



# NEFCO Furniture Ltd.

First report of the Interim Receiver

January 26, 2009

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# 1 Introduction

By Order of the Manitoba Court of Queen's Bench dated December 15, 2008, Deloitte & Touche Inc. ("Deloitte" or "Interim Receiver") was appointed as Interim Receiver over all of the assets, undertaking and property of NEFCO Furniture Ltd. ("NEFCO" or "the Company"). The Initial Order is attached as Appendix 1. NEFCO had operated furniture stores under various trade names including Penthouse Fine Home Furnishings, Furniture Galleria, Thomasville Home Furnishings, Leather Express and Great Rooms by Palliser.

The purpose of this, the Interim Receiver's First Report, is to:

- Report on the Interim Receiver's activities since its appointment
- Seek approval of the Court of the proposed marketing and sale process for the sale of all or part of the assets, business and undertaking of the Company

## 2 Activities of the Interim Receiver

Since its appointment, the activities of the Interim Receiver have included the following:

- Taking possession of the assets at various locations in Winnipeg and Calgary
- Arranging for mail redirection to the Interim Receiver
- Reviewing insurance policies and making arrangements for ongoing insurance coverage as required
- Meeting with employees and making arrangements for the retention of certain staff required by the Interim Receiver
- Supervising and directing staff retained to assist with the receivership proceedings
- Review of the payroll records and calculations of outstanding wages owing
- Arranging for preparation of and review of T4's, T4A's, and Records of Employment
- Corresponding with Service Canada as well as Provincial Employment Standards Departments with respect to outstanding wages and vacation pay
- Arrangements with telephone and computer system providers to maintain and extend services, establish network security, and access Company records
- Arrangements with locksmith and alarm companies to ensure premises are properly secured and monitored
- Notifying financial institutions and opening new bank accounts under the control of the Interim Receiver
- Preparation of a short term cash flow forecast and providing same to the applicant under the Initial Order

- Corresponding with customers, landlords, former employees and suppliers as necessary in order to advise them on the status of the interim receivership
- Corresponding with counsel and property managers for certain landlords
- Establishing a website to provide updates to customers with deposits and for customers where inventory had been purchased but not delivered
- Corresponding with Moneris who represents certain credit card companies
- Corresponding with certain lessors and finance companies regarding leased and financed assets
- Corresponding with counsel for certain of the secured creditors
- Preparation and mailing of notices to customers regarding their outstanding accounts as well as ongoing efforts to collect outstanding accounts
- Liaising with Canada Revenue Agency ("CRA") and auditors with respect to the status of Goods and Services Tax ("GST") and source deductions

## 3 Background

### 3.1 NEFCO operations

NEFCO had operated in Manitoba and Alberta from leased premises. In the fall of 2008, NEFCO had commenced closing store locations and had engaged a professional liquidation firm, M.G. Smith Inc., headquartered in London, Ontario, to assist with inventory liquidation. NEFCO continued to operate until the close of business on December 9, 2008. Immediately thereafter the business was closed and certain former employees advised the Interim Receiver that they were instructed not to report to work.

Upon the appointment of the Interim Receiver on December 15, 2008 there was inventory located at six (6) locations (3 in Winnipeg and 3 in Calgary).

### 3.2 Books and records

On December 13, 2008, prior to its appointment, Deloitte met with NEFCO's former controller who advised of the following:

- Financial statements for NEFCO had not been prepared since July 31, 2008.
- There was a perpetual inventory listing for NEFCO but that it was not accurate. He advised that a significant amount of inventory on hand had been sold and paid for in full in the final week of operations, but that paperwork for these sales had not been organized or entered into NEFCO's records.
- That there was approximately \$4.35 million of deposits which had been received by NEFCO for goods on order from the manufacturer or which had been received by NEFCO but not delivered.
- That there was significant amount of wages and vacation pay owing to NEFCO's 65 employees. He advised that the most recent payroll had not been calculated or paid and that the employees had not been terminated nor provided their Records of Employment.

Upon its appointment the Interim Receiver faced significant challenges in dealing with the inventory and customer deposits given the state in which the books and records had been left. The following summarizes some of those challenges:

- The payroll for the last pay period had not been calculated
- Conditional sales contracts for a significant portion of the goods sold in the week prior to closing were unorganized, were in numerous locations, and had not been sequentially accounted for
- Some customer deposits had not been recorded in the accounting system
- Some customer deposits had been inaccurately recorded in the accounting system
- Inventory transfers between locations had not been recorded
- Certain goods had been tagged as sold with no attributable customer information
- Certain goods were tagged as sold with inaccurate customer information
- Certain goods were tagged as sold and were identified to a customer, but the customer sales order had been previously filled or was cancelled

## 4 Assets

The following summarizes the assets of the Company:

### 4.1 Cash in trust

HSBC Bank Canada ("HSBC") maintained the operating bank account for NEFCO, however in the ordinary course of NEFCO's operations virtually all credit card receipts were cleared through an account at CIBC. Periodically NEFCO would write a cheque from the CIBC account to its HSBC account, transferring the funds.

On or about December 10, 2008, prior to the appointment of the Interim Receiver, NEFCO paid the balance of the funds in its CIBC account directly to its counsel Pullan, Kammerloch & Frohlinger ("PKF"). PKF advised that the funds had been paid to PKF with directions that the funds be first applied to outstanding legal fees and disbursements and the balance then to be paid to HSBC to be applied on the loans of H. Adelman Ltd. pursuant to a guarantee from NEFCO. On December 17, 2008 the Interim Receiver made a demand for the funds which remained in the PKF trust account and subsequently made a motion to have the funds paid to the Interim Receiver. At a hearing on January 13, 2009, a consent order was pronounced which required payment of the remaining funds to the Interim Receiver but was without prejudice to any rights existing between NEFCO and HSBC in regards to the application of the said funds towards any direct or indirect indebtedness of NEFCO. PKF was also required to provide particulars of the legal fees which had been paid from the funds prior to the interim receivership.

The Interim Receiver has now received funds totalling \$1,213,940. Counsel for the Interim Receiver has verbally been advised by PKF that legal fees deducted prior to the receivership totalled \$10,963 and is awaiting written confirmatory evidence of same.



## 4.2 Inventory

On December 16, 2008, the Interim Receiver, with the assistance of certain former employees commenced the physical count of the inventory. The Interim Receiver performed the following procedures regarding the inventory:

- Completed an inventory at all locations making note of any items which had been clearly identified as sold and belonging to a customer
- Searched for and organized all conditional sales contracts and invoices where goods had been purchased and paid for in full by the customer
- Cross referenced the conditional sales contracts to the items in inventory which had been identified as sold

The Interim Receiver sought a legal opinion from its counsel, Hill Dewar Vincent, regarding the position of customers who had fully paid for goods which had been appropriated by NEFCO for that sale but which remained on NEFCO's premises upon appointment of the Interim Receiver. Hill Dewar Vincent provided an opinion referencing *The Manitoba Sale of Goods Act* to the effect that purchasers in these circumstances had a proprietary right to the goods in priority to the Interim Receiver. The opinion was confirmed by the Interim Receiver's counsel in Alberta.

The Interim Receiver proceeded to contact and release goods to customers that had been specifically identified at NEFCO and which had been paid for in full.

The following is a summary of the NEFCO inventory:

Cost	
Total inventory	\$3,154,000
Sold goods released (100% paid)	568,000
Goods available for sale	\$2,586,000

Presently, approximately 8% of the goods available for sale remain uncoded due to there being no identification tag on the unit. Assuming an average unit value is assigned to these goods, the cost of the goods available for sale would increase to approximately \$2.8 million.

### 4.3 Accounts receivable

The following summarizes the collection and status of accounts receivable:

- The records of NEFCO reflect accounts receivable totalling approximately \$395,000. The aging of the accounts receivable is as follows:

• 1-30 Days	\$19,000
• 31-60 Days	\$35,000
• 61-90 Days	\$52,000
• 91-120 Days	\$31,000
• Over 120 Days	\$258,000
- NEFCO's former controller estimated that approximately \$30,000 of the outstanding accounts receivable was collectible
- The Interim Receiver mailed collection notices to all accounts on January 15, 2009. Second notices will be mailed on January 28, 2009

## 5 Creditors

The Interim Receiver has notified all creditors of its appointment. The following details the categories of creditors.

### 5.1 Secured creditors

The following summarizes the primary secured creditors of NEFCO and estimated amounts of direct indebtedness:

- HSBC \$2,300,000
- H. Adelman Ltd. \$1,685,000
- Plum Retail Marketing Group \$278,000
- Thomasville Furniture Industries \$213,000

The Alberta Personal Property Registry discloses the same primary secured creditors. The Manitoba Personal Property Registry also discloses a lien from the Province of Manitoba – Department of Finance Taxation Division for approximately \$115,000 representing unpaid Retail Sales Tax.

### 5.2 Unsecured creditors

Based on NEFCO's internal records, the Interim Receiver estimates total unsecured creditors (excluding customer deposits described in Section 5.3) of approximately \$3.1 million. This balance includes approximately \$91,000 of unpaid wages, \$116,000 of vacation pay and approximately \$125,000 of unpaid GST.

### 5.3 Customer deposits

NEFCO's internal records reflect 2,455 customer deposits totalling approximately \$3.5 million, primarily representing collections throughout calendar 2008. This figure excludes goods that were fully paid for and released.

The majority of the deposits relate to furniture orders where NEFCO would place the order with the manufacturer and the customer on average would pay 50% of the selling price on the order. For the majority of the deposits the goods were either not received by NEFCO or were not specifically attributed to a customer. The Interim Receiver has advised these customers that it will not be completing their transaction and that their claim against NEFCO is unsecured.

The Interim Receiver has identified approximately \$263,000 of the total inventory available for sale where there are varying levels of deposits against it. The Interim Receiver is of the view that the incremental benefits of attempting to complete these transactions would outweigh the benefits derived therefrom given that:

- The quantum of these goods represents only 5% of the inventory in units and 10% in dollars of the total inventory
- Significant costs will be incurred in notifying each individual customer which has placed a deposit and determining whether they wish to complete the transaction
- The Interim Receiver would be unable to provide any warranty or service post delivery
- Notifying each individual customer who had placed a deposit would further delay the overall realization process and incur further cost in holding the inventory
- Even if the Interim Receiver contacted every customer with a deposit where the goods are in inventory, there is no guarantee that the customer would complete the transaction

Accordingly the Interim Receiver has advised these customers that it will not be completing their transaction and that their claim against NEFCO is unsecured.

## 6 Marketing and sales process

The primary asset to be realized upon is the inventory. While it is anticipated that the number of locations will be reduced to three (3) by January 31, 2009, the Interim Receiver continues to incur costs to maintain these premises. Furthermore, the Interim Receiver is of the view that an immediate sale of all or substantially all of the assets will result in greater net realizations for the estate versus a more protracted liquidation.

The Interim Receiver therefore proposes the following sales process, which if approved by the Court, would commence immediately thereafter:

- Preparation of an information package to describe the Company's assets as well as tender terms and conditions of sale (the Terms and Conditions have been attached as Appendix 2)
- Advertisement of the tender opportunity in the Winnipeg Free Press and Calgary Herald
- Direct mailing of the tender and information package to known potential purchasers
- The Interim Receiver will require binding offers pursuant to the tender or liquidation proposal together with a 10% deposit

The Interim Receiver will concurrently direct mail the information packages to major national liquidation firms known to the Interim Receiver, inviting them to submit liquidation proposals.

As part of the sales process, the Interim Receiver will arrange site visits and hold discussions with potential purchasers as necessary. The Interim Receiver will analyze and evaluate the offers and make its recommendation to Court for approval.

## 7 Summary

A Statement of Receipts and Disbursements is attached as Appendix 3.

The Interim Receiver respectfully requests that the Court approve the proposed marketing and sales process described in section 6 in order to maximize realizations on the NEFCO assets in a timely manner.

Respectfully submitted this 26th day of January, 2009.

**DELOITTE & TOUCHE INC.**, in its  
capacity as Interim Receiver of  
Nefco Furniture Ltd. and not in its  
Personal capacity

A handwritten signature in black ink, appearing to read "Steven Peleck". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Per: S. P. Peleck  
Senior Vice-President

# Appendix 1 – Initial order

THE QUEEN'S BENCH  
WINNIPEG CENTRE  
IN BANKRUPTCY

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

BETWEEN:

HSBC BANK CANADA,

applicant,

- and -

NEFCO FURNITURE LTD.,

respondent.

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**CERTIFIED COPY**  
of  
ORDER APPOINTING INTERIM RECEIVER

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THOMPSON DORFMAN SWEATMAN LLP

Barristers & Solicitors

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Winnipeg MB R3B 3L3

(Matter No. 0092027 JBH)

(Jeffrey B. Hirsch 934-2336)

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THE QUEEN'S BENCH

WINNIPEG CENTRE

IN BANKRUPTCY

THE HONOURABLE ) Monday, the 15<sup>th</sup> day of December,  
 ) 2008  
MR. JUSTICE SCURFIELD )

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

BETWEEN:

HSBC BANK CANADA

applicant,

- and -

NEFCO FURNITURE LTD.,

**CERTIFIED COPY**  
**of**

respondent.

ORDER APPOINTING INTERIM RECEIVER

THIS APPLICATION made by HSBC BANK CANADA ("the Applicant"), for an order appointing Deloitte & Touche Inc. as Interim Receiver pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3 as amended (the "Act") without security of the assets, property and undertaking of NEFCO FURNITURE LTD. (the "Debtor") was heard this day at the Law Courts, 408 York Avenue, Winnipeg, Manitoba.

On reading the Affidavit of Andrew R. McPherson, and upon hearing the submissions of counsel for the Applicant and on reading the Consent of Deloitte & Touche Inc., no one appearing for the Debtor although duly served,

1. THIS COURT ORDERS that the time for service of the Notice of Application be and is hereby abridged such that the Application is properly returnable on December 15, 2008 and, further, that any requirement for service of the Notice of Application upon any person other than the Debtor be and is hereby dispensed with.

### **Appointment and Payment**

2. THIS COURT ORDERS that Deloitte & Touche Inc. of the City of Winnipeg, in the Province of Manitoba, be and it is hereby appointed as Interim Receiver pursuant to subsection 47(1) of the Act (hereinafter referred to in such capacity as the "Interim Receiver") without security, of all the assets, undertakings and property of the Debtor (the "Property") wherever situate with authority to receive, preserve, protect, realize and sell or otherwise dispose of the Property and to act until further Order of this Court.

3. THIS COURT ORDERS that, without limiting the powers set out in paragraph 2 above, the Interim Receiver is hereby authorized and empowered, but not obligated, to do any of the following acts or things if in its opinion it is necessary or desirable:

- (a) to take possession and control of all such portion of the Property the Interim Receiver in its discretion deems appropriate for the purpose of exercising its powers hereunder, provided that, in exercising its rights and powers, the Interim Receiver shall be entitled to the benefit of any occupation or other similar rights granted in favour of the Debtor and/or the Applicant or its affiliates pursuant to any agreement or otherwise;
- (b) to obtain appraisals and valuation of all or part of the Property;
- (c) in the name of and on behalf of the Debtor, to carry on all or part of the business of the Debtor for such period of time and in such manner as the Interim Receiver in its discretion deems appropriate;

- (d) to exercise such powers and take such steps as the Interim Receiver deems necessary or appropriate with respect to any shares or other interests held by the Debtor in any subsidiary or other entity;
- (e) to sell or otherwise dispose of the Property or any part thereof on such terms as the Interim Receiver considers necessary or advisable without notice, without having any time appointed for redemption and without waiting for the determination of any inquiries or accounts which may be directed herein or in the future, provided that, in so doing, the Interim Receiver shall not complete any sale or disposition of the Property, for proceeds exceeding \$100,000 in any single instance or \$500,000 in aggregate without the approval of the Court;
- (f) in the name of or on behalf of the Debtor, to employ, retain or continue the employment of such contractors, agents, employees, solicitors, consultants, advisors, experts, auditors, appraisers and such other assistants as the Interim Receiver deems necessary or desirable for the purpose of maintaining, protecting, preserving or securing the Property or exercising the powers and duties granted hereunder and to enter into agreements with any person with respect to such matters, provided that any expenditure or charge which shall be properly made or incurred by the Interim Receiver in so doing, including without limitation, payment of legal fees and disbursements, shall be allowed in passing its accounts and shall constitute a first charge on the Property in priority to the claims of existing and any future secured creditors, mortgagees, lien claimants, other encumbrancers and unsecured creditors;
- (g) to receive and collect all monies now or hereinafter owing or payable to the Debtor;
- (h) to settle, extend or compromise any indebtedness owing by or to the Debtor on such terms and by such means as the Interim Receiver deems appropriate;

- (i) to pay any debts of the Debtor which have priority over the claims of the Applicant and to pay such other debts of the Debtor as the Interim Receiver deems necessary or advisable to protect or properly realize on the Property, provided that all such payments are to be allowed to the Receiver in passing its accounts and shall form a first charge on the Property in priority to the claims of all existing and future secured creditors, mortgagees, lien claimants, other encumbrancers and unsecured creditors;
- (j) to initiate and prosecute all suits, proceedings and actions at law, whether in the name of the Debtor or otherwise, as the Interim Receiver deems necessary or advisable for the purpose of maintaining, protecting, preserving or securing the Property or exercising the powers granted hereunder and likewise to defend all suits, proceedings and actions, the prosecution or defence of which the Interim Receiver deems necessary or advisable for the purpose of maintaining, protecting, preserving or securing the Property or exercising the powers granted hereunder and the authority hereby conveyed shall extend to the right to compromise and settle any proceedings and to such appeals as the Interim Receiver shall deem proper and advisable in respect of any order or judgment pronounced in any such suit, proceeding or action;
- (k) to apply for any permits, licenses, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable, in the name of the Debtor;
- (l) to execute all necessary bills of sale, conveyances, deeds and documents of whatsoever nature in the name of and on behalf of the Debtor;
- (m) to file an assignment in bankruptcy on behalf of, or consent to a receiving order in bankruptcy against the Debtor;

- (n) to enter into arrangements with any trustee in bankruptcy of the Debtor (a 'Trustee') including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (o) to act as trustee;
- (p) to enter into agreements or incur any obligations necessary or reasonably incidental to the execution of the aforesaid powers; and
- (q) to take such steps as the Interim Receiver deems necessary or desirable to maintain, protect, preserve or secure the Property.

4. THIS COURT ORDERS that the Interim Receiver shall be at liberty in its discretion to open bank accounts with any Canadian bank and place funds collected in the exercise of its powers under this Order on deposit in such accounts and to invest such funds in trust deposits or other instruments.

5. THIS COURT ORDERS that the Interim Receiver shall report to this Court as to its administration on a periodic basis and the Interim Receiver is hereby authorized to provide reports and such other information as may be requested from time to time by the Applicant.

**Duty to Provide Access to the Interim Receiver**

6. THIS COURT ORDERS that the Debtor and its respective principals, present and former officers, directors, employees, agents, servants, shareholders and all other persons having notice of this Order shall give up possession of the Property, allow the Interim Receiver immediate, continuous and unconditional access to the Property and forthwith deliver to the Interim Receiver all of the Property of every kind and wherever located and all such persons are hereby restrained and enjoined from dealing with the Property or interfering with the interim Receiver and the exercise of its powers and the performance of its duties hereunder. For greater certainty, all persons having notice of this Order shall deliver to the Interim Receiver all books, documents, securities, contracts, orders, corporate and accounting records of the Debtor and all computer records, computer programs, computer tapes, computer disks, data storage media and programs containing any such information, and any other papers, records and information of any kind of the Debtor relating thereto in their possession or control (the foregoing collectively, the "Records"), and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver access to and use of accounting, computer, software and physical facilities relating thereto.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, the Debtor and its present and former directors, officers, employees and/or agents shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the interim Receiver to obtain access to, recover, and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other methods of retrieving and copying the information as the Interim Receiver in its discretion deems expedient. Further, for the purposes of this paragraph, the Debtor, its present and former directors, officers, employees and/or agents and all persons having notice of this provision of this Order shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the

Records as the Interim Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that Internet services providers or persons, corporations or individuals who provide e-mail, Worldwide Web e-mail or other Internet connection services to the Debtor to access the Internet or WorldWide Web e-mail or other similar services, deliver to the Interim Receiver, documents, server files, archive files or any other information in any form in any way recording messages, e-mails or other information sent or accessed by the Debtor.

#### **Continuation of Services**

9. THIS COURT ORDERS that all persons having notice of the Order be and they are hereby enjoined from disturbing or interfering with utility services, including, but not limited to the furnishing of gas, heat, electricity, water, telephone, telecommunications or any other utility or services furnished up to the date hereof to the Debtor and are hereby enjoined from cutting off, disconnecting or altering any such utilities or services to the Interim Receiver, except upon further order of this Court, provided that payment is made in accordance with the payment terms of the existing contracts and arrangements for such utilities supplied from the date of this Order.

10. THIS COURT ORDERS that, without limiting the generality of paragraph 9 hereof, all persons, firms corporations and other entities having agreements with the Debtor, whether written or oral, and whether the Debtor is acting as principal, agent or nominee, for the supply or purchase of goods and/or services by or to the Debtor or to any of the Property, wheresoever located, including without limitation, Internet service agreements, wireless service agreements, re-location agreements, equipment leases, commercial leases, license agreements, consignment agreements, insurance contracts, concession agreements, distribution agreements, inventory financing agreements, conditional sales agreements, royalty agreements,

bank and operating accounts, management agreements, transportation contracts, freight forwarding contracts, computer software and support systems, supply and service contracts are hereby restrained from accelerating, terminating, suspending, modifying or canceling such agreements, arrangements or supply of goods and services without the Interim Receiver's prior written consent or with the leave of this Court, (including, without limiting the generality of the foregoing, any supply which the Debtor needs to continue to provide service to customers), provided that payment is made for the goods or service supplied from the date of this Order in accordance with the payment terms of the existing contracts and arrangements or as otherwise agreed and further provided that the foregoing shall not restrict the ability of the Interim Receiver to continue or abandon any agreement entered into by the Debtor.

#### **Stay of Proceedings**

11. THIS COURT ORDERS that no one claiming an interest in any of the Property of the Debtor shall be at liberty to exercise any rights or remedies with respect to such interest including, without limitation, any right of possession, dilution, encumbrance, buy-out, divestiture, forced sale, repossession, distress, termination, suspension, modification or the right to revoke any qualification, license or registration, without the consent of the Interim Receiver or an order of this Court first being obtained upon seven days notice to the Interim Receiver.

12. THIS COURT ORDERS that no person may institute or continue any action or proceeding (whether by court process or otherwise) or exercise any private remedy for the enforcement of any claim against the Interim Receiver, the Debtor or the Property without first obtaining leave of this Court upon seven days notice to the Interim Receiver.

13. THIS COURT ORDERS that the Debtor and all parties having notice of this Order be and they are hereby restrained from in any way dealing with the Property or entering upon any premises upon which the Property may be located except with the prior written consent of the Interim Receiver or upon further order of this Court.



14. THIS COURT ORDERS that no creditor of, or persons having a contractual relationship with, the Debtor may exercise or assert any right of set-off or trust claim with respect to its account with or its claim against the Debtor except with the leave of this Court and, subject to such terms as the Court may impose.

### **Employees**

15. THIS COURT ORDERS AND DECLARES that by the granting of our Order, the business of the Debtor has not been and shall not be deemed to have been, nor treated as having been sold, transferred or disposed of, but rather, such business will continue to be the business of the Debtor until sold, transferred or otherwise disposed of, in whole or in part to a purchaser other than the Interim Receiver. Accordingly, neither the appointment of the Interim Receiver nor the exercise of any of its powers or the performance of any of its duties hereunder, or the use or employment by the Interim Receiver of any person in connection with its appointment and the performance of its powers and duties hereunder shall cause the Interim Receiver to be or be deemed or considered to be a successor employer, related employer, sponsor or payer with respect to any of the employees of the Debtor or any former employees within the meaning of the *Labour Relations Act* (Manitoba), the *Employment Standards Code* (Manitoba), the *Pension Benefits Act* (Manitoba), *Canada Labour Code*, *Pension Benefits Standards Act* (Canada), or any other provincial, federal or municipal legislation or common law governing employment, or labour standards (the "Labour Laws") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or other contract between the Debtor and any of its present or former employees. In particular, subject to paragraph 16 hereof, the Interim Receiver shall not be liable to any of the employees of the Debtor for any wages (as "wages" are defined in the *Employment Standards Code* (Manitoba, including severance pay, termination pay and vacation pay except for such wages as the Interim Receiver may specifically agree to pay, and such wages as the Interim Receiver is directed to pay pursuant to paragraph 16 hereof, and the Interim Receiver shall not make or be liable for any contribution or other payment to any person or benefit fund.

16. THIS COURT ORDERS that the Interim Receiver is hereby directed to pay, from and to the extent of cash available to the Interim Receiver at the date hereof, the payroll obligations to all employees of the Debtor for services performed by such employees for the Debtor during the period beginning at midnight on the day of this Order and ending at midnight on the day on which the Interim Receiver is discharged and to remit to the appropriate governmental authorities any statutory deductions thereon.

17. THIS COURT ORDERS that, upon payment by the Interim Receiver to the employees of any amounts on account of wage arrears, accrued and unpaid vacation pay or any other amounts owing by the Debtor as at the date of this Order, the claims of the employees in respect of such amounts shall be deemed to have been assigned to the Interim Receiver for the purpose of the Interim Receiver asserting a claim against the estate of the Debtor and the Interim Receiver shall be entitled to file one or more proofs of claim in respect of such amounts which shall be accepted by the trustee as valid claims pursuant to subsection 136(1)(d) of the Act. For greater certainty, such assignment shall not have the effect of granting to the Interim Receiver any claims against the present and former directors and officers of the Debtor.

#### **Limitations on Environmental Liabilities**

18. THIS COURT ORDERS that nothing in this Order shall vest in the Interim Receiver the ownership or possession of or require the Interim Receiver to enter into possession of any of the Property, provided that the Interim Receiver may and is hereby authorized, if it deems appropriate, to enter into possession of any or all of the Property at its discretion.

19. THIS COURT ORDERS notwithstanding any provisions to the contrary contained herein, nothing in this Order shall vest in the Interim Receiver the care, ownership, control, charge, possession, occupancy or management of, or require the Interim Receiver to take possession, occupation, control, or management of any of the Property which may be a source of a pollutant or contaminant, a waste disposal site, or which may cause or contribute or

threaten to cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal or provincial legislation or regulation thereunder or rule of law or equity respecting the protection of the environment or public health or safety and that the Interim Receiver shall not be deemed to be a person responsible, the owner, the occupant, or person having charge, management or control of any premises owned or occupied by the Debtor under any federal or provincial legislation, provided that nothing in this paragraph 19 shall relieve the Interim Receiver from any liability arising out of gross negligence or willful misconduct on the part of the Interim Receiver.

#### **Limitation of Interim Receiver's Liability**

20. THIS COURT ORDERS that the Interim Receiver shall bear no liability or obligation as a result of its appointment or the fulfillment of its duties in carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

21. THIS COURT ORDERS that the liability of the Interim Receiver which it may incur as a result of its appointment or as a result of the performance of its duties hereunder, including in respect of gross negligence or willful misconduct, shall be limited in the aggregate to the realization value of the Property and furthermore the Interim Receiver shall cease to have any liability whatsoever upon distribution of the Property or any proceeds thereof under its administration in accordance with any Order of this Court. The net realizable value of the Property shall be the cash proceeds actually received by the Interim Receiver from the operation and disposition of the Property or part thereof after deducting all costs and expenses properly incurred in connection therewith, including the reasonable remuneration and expenses of the Interim Receiver, and the fees and disbursements of its counsel.

22. THIS COURT ORDERS AND DIRECTS the Interim Receiver to prepare and provide to the Applicant on or before December 24, 2008, a budget and cash flow projection in connection with the performance by the Interim Receiver of its powers and duties hereunder and thereafter such budgets and cash flow projections as the Applicant may request.

### **Accounting for Receipts and Disbursements**

23. THIS COURT ORDERS that the Interim Receiver shall pass its accounts from time to time and shall pay the balances in its hands as this Court directs and, for this purpose, the accounts of the Interim Receiver are hereby referred to the presiding Motions Court Judge.

24. THIS COURT ORDERS that prior to the passing of accounts, the Interim Receiver shall be at liberty on a monthly basis to apply reasonable amounts from the monies in its hands against its fees and disbursements, including legal fees and disbursements on a solicitor and his own client basis, and such amounts shall constitute advances against its remuneration and expenses upon the passing of the Interim Receiver's accounts.

25. THIS COURT ORDERS that the costs of the Applicant in preparation of this Application up to and inclusive of the hearing of this application and the entry this Order (including applicable Goods and Services Tax) be paid to the Applicant by the Interim Receiver out of amounts received by it on a solicitor and his own client basis as part of its expenses.

26. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the interim Receiver including the fees of the Interim Receiver and the fees and disbursements of legal counsel on a solicitor and his own client basis, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to any charge, mortgage, lien, security interest or encumbrance on or in the Property.

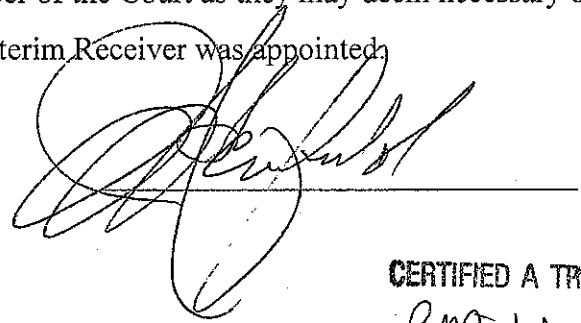
### **General**

27. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that liberty is reserved to any interested persons to apply for such further or other order as may be advised upon seven days notice to the Interim Receiver and to the Applicant.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal or administrative body of any province of Canada or of the United States of America to give effect to and assist the Interim Receiver in carrying out the terms of this order. The Interim Receiver shall be at liberty and is hereby authorized and empowered to apply as it may consider necessary or advisable, without notice, to any other courts or administrative bodies whether in Canada or the United States of America for orders in such other jurisdictions recognizing the appointment of the Interim Receiver. All courts and administrative bodies of all such jurisdictions are hereby especially requested to make such orders and to provide such assistance to the Interim Receiver as an officer of the Court as they may deem necessary or appropriate for the purposes for which the Interim Receiver was appointed.

December 15, 2008



CERTIFIED A TRUE COPY

  
DEPUTY REGISTRAR

Appendix 2 –  
Statement of receipts and disbursements,  
December 15, 2008 to January 26, 2009

Deloitte & Touche Inc., Interim Receiver

NEFCO Furniture Ltd.

**STATEMENT OF RECEIPTS AND DISBURSEMENTS**  
For the period December 15, 2008 to January 26, 2009

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**RECEIPTS**

Cash on Hand	\$ 5,542.96
Cash received from PKF Trust Account	1,213,940.33
Accounts Receivable	7,575.01
	<u><b>1,227,058.30</b></u>

**DISBURSEMENTS**

Bank Charges	167.82
Freight / Shipping	13,905.08
GST	3,625.40
Insurance	3,400.00
Occupation Rent	68,467.02
Payroll Services	462.23
Source Deductions	3,185.68
Stock Taking / Locks	3,432.05
Wages	29,748.45
	<u><b>126,393.73</b></u>

**EXCESS OF RECEIPTS OVER DISBURSEMENTS - BALANCE IN TRUST**

**\$1,100,664.57**

## Appendix 3 – Terms and conditions of sale



# Terms and conditions of sale by tender

1. The Vendor, Deloitte & Touche Inc. (the "Vendor") is the Interim Receiver **NEFCO Furniture Ltd.** ("NEFCO").
2. The Vendor is inviting tenders or liquidation proposals for the purchase of the Vendor's right, title and interest, if any, in and to the assets (sometimes also referred to as "Property") of NEFCO. These assets have been segregated into the following parcels and are more particularly described in the Asset Parcels and Description section of the Sales and Information Package:
  - Parcel 1: Inventory
  - Parcel 2: TrademarksTenders can be made en bloc or on an individual parcel basis.

The Vendor will sell any such right, title, and interest pursuant to such powers of sale as are contained in the Court Order under which it was appointed.
3. Viewing of the Property will be by appointment only. Appointments can be made by contacting Mr. Brent Warga (204) 944-3611 or Mr. John Fritz (204) 942-0051 ext. 7391 at the offices of the Vendor.
4. Sealed tenders marked "**TENDER – NEFCO Furniture Ltd.**" shall be delivered or mailed, postage prepaid, to the Vendor at 2300 – 360 Main Street, Winnipeg, Manitoba, R3C 3Z3, so as to be in its hands by **5:00 pm** (Central Standard Time) on **Friday, February 20, 2009**. The Vendor reserves the right to conclude sale arrangements on any of the assets prior to that date.
5. Every tender submitted shall be in the form of the tender prescribed by the Vendor and shall be deemed to have been expressed in Canadian funds payable at par in Winnipeg. A copy of such form of tender is attached hereto as Schedule A. Each tender shall be signed by the duly authorized officer(s) of the entity making the tender and shall contain the name and address of the tenderer (the "Purchaser"). Tenders received by the Vendor that are not in the form of tender as set out in Schedule A may be rejected.
6. Each tenderer shall, with his tender, deliver to the Vendor a certified cheque or bank draft drawn on a chartered bank of Canada, credit union or a trust company payable to the Vendor for an amount equal to 10% of the total tendered purchase price (the "Purchase Price") for each parcel (the "Purchased Assets"). If a tender is accepted and approved, said cheque or bank draft shall constitute a cash deposit and the successful tenderer shall supply the remainder of the Purchase Price together with monies referred to in clause 11 by certified cheque drawn on a Chartered Bank of Canada, credit union or trust company prior to closing or, subject to arrangements satisfactory to the solicitors for the Vendor, within a reasonable time after closing if part of the Purchase Price is to be borrowed and some time is required for the registration of security documents and subsequent reporting to and receiving funds from the lender.
7. By submitting a tender, the Purchaser acknowledges that it has inspected the Property, that it is purchasing the Vendor's right, title and interest, if any, in the Property on an "as is, where is" basis on the closing date (the "Closing Date") and that no representation, warranty or condition is expressed or implied as to title, description, fitness for purpose, existence, merchantability, conditions or quality thereof or in respect of any other matter or thing whatsoever. The Purchaser acknowledges and agrees that the Vendor is not required to inspect the Property or any part hereof and each Purchaser shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. The Purchaser acknowledges that the Property is offered as it exists on the Closing Date with no representations, warranty or condition as to any matter and with no adjustment to be allowed to either the Vendor or the Purchaser for any changes in the condition of the Property from the date thereof until the Closing Date or for any other reason whatsoever. Furthermore, the Purchaser agrees to accept the Vendor's right, title and interest, in the Property, and acknowledges that, it shall be the Purchaser's own and sole responsibility to obtain and pay the cost of any consents, permits, licenses assignments, registration fees, attorney and agent fees, filing fees, issue fees or other authorizations and assignments necessary or desirable for the transfer of such right, title and interest, to the Purchaser or for the operation or use of the Property.
8. The highest or any tender will not necessarily be accepted.
9. The acceptance of any tender may be subject to the Vendor obtaining approval in the Manitoba Court of Queen's Bench. The Closing Date shall be five (5) business days following the granting of an order approving the sale. Any extension of the Closing Date will be at the sole discretion of the Vendor.

10. The Purchaser shall pay, at the time of closing, in addition to the Purchase Price, all applicable federal and provincial taxes unless the Purchaser produces an exemption certificate.
11. Cheques accompanying a tender that is not accepted by the Vendor shall be returned to the tenderer by prepaid registered letter or by commercial courier addressed to the tenderer at the address given in its tender.
12. No tenderer shall be at the liberty to withdraw or countermand a tender once made and if the tender is withdrawn by the tenderer before it is accepted by the Vendor, then the deposit accompanying the tender will be forfeited to the Vendor as liquidated damages.
13. If any tender is accepted by the Vendor, then such acceptance shall be communicated to the Purchaser by notice in writing sent by the Vendor to the Purchaser at the address set forth in its tender, such notice to be given by facsimile, prepaid registered mail, or personal delivery, and to be deemed effectively given and received when deposited in the post office or sent by facsimile or when personally delivered, as the case may be. Personal delivery is meant to include delivery by commercial courier.
14. The advertisement, tender and the acceptance thereof, together with these Terms and Conditions of Sale by Tender, which shall be deemed to form part of such tender, shall constitute a binding agreement of purchase and sale between a Purchaser and the Vendor (the "Agreement").
15. The Vendor will deliver to the Purchaser such bills of sale, assignments and other conveyancing documents that the Vendor, acting reasonably, considers necessary to convey to the Purchaser the Vendor's right, title and interest, to the Purchased Assets, without representations or warranties of any kind.
16. The Vendor shall not be required to produce any abstract of title, title deeds or documents or copies thereof or any evidence as to title, other than those in its possession.
17. The Vendor's right, title and interest in the Property shall not pass to the Purchaser until the Purchase Price has been received by the Vendor.
18. The Purchased Assets shall be surrendered to the Purchaser at closing at the premises of NEFCO (the "Premises"). The Purchaser of any Purchased Assets shall remove the Purchased Assets from the Premise on or before the **31<sup>st</sup> day of March 2009**. If additional time is required, arrangements will have to be made with the Interim Receiver. The Purchaser shall have no right to occupy or otherwise gain access to the Premises following closing, save for access to remove the Purchased Assets. The Purchaser shall be responsible for the cost of removal and shall immediately repair or pay for any damage caused to the Premises by or in any way arising out of the removal of the Purchased Assets.
19. The Property shall be in the possession, and remain at the risk of the Vendor until the date of closing. From and after the time of closing, the Property shall be at the risk of the Purchaser.
20. Insurance will remain the responsibility of the Vendor up to and including the date of closing.
21. If any Purchaser fails to comply with any provision of the provisions contained herein, the deposits and all other payments made in connection with the Purchase Price shall be forfeited as liquidated damages, the Property may be resold by the Vendor and the deficiency, if any, arising as liquidation damages on such resale, together with all charges and expenses attending the same or occasioned by the defaulting Purchaser, shall be made good by the defaulting Purchaser, or paid forthwith to the Vendor, as the case may be.
22. Asset listings, information packages, and other material concerning the Property or the sale thereof provided by or on behalf of the Vendor have been prepared solely for the convenience of the tenderers and are not warranted or represented to be complete or accurate and are not part of the Terms and Conditions of Sale by Tender. The descriptions of the Property are for purposes of identification only and no condition, warranty, or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning those descriptions.
23. Any term or condition herein or in the advertisement may, in the Vendor's sole discretion, be waived by it, in whole or in part.
24. All stipulations as to time are strictly of the essence.
25. Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser, or their respective solicitors. Money may be tendered by bank draft or cheque certified by a chartered bank.
26. Deloitte & Touche Inc., acts in its capacity as Vendor pursuant to their appointment as Interim Receiver shall have no personal or corporate liability under any Agreement as a result of any sale herein, or the advertisement, or the terms and conditions of such sale.
27. If at any time before the Closing Date the Vendor is satisfied that it does not have the right, title or interest to sell any of the Property or portion thereof, then the Vendor may withdraw such Property from the sale and the Purchase Price shall be adjusted accordingly. The adjustment to the Purchase Price shall be so agreed to between the parties. If an agreement cannot be reached,

the amount of the adjustment to the Purchase Price shall be determined in accordance with the laws of the Arbitration Act of the Province of Manitoba.

28. The acceptance of any tender shall not be assigned by the Purchaser to any third party without the written consent of the vendor and such consent shall not be unreasonably withheld.
29. Property taxes, utilities and other matters that are normally the subject matter of adjustments in the sale of a business shall be adjusted as at the date of closing.
30. The validity and interpretation of an Agreement shall be governed by the laws of Manitoba, and such Agreement shall ensure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors or assigns as the case may be.
31. The Vendor shall not be required to pay any commission with respect to a sale to a Purchaser.
32. Each Tenderer acknowledges that during the course of the tender process, the Interim Receiver will be soliciting liquidation proposals which it will be free to consider at the same time as it is considering any tenders which have been submitted.

DATED at Winnipeg, Manitoba this 28<sup>th</sup> day of January, 2009.

**DELOITTE & TOUCHE INC.**

In its capacity as Interim Receiver of  
**NEFCO Furniture Ltd.**, and not in its  
personal capacity.  
2300 – 360 Main Street  
Winnipeg, Manitoba  
R3C 3Z3

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