jiangyin Metallurgy Hydraulic Machiner Factory Shear		
ML 3000 wire stripper		
ML2 wire stripper		
Blue wire stripper		
MI-0 wire stripper		
Cash safe Saturn TL-30X # 3219- Grey c/w electronic lock- main office		
80' truck Scale		
Boxx Modular mobile Office T+A78railer 12' x 60'		
RAD COMM SCALE 80' TRUCK SCALE RADIATION SYSTEM		
Rad com steel housing x 2- 80' truck scale		
AMI 72" WIDE PALLET FORKS 72"x6"x2.5"	175232-01-07	
Adapt a Ramp Model M35000 portable loading ramp		
Non Ferrous floor Scale C/W digital readout		
4 x 40' steel sea containers - TKC yard storage		
2x Club cadet snow blower		
qty 10- 1.5 cubic yard self dumping hoppers		
qty 3 - 3 cubic yard self dumping hoppers		
qty 6- 1/2 cubic yard self dumping hoppers		
qty 19 -4'x4'x4 steel totes		
qty 6 -4'x4'x4 steel totes c/w lids & casters		
qty 4 steel upgrade cages		
Liftmaster 10,000 Lb car lift		
3x tool storage cabinet bay door area		
200 units of Cement blocks		
Security cameras		
Portable floor scale - warehouse B		
Hillman machinery roller moving skates		
Dynablast Oil fueled hot water Power Washer #H4035DGF		
DV C15TD-41 rotary screw compressor- server room		
Misc Tools- Tool crib		
5 - 1 yard Self dumping hoppers (light blue)		
Steel plate - TKC parking lot		
2001 Freightliner MCV	1FVHBAK31HH66899	145845 Miles
qty 18 - 20 cubic yard lugger bins- TKC yard		
qty 8- 12 cubic yard lugger bins- TKC yard		
qty 2 - 8 cubic yard lugger bins - TKC yard		
qty 1- 6 cubic yard lugger bins - TKC yard		

TKC Metal Recycling Inc
Lot 1 - Machinery & Equipment

ASSET DESCRIPTIONS	SERIAL NUMBER	NOTES
20 cubic yard Roll off bin		
Service Truck c/w lubrication pumps		
Wacker Nuesson PT2A sump pump		
3x tire machines warehouse B		
Volvo L90 5 yard bucket		
Radcom Hand held radiation detector		
Oxy acetylene Cylinder storage rack		
Propane storage cabinet		
Offsite assets		
2012 StokerMill copper Granulator SM5000T - 236 hours 60-700 kg/hour production; PS800/260 R preshredder + conveyour from pre shredder to granulator (located at TKC)		Located in Lockpart, New York
80' platform truck scale - Starnino yard Welland Avenue St Catharines		
Self dumping hoppers- located at customers #1 qty 7- 3/4 #SD34R self dumping hopper, Qty 5 #SD100r 1 cu yard self dumping hoppers		
qty 6 - 20 cubic yard lugger located at various customers		
qty 4 - 12 cubic yard lugger c/w lids & doors located at various customers		
qty 6 - 12 cubic yard lugger located at various customers		
qty 1- 10cubic yard lugger located at various customers		
qty 5- 8 cubic yard lugger located at various customers		

DISCLAIMER:

The Assets listed are for INFORMATION PURPOSES ONLY. Neither the Company nor the Proposal Trustee provide any representations or warranties as to the accuracy or completeness of the Information.

TKC Metal Recycling Inc
Lot 3 - Office Furniture
ASSET DESCRIPTIONS
Xerox 6515 office printer
4 x filing cabinets - located at office printer area
Operations manager desk / chair and Lenovo think centre computer, poly media phone - main office
2 x file cabinet, chair, grey desk c/w hutch - office manager main office
boardroom table c/w 4 chairs- main office
office hutch c/w microwave, nespresso coffee maker LG monitor- main office
frigidaire SS fridge - main office
2 shelf black book cabinet- main office
Stainless storage rack - safe room
Desk, chair and lenovo think centre computer- salesmen main office
Desk, chair and lenovo think centre computer, poly business media phone - spare work station main office
beige filing cabinet- scale
scale office l shaped desk, 3 x cabinets, 2 lenovo think centre computers, 2 x chairs
rad com Asus computer - scale
LG computer monitor + Dahua camera dvr
storage lockers employee change room
table + 2 chairs employee change room
Computer tower + lenovo think centre computer- non ferrous scale
black computer tower : eaton battery back up+ camera dvr+ computer switch - server room
beige cabinet c/w with safe- server room
4x office cabinets
skid x 4 office storage cabinet- racking warehouse
1 desk- warehouse B
l shaped desk 3 x chairs, hutch -2 x misc storage cabinets- yard supervisor office mobile trailer
white board - mobile trailer
boardroom table + 8 chairs - portable trailer credenza cabinet + hutch + low profile filing cabinet- mobile trailer
Stainless steel fridge- mobile trailer
table-coffee bar + 2 chairs + microwave mobile trailer
employee lunch table + 4 chairs - mobile trailer
bench + 2 chairs employee change room- mobile trailer

DISCLAIMER:

The Assets listed are for INFORMATION PURPOSES ONLY. Neither the Company nor the Proposal Trustee provide any representations or warranties as to the accuracy or completeness of the information.

SCHEDULE "E"
PERMITTED ENCUMBRANCES

None.

SCHEDULE "F"
ALLOCATION OF PURCHASE PRICE

Machinery, Equipment & Office Furniture:

Lot 1 [REDACTED]

Lot 3 [REDACTED]

Inventory - [REDACTED]

Assigned Contracts - [REDACTED]

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceedings commenced at Hamilton

AFFIDAVIT OF KENNETH BAIRD
(Sworn September 23, 2024)

MILLER THOMSON LLP
40 King Street West, Suite 5800
Toronto, Ontario
M5H 3S1, Canada

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Jaclyn Tarola LSO #89915Q
jtarola@millerthomson.com
Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

TAB 3

District of: ON
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

THE HONOURABLE
JUSTICE ●

)
)
)

TUESDAY, THE 1ST
DAY OF OCTOBER, 2024

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

APPROVAL AND VESTING ORDER

THIS MOTION, made by TKC Metal Recycling (the “**Company**”) in connection with its Notice of Intention to Make a Proposal (“**NOI**”), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between the Company and Triple M Metal LP (the “**Purchaser**”) dated September 23, 2024, (ii) vesting in the Purchaser the Company’s right, title and interest in and to Purchased Assets as defined in the Sale Agreement (the “**Purchased Assets**”) and (iii) sealing the Confidential Appendices annexed to the Second Report of BDO Canada Limited (“**BDO**”), in its capacity as proposal trustee of the Company (in such capacity, the “**Proposal Trustee**”) dated September ●, 2024 (the “**Second Report**”), was heard this day in the Ontario Superior Court of Justice (Hamilton).

ON READING the Notice of Motion, the Affidavit of Kenneth Baird sworn September 23, 2024 and the exhibits thereto (the “**Second Baird Affidavit**”), and the Second Report, and on being advised that the secured creditors who are likely affected by the sale were given notice, and on hearing the submissions of counsel for the Company and counsel for the Proposal Trustee, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn September ●, 2024, filed,

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

2. **THIS COURT ORDERS** that upon the delivery of a Proposal Trustee’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Proposal Trustee’s Certificate**”), all of the Company’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Parayeski dated August 22, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*

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

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

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

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

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

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Company;

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

7. **THIS COURT ORDERS** that the Confidential Appendices to the Second Report are hereby sealed and shall not form part of the public record until the earlier of (a) closing of the Transaction and (b) further Order of the Court.

8. **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 Proposal Trustee and its 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 Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Schedule A – Form of Proposal Trustee’s Certificate

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. Pursuant to the Notice of Intention to Make a Proposal (“**NOI**”) filed by TKC Metal Recycling Inc. (the “**Company**”), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* R.S.C. 2985, c. B-3, as amended (the “**BIA**”), BDO Canada Limited was appointed as the proposal trustee (the “**Proposal Trustee**”) of the Company.

B. Pursuant to an Order of the Court dated ●, 2024, the Court approved an asset purchase agreement (the “**Sale Agreement**”) between the Company and Triple M Metal LP (the “**Purchaser**”) dated September 23, 2024, and provided for the vesting in the Purchaser of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price (as defined in the Sale Agreement) for the Purchased Assets; (ii) that the conditions to Closing as set out in Article ● of the Sale Agreement have been satisfied or

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

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article • of the Sale Agreement have been satisfied or waived by the Company and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ October ____, 2024.

BDO CANADA LIMITED, in its capacity as
Proposal Trustee of TKC Metal Recycling Inc.,
and not in its personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

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

Proceeding Commenced at Hamilton

**APPROVAL AND VESTING ORDER
(dated October 1, 2024)**

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Jaclyn Tarola LSO #89915Q
jtacula@millerthomson.com
Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

TAB 4

Revised: January 21, 2014

District of: ON
Division No.: 07-Hamilton
Court File No. ~~_____~~: 32-3109134
Estate No.: 32-3109134

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

COMMERCIAL LIST

THE HONOURABLE)
JUSTICE ~~_____~~) ~~WEEKDAY~~ TUESDAY, THE #1ST
DAY OF ~~MONTH, 20YR~~ OCTOBER,
2024

~~BETWEEN:~~

PLAINTIFF

~~Plaintiff~~

~~-and-~~

DEFENDANT

~~Defendant~~

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

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ TKC Metal Recycling (the
“Company”) in connection with its ~~capacity as the Court-appointed receiver (the "Receiver") of~~
~~the undertaking, property and assets of [DEBTOR]~~ Notice of Intention to Make a Proposal

(“NOI”), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (the “Debtor” “BIA”), for an order (i) approving the sale transaction (the “Transaction”) contemplated by an asset purchase agreement ~~of purchase and sale~~ (the “Sale Agreement”) between the Receiver Company and ~~[NAME OF PURCHASER]~~ Triple M Metal LP (the “Purchaser”) dated ~~[DATE]~~ and appended to the Report of the Receiver dated [DATE] (the “Report”), ~~and~~ September 23, 2024, (ii) vesting in the Purchaser the Debtor Company’s right, title and interest in and to ~~the assets described~~ Purchased Assets as defined in the Sale Agreement (the “Purchased Assets”) and (iii) sealing the Confidential Appendices annexed to the Second Report of BDO Canada Limited (“BDO”), in its capacity as proposal trustee of the Company (in such capacity, the “Proposal Trustee”) dated September 23, 2024 (the “Second Report”), was heard this day ~~at 330 University Avenue, Toronto,~~ in the Ontario Superior Court of Justice (Hamilton).

ON READING the ~~Report~~ Notice of Motion, the Affidavit of Kenneth Baird sworn September 23, 2024 and the exhibits thereto (the “Second Baird Affidavit”), and the Second Report, and on being advised that the secured creditors who are likely affected by the sale were given notice, and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING]~~ Company and counsel for the Proposal Trustee, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ [NAME] sworn ~~[DATE]~~ September 23, 2024, filed[†],

[†] This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

1. ~~THIS COURT ORDERS AND DECLARES~~ that the Transaction is hereby approved,² and the execution of the Sale Agreement by the ~~Receiver~~³Company is hereby authorized and approved, with such minor amendments as the ~~Receiver~~Company and the Proposal Trustee may deem necessary. The ~~Receiver is~~Company and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. ~~THIS COURT ORDERS AND DECLARES~~ that upon the delivery of a ~~Receiver~~Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the ~~"Receiver"~~"Proposal Trustee's Certificate"), all of the ~~Debtor~~Company's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ 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"~~"Claims")⁵ including, without limiting the generality of the foregoing: (i)

²~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against~~
[79806800.1](#)

any encumbrances or charges created by the Order of the Honourable Justice [\[NAME\]Parayeski](#) dated [\[DATE\]August 22, 2024](#); and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; ~~and (iii) those Claims listed on Schedule C hereto~~ (all of which are collectively referred to as the "Encumbrances", ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) 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.

~~3. — THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

3. **4. THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the [Receiver Proposal Trustee's](#) Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale

~~the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, 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.

4. ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the ~~Receiver~~Proposal Trustee to file with the Court a copy of the ~~Receiver~~Proposal Trustee's Certificate, forthwith after delivery thereof.

5. ~~6.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the ~~Receiver~~Company is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company~~'s records pertaining to the ~~Debtor~~Company's past and current employees, ~~including personal information of those employees listed on Schedule "●" to the Sale Agreement.~~ 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 ~~Debtor~~Company.

6. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the ~~Bankruptcy and Insolvency Act (Canada)~~BIA in respect of the ~~Debtor~~Company and any bankruptcy order issued pursuant to any such applications; and

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

(c) any assignment in bankruptcy made in respect of the ~~Debtor~~Company;

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

7. ~~8.~~ **THIS COURT ORDERS AND DECLARES** that the Confidential Appendices to the Second Report are hereby sealed and shall not form part of the public record until the earlier of (a) closing of the Transaction ~~is exempt from the application~~ and (b) further Order of the ~~Bulk Sales Act (Ontario)~~Court.

8. ~~9.~~ **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 ~~Receiver~~Proposal Trustee and its 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 ~~Receiver~~Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver~~Proposal Trustee and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Revised: January 21, 2014

Schedule A — Form of ~~Receiver~~Proposal Trustee's Certificate

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

Court File No. _____

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

~~BETWEEN:~~

PLAINTIFF

Plaintiff

~~—and—~~

DEFENDANT

Defendant

RECEIVER

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

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.

PROPOSAL TRUSTEE'S CERTIFICATE

RECITALS

A. Pursuant to ~~an Order~~ the Notice of ~~the Honourable [NAME OF JUDGE]~~ of the Ontario Superior Court of Justice (Intention to Make a Proposal (“NOI”) filed by TKC Metal Recycling Inc. (the “Company”)), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act R.S.C. 1985, c. B-3, as amended* (the ~~“Court”~~) ~~dated [DATE OF ORDER], [NAME OF RECEIVER]~~ “BIA”), BDO Canada Limited was appointed as the ~~receiver~~ proposal trustee (the ~~“Receiver”~~ “Proposal Trustee”) of the ~~undertaking, property and assets of [DEBTOR] (the “Debtor”)~~ Company.

B. Pursuant to an Order of the Court dated [DATE] ●, 2024, the Court approved ~~the~~ an asset purchase agreement ~~of purchase and sale made as of [DATE OF AGREEMENT]~~ (the ~~“Sale Agreement”~~) between the ~~Receiver~~ [Debtor] Company and ~~[NAME OF PURCHASER]~~ Triple M Metal LP (the ~~“Purchaser”~~) dated September 23, 2024, and provided for the vesting in the Purchaser of the ~~Debtor~~ Company's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~ Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price (as defined in the Sale Agreement) for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ Article ● of the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Company and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Proposal Trustee.

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

THE ~~RECEIVER~~ PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the ~~Receiver~~Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section~~Article • of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Company and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the ~~Receiver~~Proposal Trustee.
4. This Certificate was delivered by the ~~Receiver~~Proposal Trustee at _____ [TIME] on _____ ~~{DATE}~~October _____, 2024.

~~{NAME OF RECEIVER}~~BDO CANADA LIMITED, in its capacity as ~~Receiver of the undertaking, property and assets of~~ ~~{DEBTOR}~~Proposal Trustee of TKC Metal Recycling Inc., and not in its personal capacity

Per: _____

Name:

Title:

Revised: January 21, 2014

Schedule B—Purchased Assets

[79806800.1](#)

DOCSTOR: 120192714

Revised: January 21, 2014

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TKC METAL RECYCLING INC.

District
Division No.
Court No.
Estate No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceeding Commenced at Hamilton

APPROVAL AND VESTING ORDER
(dated October 1, 2024)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 788
grhodes@millerthomson.com
Tel: 416.597.4321

Jaelyn Tarola LSO #89915Q
jtandola@millerthomson.com
Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

Document comparison by Workshare Compare on Monday, September 23, 2024 3:03:16 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/79589610/1
Description	#79589610v1<Legal> - model approval-and-vesting-order-EN (4)
Document 2 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/79806800/1
Description	#79806800v1<Legal> - Approval and Vesting Order (final as served Sept 23-2024)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	145
Deletions	154
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	301

TAB 5

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE)
JUSTICE ●)
TUESDAY, THE 1ST
DAY OF OCTOBER, 2024

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

ORDER

**Re: Distribution to Secured Creditors, Extension of Time to File Proposal and Approval of
Proposal Trustee’s Second Report Activities and Conduct**

THIS MOTION made by TKC Metal Recycling Inc. (the “**Company**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an Order, *inter alia*, (i) granting a forty-five (45) day extension of time to file a proposal to November 23, 2024 in accordance with the BIA; (ii) authorizing the Company to make certain Distributions (as defined and specified herein); (iii) approving the Second Report of BDO Canada Limited (“**BDO**”), in its capacity as proposal trustee of the Company (in such capacity, the “**Proposal Trustee**”), dated September ●, 2024 (the “**Second Report**”); and (iv) approving the fees and disbursements of the Proposal Trustee and its counsel as set out in the the fee affidavit of Chris Mazur sworn September ●, 2024 (the “**BDO Fee Affidavit**”) and the fee affidavit of Dilina Lallani sworn September ●,

2024 (the “**Cozen Fee Affidavit**” and collectively with the BDO Fee Affidavit, the “**Fee Affidavits**”), was heard this day in the Ontario Superior Court of Justice (Hamilton).

ON READING the Notice of Motion, the Affidavit of Kenneth Baird sworn September 23, 2024 and the exhibits thereto (the “**Second Baird Affidavit**”), the Second Report including the Fee Affidavits, and on being advised that the secured creditors who are likely affected by the Order were given notice, and on hearing the submissions of counsel for the Company and counsel for the Proposal Trustee, and those other parties present, no one else appearing although duly served as appears from the Affidavit of Service of ●, sworn September ●, 2024, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record of the Company are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Second Baird Affidavit or the Second Report, as applicable.

EXTENSION OF THE PROPOSAL PERIOD

3. **THIS COURT ORDERS** that the time for filing of the proposal by the Company is hereby extended in accordance with section 50.4(9) of the BIA by a period of forty-five (45) days up to and including November 23, 2024.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that, upon closing of the Transaction contemplated in the Sale

Agreement between the Company and Triple M Metal LP dated September 23, 2024, and approved by the Court pursuant to the Approval and Vesting Order dated October [1], 2024 and the filing of the Proposal Trustee's Certificate with the Court confirming same, and after payment of all outstanding professional fees secured by the Administration Charge and any other priority payment, the Proposal Trustee, by and on behalf of the Company, is hereby authorized to make the following distributions from available funds, as soon as practicable, to:

- (a) 1000909688 Ontario Inc. (the "**Lender**"), up to the amount of the indebtedness owing to the Lender as at the date of distribution; and
 - (b) The Toronto-Dominion Bank ("**TD**"), up to the amount of the indebtedness owing to TD as at the date of distribution,
- (together, the "**Distributions**").

APPROVAL OF THE SECOND REPORT, CONDUCT AND ACTIVITIES OF PROPOSAL TRUSTEE

5. **THIS COURT ORDERS** that the Second Report and the conduct and activities of the Proposal Trustee described therein are hereby approved, provided that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS

6. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee, and its counsel, Cozen O'Connor LLP, as set out in the BDO Fee Affidavit and the Cozen Fee Affidavit, respectively, be and are hereby approved.

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO

**SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding Commenced at Hamilton

**ANCILLARY ORDER
(dated October 1, 2024)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G

kmahar@millerthomson.com

Tel: 416.597.4303

Gina Rhodes LSO# 78849U

grhodes@millerthomson.com

Tel: 416.597.4321

Jaclyn Tarola LSO #89915Q

jtaraola@millerthomson.com

Tel: 416.597.4341

Lawyers for TKC Metal Recycling Inc.

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF TKC METAL
RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceeding Commenced at Hamilton

MOTION RECORD
(RETURNABLE OCTOBER 1, 2024)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kyla Mahar LSO#: 44182G
kmahar@millerthomson.com
Tel: 416.597.4303

Gina Rhodes LSO# 78849U
grhodes@millerthomson.com
Tel: 416.597.4321

Lawyers for TKC Metal Recycling Inc.