

**RSM Richter**

**Eighth Report of RSM Richter Inc.  
as CCAA Monitor of  
NMC Canada, Inc., 2515080 Nova Scotia  
Company and SKD Company**

**RSM Richter Inc.**  
Toronto, May 20, 2009

RSM Richter is an independent member firm of RSM International,  
an affiliation of independent accounting and consulting firms.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NMC CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY**

**EIGHTH REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY**

**May 20, 2009**

**1. INTRODUCTION**

Pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court") made on January 21, 2009, NMC Canada, Inc. ("NMC"), 2515080 Nova Scotia Company ("2515") and SKD Company ("SKD") (collectively, the "Company") commenced proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the monitor (the "Monitor"). A copy of the Initial Order can be found at Tab "1" of the Company's compendium of orders filed with the Court in these proceedings.

The Company's stay of proceedings currently expires on May 31, 2009.

## 1.1 Purposes of this Report

The purposes of this report ("Report") are to:

- a) Provide background information about the Company and these CCAA proceedings;
- b) Summarize a transaction ("Transaction") for the sale by the Company to Martinrea Fabco Metallic Canada Inc. ("Martinrea") of, *inter alia*, certain machinery and manufacturing and other equipment located at the Company's Brampton facility required in the production of the floor pan assembly and related component parts for Chrysler Canada Inc., Chrysler LLC and Chrysler Motors LLC (jointly, "Chrysler") as well as raw materials and work in process inventory (collectively, the "Assets");
- c) Recommend that this Honourable Court make an order approving the Transaction as set out in the Agreement of Purchase and Sale ("APA") appended as Exhibit A to the affidavit of John Chen, the President of NMC, and vesting the Assets in Martinrea free and clear of any and all encumbrances, claims and the like; and
- d) Approving the Monitor's activities as described in this Report.

## 1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Terms of Reference

In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company's management, the Company's advisors, the Company's books and records and discussions with its management. The Monitor has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or

other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Order.

## **2. BACKGROUND**

NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD. NMC and 2515 own 1% and 99% of SKD, respectively. In addition to SKD's Canadian manufacturing operations, automotive parts manufacturing was carried on by SKD L.P. ("SKD US") in the US and SKD de Mexico ("SKD Mexico"), S. de R.L. de C.V. in Mexico (collectively, SKD and its related entities are referred to as the "SKD Group").

The SKD Group was primarily a tier-one supplier of stampings and welded assemblies to the North American automotive industry.

Additional information concerning the Company and these proceedings is provided in the proposed monitor's report dated January 21, 2009 and the Monitor's prior reports filed in these proceedings. Copies of these reports can be found on the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com).

## **3. THE SALE PROCESS**

As described in the Monitor's previous reports filed with this Honourable Court, the Monitor conducted a sale process ("Sale Process") as required pursuant to the terms of the Initial Order.

On February 18, 2009, the deadline for submission of offers, the Monitor received two offers for certain portions of the Company's business. No going-concern offers were received for the entire business.

The Monitor had discussions with counsel for the Company's customers - being Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC, Honda Manufacturing of Alabama, LLC, Ford Motor Company and Chrysler (collectively the "Customers") - whose business the bidders wished to acquire. Counsel for the Customers advised that their clients would be re-sourcing their business to a vendor or vendors of their choosing and were therefore not interested in transitioning their business to either of the bidders. Accordingly, the Monitor advised the bidders that their offers would not be accepted.

On April 3, 2009, this Honourable Court approved the sales to certain affiliates of Martinrea of, *inter alia*, certain machinery and equipment used in connection with the production of component parts supplied to the respective Customers, as well as associated raw materials and work in process inventory. Details of the Sale Process and the prior transactions in these proceedings are provided in the Monitor's second and sixth reports to Court dated February 13, 2009 and April 1, 2009, respectively. Copies of these reports are attached (without appendices) as Appendix "B" and Appendix "C", respectively.

As at the date of this Report, the only assets remaining relating to the production of component parts for Customers are the Assets, which are located at the Company's Brampton facility and which are required for the production of components parts for Chrysler. Until recently, Chrysler had not determined where these parts would be manufactured and whether production of same would continue at the Brampton facility. During the week of May 12, 2009, Chrysler entered into an arrangement with Martinrea for the resourcing of the production of these parts to Martinrea.

#### 4. THE TRANSACTION

A summary of the terms of the Transaction is as follows:

- a) The total purchase price is \$1 million<sup>1</sup>, plus the purchase price for the raw material and work-in-process inventory (the "Inventory"), which is to be calculated immediately prior to the time of closing;
- b) The Assets include primarily machinery and equipment located at the Company's Brampton facility required in the production of the floor pan assembly and related component parts for Chrysler (the "Equipment"). The Equipment is detailed in Schedule 1.1(d) of the APA;
- c) It is contemplated that any finished goods inventory at Brampton would be purchased by Chrysler, in accordance with the terms of the Accommodation Agreement dated January 21, 2009, as amended, among the Company and the Customers;
- d) The purchase price is to be paid by Martinrea to the Monitor, as follows:
  - i. With respect to the Inventory and certain work-in-process containers, the purchase price will be paid to the Monitor on closing to be held by the Monitor pending further order of this Honourable Court.
  - ii. With respect to the Equipment, the purchase price is to be paid to the Monitor at closing to be held in trust by the Monitor for the benefit of the Company (for subsequent distribution to parties entitled to such proceeds) and Martinrea, as the case may be, and pursuant to joint directions to be provided by the Company and Martinrea to the Monitor from time-to-time (as detailed in (iii) below).
  - iii. The APA contemplates the removal of the Equipment in stages post-closing. Martinrea is to provide an allocation of the purchase price among the Equipment, which is a schedule to the APA. On removal of the Equipment (or certain of the Equipment) from the Company's premises, Martinrea and the Company are to provide the Monitor with a removal certificate/certificates confirming that Martinrea has possession of the specified Equipment and that the proceeds allocable thereto are to be released from trust to the Monitor so that the proceeds can be made available for distribution to the Company's stakeholders in accordance with a further order of the Court, to the extent that such funds are not needed to fund professional fees or the operations of the Company in the CCAA proceedings. In the event that Martinrea has not been able to remove the Equipment from the Company's premises by a date provided for in the APA, Martinrea is to be entitled to a return of the purchase price allocated to the Equipment which it was unable to remove.

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<sup>1</sup> Includes \$100,000 for certain containers.



- e) The Assets are being purchased on an “as is, where is” basis.
- f) The representations and warranties in the APA are consistent with insolvency sale transactions.
- g) The Transaction would close as soon as possible after approval of this Honourable Court.

#### 4.1 The Purchase Price

The Monitor is satisfied that the purchase price is reasonable in the circumstances.

The purchase price for the Inventory is to be calculated in a manner consistent with the terms set out in the Accommodation Agreement, previously approved by this Honourable Court.

The Company obtained an orderly liquidation value appraisal from Corporate Assets Inc. (“CAI”), an appraiser known to the Monitor. The Monitor requested that CAI provide it with a net minimum guarantee, being the guaranteed amount that CAI would pay for the owned capital assets. Net of estimated costs, the purchase price exceeds the net minimum guarantee that CAI has advised it would provide for the Assets.

The Monitor is concerned that the market for automotive equipment continues to erode and that CAI’s net minimum guarantee could be subject to reduction.

The Monitor has also considered that customer consent is required for any transaction and that, absent such consent, the Assets are likely to be liquidated. Chrysler has consented to the Transaction – it is a condition of the Transaction that Chrysler issue new purchase orders to Martinrea. The Monitor understands that Chrysler has or will issue the required purchase orders to Martinrea.

## **5. BENEFITS OF THE TRANSACTIONS**

The Monitor respectfully recommends that this Honourable Court approve the Transaction for the following reasons:

- After considering costs, the purchase price exceeds the net minimum guarantee obtained by the Monitor from CAI – CAI is well known to the Monitor;
- The Assets only have utility in the production of certain component parts for Chrysler. Chrysler consents to the Transaction – absent its consent, the Assets may have to be sold for scrap value. The purchase price thus appears to be the highest value attainable in the circumstances; and
- The Transaction allows the estate to advance toward completion – active business operations have been terminated. Going forward, professional fees and other costs related to these proceedings should decline correspondingly.

## **6. OVERVIEW OF THE MONITOR'S ACTIVITIES**

In addition to the activities detailed above and related to the above, since April 29, 2009, the date of the Monitor's seventh report, the Monitor's activities have included:

- Attending at the Company's premises on a near daily basis in order to carry out its activities in accordance with the Initial Order;
- Assisting the Company to deal with post-filing issues, including supplier issues;
- Assisting the Company to prepare weekly variance analyses for distribution to Comerica and the Customers in accordance with the terms of the Forbearance Agreement, the Accommodation Agreement and the Initial Order;
- Reviewing weekly variance analyses with the Company and its financial advisors;
- Monitoring receipts and disbursements in accordance with the provisions of the Initial Order;
- Responding to creditor inquiries regarding these proceedings;

- Reviewing amendments to the existing agreements as well as cash flow, budget and funding issues, and discussing same with the Company and its advisors, Comerica and its advisors, the Customers and their advisors and the Unions' legal counsel;
- Corresponding with the Company, the Company's counsel, the Company's financial advisors, the Customers' financial advisors, the Customers' counsel and Goodmans to deal with various matters in respect of this mandate;
- Placing on its website copies of materials filed in these proceedings;
- Dealing extensively with issues related to Brampton, its operations and the sale of its assets;
- Advancing the Maynard's transaction as detailed in Section 6 of the Monitor's Seventh Report and the sale of the Company's real estate as detailed in Section 7 of the Monitor's Seventh Report;
- Reviewing the Company's draft motion materials in connection with the subject motion;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

## 7. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(c) of this Report.

\* \* \*

All of which is respectfully submitted,



**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**

## Appendix "A"

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**AGREEMENT OF PURCHASE AND SALE**

Made as of the • day of May, 2009

Between

**SKD COMPANY, by its partners  
NMC CANADA INC. AND 2515080 NOVA SCOTIA COMPANY**

and

**MARTINREA FABCO METALLIC CANADA INC.**

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## AGREEMENT OF PURCHASE AND SALE

This Agreement is made as of the • day of May, 2009, between

**SKD Company, by its partners NMC Canada Inc.  
and 2515080 Nova Scotia Company**

(collectively, the "Vendor")

and

**Martinrea Fabco Metallic Canada Inc.**

(the "Purchaser")

### RECITALS

A. Pursuant to an order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) dated January 21, 2009 (the "**Initial Order**"), NMC Canada Inc. and 2515080 Nova Scotia Company, the general partners of the Vendor, and the Vendor were granted protection pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the



"CCAA") and RSM Richter Inc. was appointed as monitor (the "**Monitor**") in the Vendor's CCAA proceedings.

B. The Vendor was empowered by the Initial Order to conduct a sale process with respect to the assets, property and undertaking of the Vendor.

C. The Vendor wishes to sell the Assets (as defined herein) and the Purchaser wishes to purchase the Assets, as more particularly set out herein, subject to the terms and conditions hereof.

**FOR VALUE RECEIVED**, the parties agree as follows:

## **SECTION 1 – INTERPRETATION**

### 1.1 Definitions

In this Agreement:

- (a) "**Accommodation Agreement**" means the accommodation agreement entered into on January 21, 2009, as amended, among the Vendor, the Customer, Ford Motor Company, Honda of America Mfg., Inc., Honda Canada Mfg., a division of Honda Canada, Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC;
- (b) "**Agreement**" means this Agreement of Purchase and Sale;
- (c) "**Approval and Vesting Order**" has the meaning set out in Section 4.3(a);
- (d) "**Assets**" means all of the Vendor's right, title and interest in and to:
  - (i) the machinery and manufacturing and other equipment, together with all accessories, test fixtures and equipment, gauges, appurtenances, manuals and documents necessary to operate such machinery and equipment owned by the Vendor, necessary to manufacture the floor pan assembly and related component parts being produced by the Vendor for the Customer at the Premises including, for greater certainty, the machinery, manufacturing and other equipment listed on Schedule 1.1(d) hereto and the specified containers set out in Schedule 1.1(d) (the "**Equipment**");
  - (ii) the Contracts;
  - (iii) the Intellectual Property;
  - (iv) copies of all records, books, documents and databases recorded or stored by means of any device, including in electronic form, relating to the ownership or operation of the Equipment set out in (i) above, that are in the possession or under the control of the Vendor; and

- (v) all raw materials and work in process inventory used in connection with the production of the floor pan assembly and related component parts supplied to Customer by the Vendor which are both "useable" and in a "merchantable" condition (as set forth in Section 2.11), whether currently in the possession of the Vendor or in the possession of a third party (a "Bailee") holding same for or on behalf of the Vendor (collectively, the "Inventory"),

but for greater certainty, Assets do not include the Excluded Assets;

- (e) "Assumed Obligations" has the meaning set out in Section 2.4;
- (f) "Business Day" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (g) "CCAA" has the meaning set out in the Recitals hereto;
- (h) "Closing" means the successful completion of the Transaction;
- (i) "Closing Date" means May 6, 2009, or such other date as the Purchaser and Vendor shall agree upon;
- (j) "Contracts" means those contracts entered into by the Vendor and listed on Schedule 1.1(j) hereto;
- (k) "Court" means the Ontario Superior Court of Justice (Commercial List);
- (l) "Court Approval Date" has the meaning set out in Section 4.3(c);
- (m) "Customer" means, collectively, Chrysler Canada Inc., Chrysler LLC and Chrysler Motors LLC;
- (n) "ETA" means the *Excise Tax Act* (Canada);
- (o) "Excluded Assets" means, in respect of the Vendor, all of the Vendor's property and assets other than the Assets, including for greater certainty Customer Tooling (as defined in the Accommodation Agreement), all stamping presses, cranes, forklifts and non-floor pan assembly equipment, all domestic and foreign trade-marks, service marks, business names, trade names, domain names, and trading styles of the Vendor);
- (p) "Governmental Entity" means any foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization, any international treaty organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing

- (q) **"GST"** means all goods and service taxes payable under the ETA;
- (r) **"Initial Order"** has the meaning set out in the Recitals hereto;
- (s) **"Intellectual Property"** means a perpetual, royalty free non-exclusive licence to use all intellectual property of whatever nature and kind owned by Vendor and necessary for the use and operation of the Equipment and the manufacture of component parts for the Customer, including all patents, trade secrets, Software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations, processes and processing methods, technology and techniques, know-how and manuals, as more particularly listed on Schedule 1.1(s) hereto, but excluding all domestic and foreign trade-marks, service marks, business names, trade names, domain names, and trading styles of the Vendor;
- (t) **"Monitor's Certificate"** has the meaning given to that term in the Approval and Vesting Order;
- (u) **"Premises"** means the owned premises of the Vendor known municipally as 40 Holtby Avenue, Brampton, Ontario;
- (v) **"Purchaser"** means Martinrea Fabco Metallic Canada Inc.;
- (w) **"Required Consents"** means the consents listed in Schedule 1.1(w) to the extent required under the applicable Contract with respect to the assignment of such Contract by the Vendor to the Purchaser, which consents must be obtained by the Purchaser;
- (x) **"Software"** means all software owned by the Vendor and required to operate the Equipment listed in Schedule 1.1(x), including all versions in the Vendor's possession thereof and copies of all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, and all other material related to such software;
- (y) **"Time of Closing"** means 9 a.m. (EST) on the Closing Date or such other time on the Closing Date as the parties may mutually agree;
- (z) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement; and
- (aa) **"Vendor"** means SKD Company, by its partners NMC Canada Inc. and 2515080 Nova Scotia Company.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

The following Schedules are incorporated in and form part of this Agreement:

Schedule 1.1(d) – Assets

Schedule 1.1(j) – Contracts

Schedule 1.1(s) – Intellectual Property

Schedule 1.1(w) – Required Consents

Schedule 1.1(x) – Software

Schedule 2.8 – Purchase Price Allocation

Schedule 4.3(c) – Additional Parties to be Served

**SECTION 2 – SALE AND PURCHASE AND ASSIGNMENT**

2.1 Sale and Purchase of Assets

Subject to the terms and conditions hereof, the Vendor shall sell to the Purchaser and the Purchaser shall purchase the Vendor's right, title and interest in the Assets. The Purchaser acknowledges that it is not purchasing any Excluded Assets.

2.2 Assignment and Assumption of Contracts

Subject to the conditions and terms hereof, the Vendor shall assign to the Purchaser all of the Vendor's rights, benefits and interests in and to the Contracts and the Purchaser shall assume the obligations and liabilities of the Vendor under the Contracts from and after the Closing Date. For greater certainty, any obligations and liabilities incurred, accruing or coming due under or

pursuant to the Contracts after the Time of Closing shall be the obligation of the Purchaser and not the Vendor.

This Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third party if such consent has not been obtained, and such assignment or attempted assignment would constitute a breach of such Contract. In such case the Vendor will, for thirty (30) days after the Closing Date, hold the benefit of any Contract for which such consent or approval has not been obtained in trust for the Purchaser (but only to the extent that holding such benefit in trust without first having obtained the consent or approval of the other contracting party does not constitute a breach of, or result in a default under such Contract) and during the thirty (30) day period after the Closing Date the Purchaser shall use its best commercial efforts to continue to perform such Contracts. All benefits derived under any such Contract after the Time of Closing shall be for the benefit of the Purchaser, and the Vendor shall take or cause to be taken all action that the Purchaser may reasonably require to provide the Purchaser with the benefit thereof, it being understood that at such time as such consent or approval is obtained, the said Contract shall be automatically assigned to the Purchaser. Notwithstanding the foregoing, the Vendor shall only be required to hold the benefit of any Contract for which such consent or approval has not been obtained in trust for the Purchaser for a maximum of thirty (30) days after the Closing Date, and if such consent or approval to assignment is not obtained by the Purchaser from the applicable third party during such time period, the Vendor shall automatically cease to hold such Contract in trust for the Purchaser, such Contract shall not be assigned to the Purchaser, and the Vendor shall be entitled to terminate, cancel and/or repudiate such Contract.

### 2.3 "As is, Where is"

The Purchaser acknowledges that the Vendor is selling the Assets on an "as is, where is" basis as they shall exist on the Closing Date. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to or the condition of the Assets and that the Purchaser has conducted such inspections of the condition of and title to the Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions. For greater certainty, the Purchaser acknowledges that the Vendor is only selling its rights, title and interest in assets contained in the LX2 or smaller floor pan line to the extent the Vendor has any right, title, and interest in such assets and the Purchaser acknowledges that the Customer may have an interest in such assets.

#### 2.4 Assumed Obligations and Retained Liabilities

The Purchaser agrees that on the Closing Date it will assume and thereafter satisfy, discharge, perform and fulfill, and forever indemnify and save harmless the Vendor from and against, only the following liabilities, commitments and obligations (the "**Assumed Obligations**"):

- (a) liabilities, commitments and obligations under the Contracts and arising after the Time of Closing, excluding any liabilities that relate to any violation, default or non-performance at or prior to the Time of Closing; and
- (b) liabilities, commitments and obligations in respect of the Assets arising or incurred from and after the Time of Closing and not related to events occurring prior to the Time of Closing.

Except for the Assumed Obligations, the Vendor shall retain, and the Purchaser shall not assume, nor be responsible or liable with respect to any costs, expenses, liabilities and obligations of the Vendor, or claims of any other nature against the Vendor or related to the Excluded Assets, whether fixed, contingent or otherwise and whether known or unknown (collectively, the "**Retained Liabilities**").

#### 2.5 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable for any other liabilities or obligations of the Vendor.

#### 2.6 Purchase Price

The purchase price for the Assets shall be the sum of:

- (a) Cdn\$900,000 plus applicable taxes for the Assets other than: (i) the Inventory; and (ii) the specified containers set out in Schedule 1.1(d);
- (b) Cdn\$100,000 plus applicable taxes for the specified containers set out in Schedule 1.1(d); and
- (c) the purchase price for the Inventory as calculated pursuant Section 2.11 plus applicable taxes,

(collectively, the "**Purchase Price**").

#### 2.7 Payment of the Purchase Price

At or prior to the Time of Closing, the Purchaser shall pay the Purchase Price by bank draft drawn upon a Canadian chartered bank or by wire transfer to a bank account specified, in advance, by the Monitor, as follows:

- (a) Cdn\$100,000 plus applicable taxes for the specified containers set out in Schedule 1.1(d) plus the portion of the Purchase Price relating to the Inventory plus applicable taxes, shall be paid to the Monitor (to be held by the Monitor pending further order of the Court); and
- (b) Cdn\$900,000 plus applicable taxes, representing the portion of the Purchase Price attributable to the Assets other than Inventory, shall be paid to the Monitor, to be held in trust in an interest-bearing account for the benefit of the Vendor (for subsequent distribution to parties entitled to such proceeds) and the Purchaser, as the case may be.

In the case of any funds paid by wire transfer, payments shall occur upon confirmation by the Monitor of its receipt of the funds wired in the designated bank account.

#### 2.8 Allocation of Purchase Price

The Vendor and the Purchaser agree to allocate the Purchase Price among the Purchased Assets in accordance with Schedule 2.8 and to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation.

#### 2.9 Taxes

The Purchaser shall pay on the Closing Date, in addition to the Purchase Price, all applicable federal, provincial, state or other taxes exigible in connection with the purchase and sale of the Assets including, without limitation, goods and services tax. Alternatively, where applicable, the Purchaser shall have the option to furnish the Vendor with appropriate exemption certificates in form and substance to the Vendor, acting reasonably.

The Purchaser agrees to and hereby indemnifies and saves the Vendor and the Monitor harmless from and against all claims and demands for payment of the above-mentioned taxes including penalties and interest thereon and any liability or costs incurred as a result of any failure by the Purchaser to pay such taxes when due.

#### 2.10 Excluded Assets

For greater certainty, the Assets shall not include any of the Excluded Assets. If any of the Excluded Assets or any proceeds in respect thereof shall at any time come into the possession of or under the control of the Purchaser or any of its employees, officers or agents, such assets and/or proceeds, as applicable, shall be held by the Purchaser in trust for the benefit of the Vendor. Within two Business Days from the date on which the Purchaser or any of its employees, officers or agents, becomes aware that it has come into possession of or has obtained control over any of such assets and/or proceeds, as applicable, the Purchaser shall (a) by notice in writing delivered to the Vendor and the Monitor in accordance with the provisions hereof, so advise the Vendor, and (b) forthwith account and deliver over to the Vendor, at the Purchaser's cost, any such assets and forthwith account and deliver over to the Monitor, at the Purchaser's cost, any such proceeds. If any proceeds in respect of any Assets (other than the Purchase Price or insurance proceeds) come into the possession of or under the control of the Vendor or any of

its employees, officers or agents, such assets and/or proceeds, as applicable, shall be held by the Vendor in trust for the benefit of the Purchaser. Within five Business Days from the date on which the Vendor or any of its employees, officers or agents, comes into possession of or obtains control over any of such assets and/or proceeds, as applicable, the Vendor shall (a) by notice in writing delivered to the Purchaser, in accordance with the provisions hereof, so advise the Purchaser and (b) forthwith account and deliver over to the Purchaser any such assets and/or proceeds.

#### 2.11 Inventory

The purchase price for the Inventory shall be calculated as follows:

- (a) for raw materials, 100% of the Vendor's actual invoiced cost; and
- (b) for work in process, 85% of the Vendor's costs, which costs shall be calculated on a percentage of completion basis based on the existing price called for in the purchase order for the component parts in issue.

The Purchaser and the Vendor shall conduct a physical inventory ("**Physical Inventory**") for the purposes of identifying the Inventory that is usable and merchantable, which Physical Inventory and determination shall be made immediately prior to the Time of Closing and evidenced by the Purchaser making payment for the applicable Inventory.

For purposes of this Agreement, the term "useable" means all Inventory that, on the date that the Physical Inventory is undertaken, is (i) not obsolete, as reasonably determined by the Purchaser in accordance with applicable industry standards for the Inventory at issue; and (ii) useable by the Purchaser in the production of component parts for the Customer, as reasonably determined by the Purchaser. The term "merchantable" means merchantable in conformance with all applicable purchase order specifications.

### SECTION 3 – REPRESENTATIONS AND WARRANTIES

#### 3.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a corporation duly formed and subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree



which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;

- (d) other than filings and approvals contemplated in this Agreement, there is no requirement for the Purchaser to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any governmental authority or other regulatory body as a condition to the lawful consummation of the Transaction;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the transactions contemplated and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success; and
- (f) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Purchaser and constitutes or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof.

### 3.2 Vendor's Representations

The Vendor represents and warrants to the Purchaser as follows:

- (a) SKD Company is a general partnership duly formed, organized and subsisting under the laws of the Province of Ontario;
- (b) the Vendor has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations hereunder and the execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly authorized by all necessary action on the part of the Vendor;
- (c) this Agreement and all other documents contemplated hereunder to which the Vendor is or will be a party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Vendor and constitutes or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Vendor, as the case may be, enforceable in accordance with the terms hereof or thereof;

- (d) subject to the granting of the Approval and Vesting Order, the Vendor has the right to enter into this Agreement and to complete the Transaction;
- (e) the Vendor is a Canadian partnership as that term is defined in the *Income Tax Act* (Canada); and
- (f) the Vendor is registered under Part IX of the ETA and its registration number is 12300 8963 RT0001.

#### SECTION 4 – CONDITIONS

##### 4.1 Conditions – Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) At or prior to the Time of Closing:
  - (i) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Time of Closing with the same effect as though made on and as of the Time of Closing;
  - (ii) the Vendor shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Time of Closing; and
  - (iii) no action or proceedings shall be pending to restrain or prohibit the completion of the Transaction contemplated by this Agreement;
- (b) at or prior to the Time of Closing the Purchaser shall have received all Required Consents on terms acceptable to the Purchaser, acting reasonably;
- (c) at or prior to the Time of Closing, no person shall attempt to restrain, enjoin or interfere with the removal of the Assets (whether by legal process or otherwise) by the Purchaser; and
- (d) at or prior to the Time of Closing, the Purchaser shall have received confirmation, on terms acceptable to it in its sole discretion, that the Customer will and is able to issue new purchase orders in favour of the Purchaser and to transfer any required tooling and equipment owned by the Customer from the Premises.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

#### 4.2 Conditions – Vendor

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) at or prior to the Time of Closing:
  - (i) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Time of Closing with the same effect as though made on and as of the Time of Closing;
  - (ii) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Time of Closing;
  - (iii) no action or proceedings shall be pending to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
- (b) the Vendor shall not have lost its ability to convey the Assets or any part thereof;
- (c) at or prior to the Time of Closing, the Vendor shall be satisfied that it has sufficient funding to permit the Vendor to pay all obligations, insurance, heat, electricity and other occupation costs in relation to the Premises to and including the end of June, 2009; and
- (d) at or prior to the Time of Closing, the Customer shall have paid to the Monitor, in trust for the Vendor: (i) all of the accounts payable owed by the Customer to the Vendor as of the Closing Date; and (ii) the purchase price (plus applicable taxes) for the Inventory (for the purpose of this Section 4.2(d) as defined in the Accommodation Agreement) to be purchased by the Customer pursuant to the Accommodation Agreement. Additionally, prior to the Time of Closing, the Customer shall have paid to the Seller USD \$193,000 for the costs of operating the Premises for the month of May, 2009.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing.

#### 4.3 Mutual Conditions

The obligations of the Vendor and the Purchaser are subject to the conditions that at or prior to the Time of Closing:

- (a) the Vendor shall have obtained all necessary consents, in form and substance satisfactory to the Vendor in its sole discretion, to the sale of the Assets as required under the Accommodation Agreement and the Access and Security

Agreement between, amongst others, SKD Company and the Customer dated January 21, 2009, as amended;

- (b) the Vendor and Purchaser shall have met and agreed upon the process for the detachment and removal of any Equipment, or any appurtenance or accessions to any Equipment, that is/are affixed to either land or building, including the disposition of any ventilation, electric or water lines, pipe, ducts and hosing, racks and rails, as well as the repair of any openings left by or damage caused to any ceiling, roof, walls or floors occasioned by such removal;
- (c) at or prior to May 21, 2009, or such later date as the Vendor and Purchaser may agree (the "**Court Approval Date**"), an order shall have been obtained from the Court on notice to all persons on the service list in the Vendor's CCAA proceedings, all other persons having a security interest in the Assets registered under the *Personal Property Security Act* of Ontario and any other persons listed on Schedule 4.3(c) to this Agreement, approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Vendor in the Assets free and clear of all liens, security interests and other encumbrances, which order (the "**Approval and Vesting Order**") shall be in form and substance satisfactory to the Purchaser, the Vendor and the Monitor, acting reasonably; and
- (d) at the Time of Closing, the Approval and Vesting Order shall not be stayed or vacated, or varied in a manner not acceptable to both the Vendor and the Purchaser, no appeal of the Approval and Vesting Order shall have been commenced and there shall be no action or proceeding pending or threatened to restrain or prohibit the completion the Transaction.

The parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser.

#### 4.4 Non-Satisfaction of Conditions

- (a) If any condition set out in this Section 4 is not satisfied or performed on or prior to the Closing Date, the party for whose benefit the condition is inserted may:
  - (i) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
  - (ii) elect on written notice to the other party to terminate this Agreement.

## SECTION 5 – CLOSING

### 5.1 Closing

The completion of the Transaction shall take place at the offices of Wildeboer Dellelce LLP (Toronto Office), counsel to the Purchaser, on the Closing Date at the Time of Closing or as otherwise determined by mutual agreement of the parties in writing.

### 5.2 Purchaser's Deliveries on Closing Date

At or before the Time of Closing, the Purchaser shall execute and/or deliver to the Vendor or the Monitor, as applicable, the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment to the Monitor in full of the Purchase Price;
- (b) payment to the Monitor, or evidence of payment, of applicable federal and provincial taxes or alternatively, appropriate exemption certificates, as required by Section 2.9;
- (c) a bill of sale, and, if applicable and requested, an agreement providing for the assignment and/or assumption of a Contract;
- (d) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Time of Closing, with the same effect as though made on and as of the Time of Closing;
- (e) an acknowledgement dated the Closing Date, that each of the conditions precedent in Sections 4.1 and 4.3 of this Agreement have been fulfilled, performed or waived as of the Time of Closing; and
- (f) such further and other documentation as is referred in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

### 5.3 Vendor's Deliveries on Closing Date

At or before the Time of Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a bill of sale, and, if applicable, an agreement providing for the assignment and/or assumption of a Contract;
- (b) a specific non-exclusive licence to use the Intellectual Property;
- (c) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this agreement are true as of the Time

of Closing, with the same effect as though made on and as of the Time of Closing;

- (d) an acknowledgement dated the Closing Date, that each of the conditions precedent in Sections 4.2 and 4.3 of this Agreement have been fulfilled, performed or waived as of the Time of Closing; and
- (e) a true copy of the Approval and Vesting Order.

With respect to conveyances of title to the Equipment that occur subsequent to the Closing Date, a bill of sale shall be executed by the Purchaser and the Vendor as Equipment is removed from the Premises.

#### 5.4 Removal of Assets from Premises

Notwithstanding anything to the contrary herein, title to any particular piece of Equipment shall remain with the Vendor until such time as the Purchaser or a Purchaser Representative (as defined in Section 5.4(c)) takes possession of such Equipment free of restraint, injunction or interference (whether by legal process or otherwise), with such possession being deemed to occur the moment such Equipment leaves the Premises.

- (a) Concurrently with the removal of any Equipment listed on Schedule 1.1(d) by the Purchaser from the possession or control of the Vendor, a representative of the Vendor and Purchaser shall each execute a certificate (the "**Removal Certificate**") identifying the Equipment listed on Schedule 1.1(d) being removed, identifying the purchase price of the Equipment being removed based on the values set forth in Schedule 1.1(d), and directing the Monitor to release from trust that portion of the Purchase Price attributable to such Equipment identified in the Removal Certificate.

Subject to the Purchaser providing evidence of insurance to cover any potential damages that might be incurred by the Purchaser removing the Assets, Vendor shall provide access to the Premises to the Purchaser for a period that commences following the Time of Closing on the Closing Date and ends at 5:00 p.m. on the earlier of: (a) 20<sup>th</sup> Business Day following the Closing Date; or (b) June 30, 2009 (the "**Removal Period**"), for the purposes of the Purchaser completing the removal of the Assets purchased under this Agreement, which removal shall be on the following terms.

- (b) The Vendor shall provide access to the Premises for the purpose of completing the Transaction at such time and on such dates as the Purchaser shall require, provided that the Purchaser provides reasonable prior written notice of same to the Vendor. For greater certainty, nothing herein shall limit the time of day during which the Purchaser or the Purchaser's Representatives (as hereinafter defined) shall be permitted access to the Premises. The Vendor shall, at all times as the Purchaser or the Purchaser's Representatives are present at the Premises, ensure that one or more of the Vendor's employees are present.

- (c) The Purchaser agrees that it and its invitees, employees, contractors and agents (the "**Purchaser Representatives**") shall act in a prudent and responsible manner while attending at any Premises and such Premises shall be left by the Purchaser in the same state of repair as existed at the commencement of the Removal Period. The Purchaser and all Purchaser Representatives shall be fully insured for any activities they perform or undertake in relation to the removal of the Assets, including for any loss, damage or injury to the Premises, any property or assets situated on the Premises or any employees, contractors or invitees of the Vendor or Purchaser.
- (d) The Purchaser agrees not to detach or remove from the Premises any base building, plumbing, heating, ventilating, lighting equipment, wiring or electrical panels and services, or other building services, without the prior agreement of the Vendor or an order of the Court.
- (e) The Purchaser shall be responsible at its sole cost and expense, for the following:
  - (i) removal of the Assets from the Premises together with any associated protective barriers and bollards and all process cabling, plumbing, piping, ductwork servicing the Equipment back to the base building services at their respective main distribution points;
  - (ii) leaving the portion of the Premises from or through which any Equipment is removed in a clean and broom-swept condition, including conducting any floor cleaning required as a result of the removal of the Equipment; and
  - (iii) without limiting any other provisions of this Section 5.4, shearing off any protruding bolts remaining after removal of the Equipment, repairing and properly restoring any holes to any roof, ceiling, wall or floor and any other damages caused to Premises due to the removal of any Equipment, and properly capping at each respective main distribution point all process ventilation, compressed air, gas and electrical connections relating to the Equipment, at all times using properly licensed, certified and qualified trades people.
- (f) The Vendor and the Purchaser, acting reasonably, agree to conduct inspections of each of the Premises to identify the state of repair (i) prior to the Purchaser's removal of any Assets and (ii) on one or more occasions following the entry onto the Premises by the Purchaser, or the Purchaser's Representatives, including a final inspection on the last date of the Removal Period (the "**Exit Date**"). During the final inspection on the Exit Date, the Vendor and Purchaser shall identify and record any damage or required restoration to any Premises caused during the Removal Period which the Purchaser is responsible to repair pursuant to this Agreement. If there is a dispute as to damage or required restoration to any Premises, the Vendor and the Purchaser shall promptly work

in good faith to resolve such dispute, provided that if such dispute is not settled within three (3) Business Days, either the Vendor or the Purchaser may seek a determination of responsibility for such damage by the Court.

- (g) The Purchaser undertakes to repair at its sole expense forthwith, but in any event, before or within seven days' following the expiry of the Removal Period, all damages caused by the Purchaser and the Purchaser Representatives relating to the Removal of the Assets. The Purchaser further agrees to indemnify and hold harmless the Vendor from and against, all claims, demands, damages, losses, actions and costs incurred or arising from or in any way related to any loss or damage, suffered or incurred, by any Purchaser's Representative.

#### 5.5 Incomplete Removal of Equipment

If prior to June 30, 2009 the Purchaser is prevented from taking possession of Equipment in the manner described in Section 5.4 hereof (other than as a result of its own actions or omissions or its breach of this Agreement), the Purchaser shall have the option on written notice to the Vendor and the Monitor to terminate this Agreement with respect to the Purchaser's obligation to purchase any remaining Equipment that has not been removed from the Premises on the date the written notice is delivered to the Vendor as set forth in Section 6.2 (but for greater certainty all other obligations of the Purchaser under this Agreement, including indemnity obligations, shall continue). In the event the Purchaser exercises such option, the Purchaser and the Vendor shall jointly direct the Monitor to release from trust to the Purchaser that portion of the Purchase Price attributable to such Equipment not removed based on the values set forth in Schedule 1.1(d).

If on June 30, 2009 the Purchaser has not taken possession of all of the Equipment in the manner described in Section 5.4 hereof and the Vendor has not arranged for adequate funding (in the Vendor's sole discretion) to continue providing the Purchaser with access to the Premises, the Vendor shall have the option on written notice to the Purchaser and the Monitor to terminate this Agreement with respect to the Vendor's obligation to sell any remaining Equipment that has not been removed by the Purchaser from the Premises on the date the written notice is delivered to the Purchaser as set forth in Section 6.2 (but for greater certainty all other obligations of the Vendor under this Agreement, including indemnity obligations, shall continue). In the event the Vendor exercises such option, the Purchaser and the Vendor shall jointly direct the Monitor to release from trust, to be held by the Monitor for distribution as directed by the Court that portion of the Purchase Price attributable to such Equipment not removed based on the values set forth in Schedule 1.1(d).

#### 5.6 Purchaser's Acknowledgement

The Purchaser acknowledges that the Vendor is selling its rights, benefits and interests, if any, in and to the Assets pursuant to the Approval and Vesting Order. The Purchaser agrees to purchase and accept the rights, benefits and interests of the Vendor in and to the Assets pursuant to and in accordance with the terms of this Agreement, the bill of sale, any assignment and assumption agreement delivered pursuant to this Agreement and the Approval and Vesting Order.



The Purchaser acknowledges that neither the Vendor nor the Monitor has an obligation to deliver physical possession of the Assets to the Purchaser and shall not be required to incur any costs in connection with the removal of the Assets.

#### 5.7 Possession of Assets

The Vendor shall remain in possession of the Assets (other than the Equipment) until the Time of Closing. At the Time of Closing, the Purchaser shall take possession of the Assets (other than the Equipment) where situate at the Time of Closing. In no event shall title to the Assets (other than Equipment) be vested, sold, assigned, transferred or set over in or to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied, the Purchaser has satisfied all delivery requirements outlined in Section 5.2 and a Monitor's Certificate has been filed with the Court.

The Vendor shall remain in possession of the Equipment until such time as the same have been removed by the Purchaser in the manner contemplated by the Section 5.4 hereof. Upon removal of the Equipment to the location specified in Section 5.4 hereof, the Purchaser shall take possession of and title to the Equipment. In no event shall title to the Equipment be vested, sold, assigned, transferred or set over in or to the Purchaser until the conditions set out in the Approval and Vesting Order and in Section 5.4 hereof have been satisfied, the Purchaser has satisfied all delivery requirements outlined in Section 5.2 and a Monitor's Certificate has been filed with the Court. The Vendor acknowledges that it has an obligation to permit the removal of the Equipment from the Premises by the Purchaser, provided however, that the Vendor shall not be required to incur any costs (other than compensation of its employees) in connection with the removal of the Equipment.

#### 5.8 Access to Assets

The Purchaser may have reasonable access to the Assets located at the any Premises, as the case may be, during normal business hours on Business Days prior to the Time of Closing for the purpose of enabling the Purchaser to conduct such physical and other tests and inspections of the Assets as it deems appropriate. Such tests and inspections shall only be conducted in the presence of a representative of the Monitor or the Vendor, if so required, at the discretion of the Vendor. The Purchaser further agrees to indemnify and hold harmless the Vendor from and against, all claims, demands, damages, losses, actions and costs incurred or arising from or in any way related to any loss or damage, suffered or incurred, by any Purchaser's Representative.

#### 5.9 Risk

The Assets shall be and remain at the risk of:

- (a) the Vendor until (i) the Time of Closing in the case of Assets other than Equipment; and (ii) delivery of each joint direction of the Vendor and Purchaser contemplated in Section 5.4 in the case of Equipment; and
- (b) the Purchaser from and after the (i) the Time of Closing in the case of Assets other than Equipment; and (ii) delivery of each joint direction of the Vendor and Purchaser contemplated in Section 5.4 in the case of Equipment.

Notwithstanding the foregoing, the Purchaser shall bear the risk of loss with respect to Equipment damaged by it or a Purchaser's Representative during the dismantling and removal process (and there shall be no reduction in the Purchase Price). If, prior to the relevant time of the transfer of title and risk, the Assets shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the Transaction (or if the Closing Date has already occurred, the portion of the Transaction involving the removal of Equipment after the date such Equipment is substantially damaged). Such option shall be exercised within 15 days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 days of the Closing Date) in which event this Agreement shall be terminated automatically (but if such event which substantially damages or destroys Assets by fire or other casualty does not occur until after the Closing Date, the Purchaser may only rescind this Agreement with respect to the Purchaser's obligation to purchase any remaining Equipment that to the date of the written notice has not been removed from the Premises and otherwise the Purchaser's obligations hereunder survive). If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. If any dispute arises under this section as to whether damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined in accordance with Section 5.10 herein.

#### 5.10 Dispute Resolution

If any dispute arises (a) under Section 5.9 as to whether any damage or destruction is substantial or with respect to the amount of any abatement, or (b) with respect to any other matter related to the Transaction, such dispute will be determined by the Court in the Vendor's CCAA proceedings, or by such other person or in such other manner as the Court may direct.

#### 5.11 Termination

(a) This Agreement may be terminated by:

- (i) the written agreement of the Vendor and the Purchaser;
- (ii) the Purchaser or the Vendor pursuant to Section 4.4(a);
- (iii) the Purchaser pursuant to Section 5.9.

Additionally, this Agreement may be terminated in part in accordance with Section 5.5

(b) If this Agreement is terminated pursuant to Sections 4.4(a) or by the Purchaser prior to the Closing Date pursuant to Section 5.9, or if the parties mutually agree in writing to terminate this Agreement, then:

- (i) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end (other than the indemnification obligations in Section 5.8 which shall survive); and

- (ii) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

#### 5.12 Breach by Purchaser

If the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser.

### **SECTION 6 – GENERAL**

#### 6.1 Further Assurances

Each of the parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

#### 6.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax, addressed in the case of the Purchaser, as follows:

Martinrea International Inc.  
30 Aviva Park Drive  
Vaughan, ON L4L 9C7

Attention: Rob Wildeboer  
Telephone No.: (416) 749-0314  
Fax No.: (905) 264-2937

with a copy to:

Wildeboer Dellelce LLP  
Suite 800  
Wildeboer Dellelce Place  
365 Bay Street  
Toronto, ON M5H 2V1

Attention: Robert Wortzman  
Facsimile: (416) 361-1790  
Email: rwortzman@wildlaw.ca

and in the case of the Vendor, as follows:

SKD Automotive Group  
1450 W. Long Lake Rd.

Suite 210  
Troy, MI 48098

Attention: John Chen  
Facsimile: (248) 267-9669  
E-Mail: jchen@skdautomotive.com

SKD Automotive Group  
1965 Pratt Boulevard  
Elk Grove Village, IL 60007

Attention: Vytas Ambutas  
Facsimile: (847) 806-7244  
E-Mail: vambutas@nmlp.com

with a copy to:

Lang Michener LLP  
Brookfield Place, 181  
Bay Street, Suite 2500  
Toronto, ON M5J 2T7

Attention: Sheryl E. Seigel  
Facsimile: (416) 365-1719  
Email: sseigel@langmichener.ca

with a copy to:

RSM Richter Inc. in its capacity as monitor of  
SKD Company

200 King Street West, Suite 1100,  
Toronto, ON M5H 3T4

Attention: Bobby Kofman  
Telephone No.: 416 932-6228  
Fax No.: 416 932-6200

with a copy to:

Goodmans LLP  
250 Yonge Street, Suite 2400  
Toronto, ON M5B 2M6

Attention: Joseph Latham  
Telephone No.: 416 597-4211  
Fax No.: 416 979-1234

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day, and if transmitted by fax after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

### 6.3 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser or by their respective solicitors.

### 6.4 Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

### 6.5 Survival

The representations, warranties and covenants of the parties hereto contained in this Agreement shall survive Closing without limitation of time.

### 6.5 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor. The Purchaser shall, without the obligation to obtain prior written consent of the Vendor, be entitled to assign this Agreement or all or any part of its rights or obligations hereunder to any one or more of its direct or indirect subsidiaries and provided further that Purchaser shall be entitled to designate one or more of its direct or indirect subsidiaries to receive the Assets and assume the Assumed Obligations hereunder, provided that notwithstanding any assignment, the Purchaser shall continue to be liable to the Vendor and its successors and assigns for any default in performance by any permitted assignee of its obligations hereunder.

### 6.6 Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the parties with respect to the subject matter and supersede all prior negotiations and understandings. This Agreement may not be amended or modified in any respect except by written instrument executed by the parties.

### 6.7 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

#### 6.8 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

#### 6.9 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 therein and each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### 6.10 Monitor's Capacity

The Monitor is acting in its capacity as Monitor of the Vendor and shall have no personal or corporate liability under this Agreement.

#### 6.11 Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor or the Monitor on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendor against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

6.12 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 constitute one and the same agreement. Transmission by facsimile or electronic transmission in "pdf" format of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

**The parties have executed this Agreement.**

**SKD COMPANY, an Ontario general partnership,  
by its partners NMC CANADA INC. and 2515080  
NOVA SCOTIA COMPANY**

**NMC CANADA INC.**

By: \_\_\_\_\_

Name: John Chen

Title: President

**2515080 NOVA SCOTIA COMPANY**

By: \_\_\_\_\_

Name: John Chen

Title: President

**MARTINREA FABCO METALLIC CANADA  
INC.**

By: \_\_\_\_\_

Name: Rob Wildeboer

Title: Chairman

**Schedule 1.1(d) – Assets**

References to "CAI Item #" in this Schedule 1.1(d) are references to the corresponding list and description of equipment for each of such Premises as set forth in the appraisal report prepared by Corporate Assets Inc. dated February 20, 2009, a copy of which has been provided by the Vendor to the Purchaser.

**BRAMPTON**

40 Holtby Avenue  
Brampton, Ontario

CAI ITEM #	CUSTOMER	PURCHASE PRICE	PURCHASE PRICE INCLUSIVE OF GST (5%)
1	Chrysler	\$882,000	\$926,100
11	Chrysler	\$3,000	\$3,150
12	Chrysler	\$1,500	\$1,575
13	Chrysler	\$1,500	\$1,575
14	Chrysler	\$3,500	\$3,675
38 <sup>(1)</sup>	Chrysler	\$6,500	\$6,825
39 <sup>(1)</sup>	Chrysler	\$2,000	\$2,100
<b>TOTAL</b>		<b>\$900,000</b>	<b>\$945,000</b>

<sup>(1)</sup> Listed under equipment located at 6495 Tomken Road, Mississauga, this equipment was moved from Tomken Road to 40 Holtby Avenue, Brampton, Ontario subsequent to February 20, 2009 for use in the floor pan.

The specified containers are the following:

Where Used	Description	Dimensions	QTY @ Brampton	QTY @ MTB
4780763AA	BLANK PALLET	30" x 41.5" x 34"	-	24
5065202/3AC	Special Rack	96" x 56" x 78.5"	30	-
5065202/3	BLANK PALLET	58" x 81.5" x 25"	-	24
4780787AB	Special Rack	90" x 61" x 51"	107	-
4780787AB	BLANK PALLET	40" x 60" x 24"	-	43
5112846/7AA	BLANK PALLET	58" x 81.5" x 25"	-	14
5112858AA	BLANK PALLET	40" x 60" x 26"	-	10
5112691AA	BLANK PALLET	48" x 80" x 28"	11	11
5112840AA	BLANK PALLET	30" x 60" x 25"	-	10
4780832/3	BLANK PALLET	40" x 41" x 26"	-	30

Total

148

166

Purchase price \$100,000. Purchase price inclusive of GST (5%) \$105,000.



**Schedule 1.1(j) - Contracts**

1. Licenses for software embedded on the Equipment shall be assigned to the extent the Vendor is permitted to assign such licenses.

**Schedule 1.1(s) – Intellectual Property**

Nil.

**Schedule 1.1(w) – Required Consents**

Nil.

**Schedule 1.1(x) – Software**

Nil.

**Schedule 2.8 – Purchase Price Allocation**

1. Equipment - **\$900,000**
  - The price allocated to each specific piece of Equipment is as listed in Schedule 1.1(d).
  - \$0.00 is allocated to the Seller's interest in assets contained in the LX2 or smaller floor pan line.
2. Equipment - \$100,000 for the specified containers set out in Schedule 1.1(d)
3. Intellectual Property - \$0.00
4. Contracts - \$0.00
5. Inventory - Price as set forth in Section 2.11

**Schedule 4.3(c) – Additional Parties to be Served**

**Additional Service List for Vesting Order / Sale Approval**

**NMC Canada Inc.**

**Secured Parties & Addresses (PPSA):**

Orlando Corporation  
6205 Airport Road, Suite 500, Building B, Mississauga, ON L4V 1E3

Orion Properties Ltd.  
500-6205 Airport Road, Mississauga, ON L4V 1E3

Comerica Bank  
200 Bay Street, Suite 2210, Royal Bank Plaza, South Tower, Toronto, ON M5J 2J2

**Lessor & Address:**

Stellarbridge Management Inc.  
111 Creditstone Road, Concord ON L4K 1N3

**SKD Company**

**Secured Parties & Addresses (PPSA):**

Orlando Corporation  
6205 Airport Road, Suite 500, Building B, Mississauga, ON L4V 1E3

Orion Properties Ltd.  
500-6205 Airport Road, Mississauga, ON L4V 1E3

Integrated Distribution Systems LP  
O/A Wajax Industries 16745-111 Avenue, Edmonton, AB T5M 2S4

CBSC Capital  
100-1235 North Service Rd. W., Oakville, ON L6M 2W2

CBSC Capital Inc.  
#100, 1235 North Service Rd. West, Oakville, ON L6M 2W2

Comerica Bank  
200 Bay St., Ste 2210, Royal Bank Plaza, South Tower, Toronto, ON M5J 2J2

**2515080 Nova Scotia Company**

**Secured Parties & Addresses (PPSA):**

Orlando Corporation  
6205 Airport Road, Suite 500, Building B, Mississauga, ON L4V 1E3

Orion Properties Ltd.  
500-6205 Airport Road, Mississauga, ON L4V 1E3

General Electric Canada Equipment Finance G.P.  
5500 North Service Rd., 8<sup>th</sup> Floor, Burlington, ON L7L 6W6

Comerica Bank  
200 Bay St., Ste 2210, Royal Bank Plaza, South Tower, Toronto, ON M5J 2J2

**SKD Automotive Group Milton Division**

**Secured Parties & Addresses (PPSA):**

Answer Precision Tool Inc.  
190 Washburn Drive, Kitchener, ON N2R 1S2

**Creditor Parties & Addresses (Executions):**

Roberto Costantino  
161 Lio Avenue, Woodbridge, ON L4H 2R9

Tony Wong  
109 Angelica Avenue, Richmond Hill, ON L4S 1T8

**SKD Brampton**

**Secured Parties & Addresses (PPSA):**

Ready Machinery & Equipment [Canada] Inc.  
8080 Lawson Road, R.R. #4, Milton, ON L9T 2M1

**Unions (Notice to be provided in manner previously set forth in SKD CCAA filings)**

National Automobile, Aerospace, Transportation and General Workers of Canada (C.A.W.) and its Local 1285

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)

Teamsters Local Union No. 419



## Appendix "B"

**RSM Richter**

**Second Report of RSM Richter Inc.  
as CCAA Monitor of  
NMC Canada, Inc., 2515080 Nova Scotia  
Company and SKD Company**

**RSM Richter Inc.**  
Toronto, February 13, 2009

RSM Richter is an independent member firm of RSM International,  
an affiliation of independent accounting and consulting firms.

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Appendix "A"	Accommodation Agreement
Appendix "B"	Proposed Monitor's Report (without appendices)
Appendix "C"	First Chen Affidavit (without exhibits)
Appendix "D"	The Subordinated Participations Agreement

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NMC CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY**

**SECOND REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
NMC CANADA INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY**

**February 13, 2009**

**1. INTRODUCTION**

Pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court") made on January 21, 2009, NMC Canada Inc. ("NMC"), 2515080 Nova Scotia Company ("2515") and SKD Company ("SKD") (collectively, the "Company") commenced proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the monitor (the "Monitor"). A copy of the Initial Order can be found at Tab "1" of the Company's compendium of orders, filed with the Court in these proceedings.

The Company's stay of proceedings currently expires on February 19, 2009.

## 1.1 Purposes of this Report

The purposes of this report ("Report") are to:

- a) Provide background information about the Company and these CCAA proceedings;
- b) Provide an update on the status of the sale process ("Sale Process") being conducted by the Monitor pursuant to the terms of the Initial Order;
- c) Recommend that this Honourable Court make an order:
  - Granting the Company's request for an extension of its stay of proceedings from February 19, 2009, the date that the current stay expires, to February 27, 2009; and
  - Approving the Monitor's actions and activities, as described in this Report and the prior reports of the Monitor filed with this Honourable Court.

## 1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Terms of Reference

In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company's management, the Company's advisors, the Company's books and records and discussions with its management. The Monitor has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

## 2. BACKGROUND

NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD. NMC and 2515 own 1% and 99% of SKD, respectively. In addition to SKD's Canadian manufacturing operations, automotive parts manufacturing is carried on by SKD L.P. in the US ("SKD US") and SKD de Mexico, S. de R.L. de C.V. in Mexico ("SKD Mexico") (collectively, SKD US, SKD Mexico, SKD and related entities are referred to as the "SKD Group").

The SKD Group is primarily a tier one supplier of stampings and welded assemblies to the North American automotive industry.

At the commencement of the CCAA proceedings, the Company had approximately 661 employees (approximately 192 salaried employees and approximately 469 hourly employees). The hourly employees are represented by three unions, the National Automobile, Aerospace, Transportation and General Workers of Canada and its Local 1285 (the "CAW"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (the "USW") and Teamsters Local Union No. 419 (the "Teamsters") (collectively these unions being the "Unions").

Prior to the commencement of the CCAA proceedings, the Company, Comerica Bank ("Comerica") and the Customers (as defined in Section 3 below) negotiated an accommodation agreement (the "Accommodation Agreement"), which, *inter alia*, sets out the terms pursuant to which the Company will continue to supply to the Customers, the Customers' terms of payment and the mechanism pursuant to which the Customers will fund the Company' operations. The Accommodation Agreement (including the Access and

Security Agreement) was approved by this Honourable Court. A copy of the Accommodation Agreement is attached as Appendix "A".

Additional information concerning the Company, its creditors and its financial position, can be found in the report filed on January 21, 2009 with this Honourable Court by Richter as proposed Monitor of the Company (the "Proposed Monitor's Report"), the affidavit of John Chen, the President of NMC, sworn January 21, 2009 (the "First Chen Affidavit"), and the affidavit of Mr. Chen sworn February 13, 2009 (the "Second Chen Affidavit"). The Proposed Monitor's Report (without appendices) and the First Chen Affidavit (without exhibits) are provided in Appendices "B" and "C", respectively. The Second Chen Affidavit was filed with the Company's motion materials in connection with this motion.

### **3. THE COMPANY'S ACTIVITIES**

Following the issuance of the Initial Order, the Company, with the assistance of the Monitor (where necessary), communicated with each of the Company's major stakeholder groups, including suppliers and employees. The Company has secured the cooperation of the majority of its stakeholders and the business is now operating without disruption, as it has (for the most part) since the date of the Initial Order.

Since the date of the Initial Order, the Company's activities have included the following:

- Convening meetings with its employees;
- Negotiating with suppliers and service providers regarding the terms on which goods and services are to be provided to the Company and paid for by the Company during these proceedings;
- Corresponding with and reporting to Comerica and the Company's major customers, being Ford Motor Company ("Ford"), Chrysler Canada Inc. and Chrysler LLC (jointly, "Chrysler") and Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, "Honda"), (Ford, Chrysler and Honda are referred to as the "Customers");



- Corresponding with the Unions to provide information related to these proceedings;
- Terminating six salaried employees;
- Working with the Customers to establish inventory bank requirements and commencing the building of the inventory banks;
- Working with the Company's advisors to prepare variance analyses and cash flow forecasts as required pursuant to the terms of the Accommodation Agreement;
- Addressing various issues and inquiries made by creditors and suppliers of the Company; and
- Assisting the Monitor with the Sale Process, as detailed in Section 4 below.

#### 4. SALE PROCESS

The Monitor is conducting the Sale Process as required pursuant to the terms of the Initial Order. The deadline for submission of offers is February 18, 2009.

The following is a summary of the Monitor's activities in connection with the Sale Process:

- Prior to and immediately following the commencement of these proceedings, the Monitor researched and prepared a list of 139 prospective purchasers (approximately 95 strategic parties and 44 financial investors). Certain of these parties were brought to the attention of the Monitor by the Company and its advisors;
- The Monitor prepared an interest solicitation letter that it circulated to the prospective purchasers. Attached to this letter was a confidentiality agreement ("CA");
- The Monitor prepared a confidential information memorandum ("CIM") that provides an overview of the Company's business, assets and Sale Process for prospective purchasers to review upon execution of a CA. Eight (8) parties executed a CA and received the CIM;
- The Company and the Monitor worked together to have information assembled in an electronic data room. The Monitor facilitated due diligence requests received from prospective purchasers. Approximately seven (7) prospective purchasers performed diligence in the data room. As of the date of this Report, one prospective purchaser attended at the Company's premises to tour the facilities and to meet with the plant managers and the Monitor. Two other plant visits are scheduled with prospective purchasers; and

- The Monitor also made available in the data room a soft copy of the form of offer. The form of offer was drafted as an asset purchase agreement. To the extent relevant, the Monitor recommended that prospective purchasers submit their offers to the Monitor in this form, or substantially in this form.

As summarized in the Proposed Monitor's Report, prior to the commencement of these proceedings, Management was in negotiations to sell SKD US and SKD Mexico to a party interested in those entities. During those negotiations, it became apparent that certain customers may favour a different purchaser ("Prospective Purchaser"), as it was believed that the Prospective Purchaser could provide a global solution; that is, one buyer for the business and assets of SKD US, SKD Mexico and the Company. Discussions among the Company, certain of the Customers and the Prospective Purchaser have continued throughout these proceedings, in parallel with the Sale Process.

A meeting among the Customers, the Company, Comerica, the Prospective Purchaser and the Monitor was convened in Detroit, Michigan on February 10, 2009. During the meeting, varying degrees of support were expressed for a transaction with the Prospective Purchaser. As at the date of this Report, it is unclear if the terms of an agreement will be reached with the Prospective Purchaser to acquire the business and assets of any or all of SKD US, SKD Mexico and SKD Canada. Provided a consensus could be reached for the sale of the Company's business and assets, and the value and structure of the transaction was acceptable, the Monitor has advised that it would consider an offer from the Prospective Purchaser, which would be subject to the approval of this Honourable Court. The Monitor is cognizant that an offer which is supported by all Customers would make it virtually impossible for any other party to submit an acceptable offer. The Monitor is not in a position at this time to make such a recommendation, as unanimous Customer support has not been obtained.

The Initial Order requires that the Company return to Court on or before February 25, 2009, to seek this Honourable Court's approval of a sale transaction (if such transaction has been completed). The Monitor understands that the Company will bring another motion prior to the end of February in order to, *inter alia*, provide the Court with a Sale Process update and to consider the next steps in these proceedings.

## **5. CASH FLOW**

As at February 11, 2009, Comerica is owed a principal amount of approximately US\$12.1 million, excluding interest, costs and expenses, and excluding Customer funding, which is by way of subordination participations in the Comerica facility. Customer participations are purchased pursuant to an amended and restated subordinated participations agreement entered into among Comerica, the Customers and General Motors Corporation on January 21, 2009 (the "Subordinated Participations Agreement"). A copy of the Subordinated Participations Agreement is attached as Appendix "D". Total Customer funding since the commencement of these proceedings is approximately US\$4.7 million. Accordingly, the total secured indebtedness under the Comerica facility (including the Customer funding) was approximately US\$16.8 million as at February 11, 2009.

Pursuant to the forbearance agreement ("Forbearance Agreement"), the maximum borrowing limit under the Comerica facilities is US\$18 million, plus the amount of subordinated participations. The maximum Customer funding available to the Company pursuant to the budget appended to the Accommodation Agreement is US\$8.8 million.

The Company's cash flow projection for the period ending February 27, 2009 was appended to the First Chen Affidavit. The projected cash flow reflects the Customers' operations through to February 27, 2009. The cash flow reflects that the Company has sufficient funding for the extension period. The Monitor believes that the cash flow projection is reasonable.

The Company, its advisors and the Monitor are working with the Customers to finalize the terms of a cash flow for at least 30 days beyond the end of February, 2009. Should there be agreement among all the parties on funding and other matters, as well as other terms of an extension, the Monitor understands that the Company would seek an application in late February, 2009 to extend the stay of proceedings.

## **6. COMPANY'S REQUEST FOR AN EXTENSION**

The Company is seeking an extension of the stay of proceedings to February 27, 2009.

The Monitor supports the Company's request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence;
- It should not prejudice any employee or creditor, as arrangements are in place to pay post-filing services and supplies;
- Comerica and the Customers, the principal economic stakeholders in these proceedings, support the extension;
- It would allow the Company the opportunity to comply with its obligations under the Accommodation Agreements; and
- It would allow the Monitor the opportunity to complete the Sale Process.

## 7. OVERVIEW OF THE MONITOR'S ACTIVITIES

The Monitor's activities to date have included:

- Attending at the Company's premises on a near daily basis in order to carry out its mandate in accordance with the Initial Order;
- Assisting the Company to deal with numerous post-filing issues, including supplier issues;
- Assisting the Company to prepare weekly variance analyses for distribution to Comerica and the Customers in accordance with the terms of the Forbearance Agreement, the Accommodation Agreement and the Initial Order;
- Reviewing weekly variance analyses and weekly cash flow projections with the Company and its advisors;
- Monitoring receipts and disbursements in accordance with the provisions of the Initial Order;
- Responding to creditor inquiries regarding these proceedings;
- Causing to be mailed on January 27, 2009, the CCAA notice to the Company's known creditors;
- Drafting and finalizing the Monitor's first report to Court in respect of the Company's motion brought on January 29, 2009 to compel a vendor to comply with the terms of the Initial Order;
- Working with the Company, Goodmans and the Customers' financial advisors, to deal with various supplier issues;
- Attending at the "all hands" meeting on February 10<sup>th</sup> meeting in Detroit, Michigan;
- Carrying out the Sale Process as detailed herein;
- Placing on its website copies of materials filed in these proceedings;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

**8. CONCLUSION AND RECOMMENDATION**

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in cursive script that reads "RSM Richter Inc." followed by a period.

**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**

## Appendix "C"

**RSM Richter**

**Sixth Report of RSM Richter Inc.  
as CCAA Monitor of  
NMC Canada, Inc., 2515080 Nova Scotia  
Company and SKD Company**

RSM Richter Inc.  
Toronto, April 1, 2009

RSM Richter is an independent member firm of RSM International,  
an affiliation of independent accounting and consulting firms.



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Appendix "B"	Form of Agreement of Purchase and Sale with respect to Ford Assets
Appendix "C"	Form of Agreement of Purchase and Sale with respect to Chrysler Assets
Appendix "D"	Form of Bill of Sale with respect to Sundry Ford Assets
Appendix "E"	Second Report of the Monitor dated February 13, 2009
Appendix "F"	Form of Union Agreement with USW, including escrow agreement as Exhibit 1 thereto
Appendix "G"	Form of Union Agreement with CAW, including escrow agreement as Exhibit 1 thereto
Appendix "H"	Form of Union Agreement with Teamsters, including escrow agreement as Exhibit 1 thereto

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NMC CANADA, INC. AND 2515080 NOVA SCOTIA COMPANY**

**SIXTH REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY**

**April 1, 2009**

**1. INTRODUCTION**

Pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court") made on January 21, 2009, NMC Canada, Inc. ("NMC"), 2515080 Nova Scotia Company ("2515") and SKD Company ("SKD") (collectively, the "Company") commenced proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the monitor (the "Monitor"). A copy of the Initial Order can be found at Tab "1" of the Company's compendium of orders filed with the Court in these proceedings.

The Company's stay of proceedings currently expires on April 30, 2009.

## 1.1 Purposes of this Report

The purposes of this report ("Report") are to:

- a) Provide background information about the Company and these CCAA proceedings;
- b) Detail the following transactions:

- The sale to Martinrea Jonesville LLC ("Martinrea Jonesville"), of the business and assets of the Company related to the Company's programs for Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC and Honda Manufacturing of Alabama, LLC (collectively, "Honda"), (the business and assets of Honda proposed to be sold being the "Honda Assets" and the transaction pursuant to which the Honda Assets are proposed to be sold being the "Honda Transaction");
- The sale to Martinrea International Inc. ("Martinrea International") of the business and assets of the Company related to programs for Ford Motor Company ("Ford") (the business and assets of Ford proposed to be sold being the "Ford Assets" and the transaction pursuant to which the Ford Assets are proposed to be sold being the "Ford Transaction");
- The sale to Martinrea International of the business and assets of the Company related to certain programs for Chrysler Canada Inc. and Chrysler LLC (jointly, "Chrysler") (the business and assets of Chrysler proposed to be sold being the "Specified Chrysler Assets" and the transaction pursuant to which the Specified Chrysler Assets are proposed to be sold being the "Chrysler Transaction"); and
- The sale of sundry Ford assets (the "Sundry Ford Assets") to Ford (the "Second Ford Transaction");

(Hereinafter, Martinrea Jonesville and Martinrea International are referred to as the "Purchaser"; Honda, Ford and Chrysler are referred to as the "Customers"; the Honda Transaction, the Ford Transaction and the Chrysler Transaction are referred to as the "Transactions"; and the Honda Assets, the Ford Assets and the Specified Chrysler Assets are referred to as the "Purchased Assets").

- c) Recommend that this Honourable Court make an order:
  - Approving the Honda Transaction as documented in the agreement of purchase and sale substantially in the form provided in Appendix "A" (the "Honda APA");

- Approving the Ford Transaction as documented in the agreement of purchase and sale substantially in the form provided in Appendix "B" (the "Ford APA");
- Approving the Chrysler Transaction as documented in the agreement of purchase and sale substantially in the form provided in Appendix "C" (the "Chrysler APA" and collectively with the Honda APA and the Ford APA, the "APAs");
- Approving the Second Ford Transaction as documented in the bill of sale substantially in the form provided in Appendix "D";
- Vesting the Honda Assets in Martinrea Jonesville free and clear of all encumbrances;
- Vesting the Ford Assets and the Chrysler Assets in Martinrea International, free and clear of all encumbrances;
- Vesting the Sundry Ford Assets in Ford free and clear of all encumbrances;
- Approving the Union Agreements (as defined in Section 4.2 below) to be entered into between the Company and each of the unions (being, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local (United Steelworkers) (the "USW"), the National Automobile, Aerospace, Transportation and General Workers of Canada (C.A.W.) Local 1285 (the "CAW") and Teamsters Local Union No. 419 (the "Teamsters"); (the USW, the CAW and the Teamsters are collectively referred to as the "Unions"));
- Approving the escrow agreements to be entered into among the Company, the Monitor and each of the Unions with respect to funds to be held in trust by the Monitor to fund payments to be made to the unionized employees pursuant to the Union Agreements (the "Union Escrow Agreements"), subject to certain protections being provided to the Monitor and the Customers in connection therewith (as detailed below); and
- Approving the Monitor's activities as described in this Report.

## 1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

### **1.3 Terms of Reference**

In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company's management, the Company's advisors, the Company's books and records and discussions with its management. The Monitor has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Order.

## **2. BACKGROUND**

NMC and 2515 are the general partners of SKD. The only assets and liabilities of NMC and 2515 relate to SKD. NMC and 2515 own 1% and 99% of SKD, respectively. In addition to SKD's Canadian manufacturing operations, automotive parts manufacturing was carried on by SKD L.P. ("SKD US") in the US and SKD de Mexico ("SKD Mexico"), S. de R.L. de C.V. in Mexico (collectively, SKD and its related entities are referred to as the "SKD Group").

The SKD Group is primarily a tier-one supplier of stampings and welded assemblies to the North American automotive industry.

Additional information concerning the Company and these proceedings is provided in the proposed monitor's report and the Monitor's five reports filed in these proceedings. Copies of these reports can be found on the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com).

### **3. THE SALE PROCESS**

As described in the Monitor's earlier reports filed with this Honourable Court, the Monitor conducted the sale process ("Sale Process") as required pursuant to the terms of the Initial Order.

On February 18, 2009, the deadline for submission of offers, the Monitor received two offers for certain portions of the Company's business. No going-concern offers were received for the entire business.

The Monitor had discussions with counsel to the Customers whose business the bidders wished to acquire. Counsel for these Customers advised that their clients would be re-sourcing their business to a vendor or vendors of their choosing and were therefore not interested in transitioning their business to either of the bidders. Accordingly, the Monitor advised the bidders that their offers would not be accepted. Additional details regarding the Sale Process are provided in the Monitor's second report to Court dated February 13, 2009 (the "Second Report"). A copy of the Second Report is attached (without appendices) as Appendix "E".

#### 4. THE TRANSACTIONS

A summary of the terms of the Transactions is as follows:

- a) The total purchase price is \$3.1 million, plus the purchase price for the raw material and work-in-process inventory (the "Inventory"), which is to be calculated immediately prior to the time of closing, pursuant to the terms set out in the APAs (the "Purchase Price"). The Purchase Price as it relates to the Purchased Assets, excluding the Inventory, is as follows:
  - Honda Transaction: \$500,000;
  - Ford Transaction: \$1.3 million; and
  - Chrysler Transaction: \$1.3 million.
- b) The Purchased Assets include, *inter alia*, primarily machinery and equipment (in each case as listed on Schedule 1.1(d) of the respective APAs (the "Equipment")) used in connection with the production of "component parts" supplied to the respective Customers, as well as the Inventory. It is contemplated that finished goods inventory would be purchased by the Customers in accordance with the terms of the Accommodation Agreement dated January 21, 2009, as amended, among the Company, the Customers and Comerica Bank (the "Accommodation Agreement");
- c) The Purchase Price is to be paid by the Purchaser to the Monitor, as follows:
  - i. With respect to the Inventory and in the case of Chrysler, certain work-in-process containers, the Purchase Price will be paid to the Monitor on closing to be held by the Monitor pending further order of this Honourable Court;
  - ii. With respect to the Purchased Assets, other than Inventory (and in the case of Chrysler, certain work-in-process containers), the Purchase Price will be paid to the Monitor at closing to be held in trust by the Monitor for the benefit of the Company (for subsequent distribution to parties entitled to such proceeds) and the Purchaser, as the case may be, and pursuant to joint directions to be provided by the Company and the Purchaser to the Monitor from time to time (as detailed in (iii) below); and
  - iii. The APAs contemplate the removal of the Equipment in stages post-closing. The Purchaser is to provide an allocation of the Purchase Price among the Equipment, which is a schedule to each APA. On removal of the Equipment (or certain of the Equipment) from the Company's premises, the Purchaser and the Company are to provide the Monitor with a removal certificate confirming that the Purchaser has possession of the Equipment and that the proceeds allocable to



the Equipment (or certain of the Equipment) are to be released from trust to the Monitor so that they can be made available for distribution to the Company's stakeholders in accordance with a further order of the Court, to the extent that such funds are not needed to fund professional fees or the operations of the Company in the CCAA proceedings. In the event that the Purchaser has not been able to remove the Purchased Assets from the Company's premises by a date provided for in the respective APAs, the Purchaser is to be entitled to a return of the Purchase Price allocated to the Equipment which it could not remove;

- d) As a condition to closing, the Company and each of the Unions are required to enter into binding agreements, satisfactory to the Company and the Monitor, regarding, *inter alia*: (i) payment of the Company's obligations to the unionized employees in respect of severance and termination obligations; (ii) the maintenance of health benefits for a period of time following termination of the employees; and (iii) certain agreements with respect to the Company's registered pension plans relating to the unionized employees. Details related to these agreements are provided in Section 4.2 below;
- e) The Purchased Assets are being purchased on an "as is, where is" basis;
- f) The representations and warranties in the APAs are generally consistent with insolvency sale transactions; and
- g) The Transactions would close as soon as possible after approval of this Honourable Court.

#### 4.1 The Purchase Price

The Monitor is satisfied that the Purchase Price is reasonable in the circumstances. The Purchase Price as it relates to Inventory is to be calculated in a manner consistent with the terms set out in the Accommodation Agreement, previously approved by this Honourable Court.

The Company obtained an orderly liquidation value appraisal from Corporate Assets Inc. ("CAI"), an appraiser known to the Monitor. The Monitor requested that CAI provide it with a net minimum guarantee, being the guaranteed amount that CAI would pay for the Company's owned capital assets. The Purchase Price exceeds the value of the net minimum guarantee that CAI has advised it would provide for the Purchased Assets. The Monitor is

therefore satisfied that the Purchase Price in respect of each of the Transactions is reasonable in the circumstances.

In considering the Purchase Price, the Monitor has also considered that the Customers' consent is required for any transaction and that, absent their consent, the equipment is likely to be liquidated, because Customer support for a buyer may not be forthcoming. Also, with the continuing erosion of the automotive sector, there is a risk that automotive equipment may decline in value if these sales are not concluded, as the Monitor has witnessed in other recent automotive insolvencies in which it has been involved.

The Monitor notes that the Purchase Price in each instance is payable to the Monitor, to be held by the Monitor in accordance with the terms summarized in 4(c) above. The Forbearance Agreement with Comerica Bank, the Company's first secured creditor, indicates that all cash inflows are to be paid to it and that it reserves the right, in its sole discretion, to determine the application of the proceeds of all unusual or extraordinary items or to hold same as cash collateral. The Monitor believes that is it appropriate for the proceeds to be held by the Monitor as set out above for a number of reasons, including: (i) certain of the proceeds are not released from trust until the assets are delivered to the Purchaser; (ii) Comerica holds cash collateral sufficient to cover the entirety of its direct advances to the Company and there are additional receivables to be collected by the Company which will be applied to reduce the Company's facility with Comerica; (iii) the collection of accounts receivable and other non-Transaction amounts will continue to be paid to Comerica in the normal course; and (iv) the Monitor will disburse the funds in accordance with directions from this Court at a later time, which will include a payment to Comerica if appropriate. For the foregoing reasons, the Monitor recommends that this Court approve the foregoing arrangements.

#### 4.2 The Unions and Union Agreements

The Purchaser and the Company have been negotiating with the Unions regarding, *inter alia*: (i) payment of the Company's obligations to the unionized employees in respect of severance and termination obligations; (ii) the maintenance of health benefits for a period of time following termination of the employees; and (iii) certain agreements with respect to the Company's registered pension plans relating to the unionized employees. An agreement has been reached among the relevant parties pursuant to which approximately \$10 million in the aggregate (the "Settlement Amount") is to be made available to the Unions in respect of these obligations. A condition to the payment of the Settlement Amount is that the Company will enter into a separate agreement with each of the Unions (collectively the "Union Agreements"), the principal terms of which are as follows:

- The Union Agreements are subject to ratification by the respective Unions, which is to be confirmed in writing on or before March 31, 2009;
- The Union Agreements are subject to the approval of this Honourable Court;
- Payment to any employee under the Union Agreements will be made by the Monitor, on the Company's behalf and at its direction, within 14 days of notification to the Monitor of such employee's termination date;
- Among other things, the Unions acknowledge that payments made pursuant to the Union Agreements are in full satisfaction of any and all amounts that may be owing to the unionized employees on account of termination and severance pay and notice under the *Employment Standards Act, 2000*, the respective collective bargaining agreement and any other applicable statute, and warrant and agree that they will have no further claims for any termination and severance obligations against the Company or any third party. The Unions release and discharge the Company and third parties from any and all other claims, disputes and grievances of the Unions and their member employees relating to termination and severance obligations or any other matter that is the subject of: (i) the Union Agreements; (ii) the interpretation, application, or operation of the respective collective agreements; and (iii) the employment and termination of employment of employee members, including under applicable law;

- The Union Agreements provide for the maintenance of health benefits for a period of three months following termination of the employees; and
- The Unions agree that notwithstanding the terms of the respective collective bargaining agreements, no further contributions or payments will be required to be paid or funded by the Company in respect of the Company's pension plans following termination of the unionized employees and, as applicable, that the defined benefit pension plans maintained by the Company for Union members can be wound up.

Copies of the Union Agreements are attached as Appendices "F", "G" and "H".

The Union Escrow Agreements, which form Exhibit 1 to the respective Union Agreements, contemplate that the Settlement Amount will be paid in trust by the relevant parties to the Monitor, in its capacity as escrow agent ("Escrow Agent"), and not in its corporate or personal capacity. Funds from the Settlement Amount will be disbursed by the Monitor, on the Company's behalf, and at its direction, to employees within 14 days of notification to the Monitor of their termination and in accordance with the terms of the Union Escrow Agreements. The Monitor will be entitled to its fees for acting as Escrow Agent as part of the fees of the Monitor in the CCAA proceedings. The parties have further agreed that by merely acting as escrow agent and making the payments contemplated by the Escrow Agreements, the Monitor will not be nor will it be construed to be the employer of any employees of SKD Company and further that the protections in favour of the Monitor under the Initial Order will be extended in all respects to the Monitor in its capacity as Escrow Agent and that the parties will seek an order from this Honourable Court that such protections are extended to the Monitor in its capacity as Escrow Agent.

## 5. BENEFITS OF THE TRANSACTIONS

The Monitor respectfully recommends that this Honourable Court approve the Transactions with the Purchaser for the following reasons:

- The Transactions are commercially reasonable in the circumstances;
- The Purchase Price exceeds the net minimum guarantee obtained by the Monitor from a reliable party which is known to the Monitor;
- It results in the payment of approximately \$10 million to the unionized employees, collectively, in respect of severance and termination pay obligations and certain health benefit amounts, which, absent the completion of the Transactions, is unlikely to be available to them in their entirety; and
- The Transactions are supported by the Customers, in their capacity as secured lenders, and the interests of which are subordinate to those of Comerica.

## 6. THE SECOND FORD TRANSACTION

There are certain Ford programs which Ford determined would not be transferred to the Purchaser. Accordingly, Ford has elected to exercise its option as provided in the Accommodation Agreement to purchase certain Designated Equipment (as defined in the Accommodation Agreement), being the Sundry Ford Assets.

The terms of the Second Ford Transaction are as follows:

- The purchase price for the Sundry Ford Assets is approximately US\$99,000 (the "Ford Purchase Price"), which would be paid to the Monitor on closing;
- The Sundry Ford Assets are being purchased on an "as is, where is" basis;
- The representations and warranties in the Ford bill of sale are generally consistent with insolvency sale transactions; and
- The Second Ford Transaction would close as soon as possible after approval of this Honourable Court.

The Monitor is satisfied that the Ford Purchase Price is reasonable in the circumstances and it is consistent with the mechanism to determine the purchase prices, as set out pursuant to Section 6.2 of the Accommodation Agreement. The Ford Purchase Price also exceeds the orderly liquidation value of the assets provided by CAI.

## **7. OVERVIEW OF THE MONITOR'S ACTIVITIES**

In addition to the activities detailed above and related to the above, since March 27, 2009, the date of the Monitor's fifth report, the Monitor's activities have included:

- Attending at the Company's premises on a near daily basis in order to carry out its activities in accordance with the Initial Order;
- Assisting the Company to deal with post-filing issues, including supplier issues;
- Assisting the Company to prepare weekly variance analyses for distribution to Comerica and the Customers in accordance with the terms of the Forbearance Agreement, the Accommodation Agreement and the Initial Order;
- Reviewing weekly variance analyses with the Company and its financial advisors;
- Monitoring the Company's receipts and disbursements in accordance with the provisions of the Initial Order;
- Responding to creditor inquiries regarding these proceedings;
- Reviewing the Company's draft motion materials in respect of a motion returnable on March 31, 2009;
- Reviewing amendments to the existing agreements as well as cash flow, budget and funding issues, and discussing same with the Company and its advisors, Comerica and its advisors, the Customers and their advisors and the Unions' legal counsel;
- Corresponding with the Company, the Company's counsel, the Company's financial advisors, the Customers' financial advisors, the Customers' counsel and Goodmans to deal with various matters in respect of this mandate;

- Placing on its website copies of materials filed in these proceedings;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

## 8. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(c) of this Report.

\* \* \*

All of which is respectfully submitted,



**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
NMC CANADA, INC., 2515080 NOVA SCOTIA COMPANY  
AND SKD COMPANY  
AND NOT IN ITS PERSONAL CAPACITY**