

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O 1990 C. C.43, AS AMENDED

MOTION RECORD OF THE RECEIVER

Returnable August 22, 2024

July 25, 2024

HARRISON PENZA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #69806O)

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Solicitors for the Receiver,
Deloitte Restructuring Inc.

TO: Service List

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

B E T W E E N :

THE TORONTO-DOMINION BANK

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**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC., AND MOLDCO HOLDINGS
INC.**

Respondents

SERVICE LIST

As of July 24, 2024	
GOWLING WLG (CANADA) LLP 1 First Canadian Place 1600-100 King St. W. Toronto, ON M5X 1G5 Virginie Gauthier (LSO #41097D) Tel: (416) 862-7525 Email: virginie.gauthier@gowlingwlg.com Lawyers for the Respondents, Injection Technologies Inc., Moldco Plastics Inc., and Moldco Holdings Inc.	MOLDCO PLASTICS INC. 550 Burrard Street Bentall 5, Suite 2300 Vancouver, BC V6C 2B5 - and - 4350 Industrial Drive Windsor, ON N9C 3R8 Duane Humphries Email: dhumphries@it-group.ca
INJECTION TECHNOLOGIES INC. 4350 Industrial Drive Windsor, ON N9C 3R8 Duane Humphries Email: dhumphries@it-group.ca	MOLDCO HOLDINGS INC. 550 Burrard Street Bentall 5, Suite 2300 Vancouver, BC V6C 2B5 - and - 4350 Industrial Drive Windsor, ON N9C 3R8 Duane Humphries Email: dhumphries@it-group.ca

<p>DELOITTE RESTRUCTURING INC. 8 Adelaide Street West, Suite 200 Toronto, ON M5H 0A9</p> <p>Stefano Damiani Tel: (416) 874-4404 Email: sdamiani@deloitte.ca</p> <p>Jorden Sleeth Tel: (416) 775-8858 Email: jsleeth@deloitte.ca</p> <p>Receiver</p>	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay St, Suite 1800 Toronto, ON M5J 2T9</p> <p>Robb English (LSO #19862F) Tel: (416) 865-4748 Email: renghish@airdberlis.com</p> <p>Matilda Lici (LSO #79621D) Tel: (416) 865-3428 Email: mlici@airdberlis.com</p> <p>Lawyers for the Applicant, The Toronto-Dominion Bank</p>
<p>HARRISON PENZA 130 Dufferin Avenue, Suite 1101 London, ON N6A 5R2</p> <p>Tim Hogan (LSO #36553S) Robert Danter (LSO #69806O)</p> <p>Tel: (519) 661-6743 Email: thogan@harrisonpensa.com rdanter@harrisonpensa.com</p> <p>Lawyers for the Receiver, Deloitte Restructuring Inc.</p>	<p>SORBARA, SCHUMACHER, MCCANN LLP 31 Union Street East Waterloo, ON N2J 1B8</p> <p>Justin Heimpel (LSO #43807W) Tel: 519-741-8010 ext. 224 Email: justin@sorbaralaw.com</p> <p>Lawyers for 2013 Gary Paul Cluthe Family Trust</p>
<p>HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE</p> <p>Revenue Collections Branch – Insolvency Unit 33 King Street W., P.O. Box 627 Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca</p>	<p>CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office 120 Adelaide St. W., Suite 400 Toronto, ON M5H 1T1</p> <p>Email: AGC-PGC.Toronto-TaxFiscal@justice.gc.ca</p>
<p>BMW Canada Inc. 50 Ultimate Drive Richmond Hill, ON L4S 0C8</p>	<p>De Lage Landen Financial Services Canada Inc. 5046 Mainway, Unit 1 Burlington, ON L7L 5Z1</p>

CWB National Leasing Inc. 1525 Buffalo Place Winnipeg, MB R3T 1L9	GOODMANS LLP 3400-333 Bay St Toronto, ON M5H 2S7 Joseph Latham (LSO # 32326A) Tel: (416) 979-2211 Email: jlatham@goodmans.ca Lawyers for Magna Closures Inc.
MERIDIAN ONECAP CREDIT CORP. 4710 Kingsway, Suite 1500 Burnaby, BC V5H 4M2	MILLER THOMSON LLP One London Place 255 Queens Avenue, Suite 2010 London, ON N6A 5R8 Tony Van Klink (LSO # 29008M) Tel: 519-931-3509 Email: tvanklink@millerthomson.com Lawyers Bank of Montreal
WELLS FARGO EQUIPMENT FINANCE COMPANY 1290 Central Parkway W., Suite 1100 Mississauga, ON L5C 4R3	LOOPSTRA NIXON LLP 2800-130 Adelaide St W Toronto, ON M5H 3P5 Gary Fung (LSO #61498T) Tel: (416) 366-8073 Email: gfung@ln.law Ben Gliksman (LSO #59806H) Email: ben@zynik.com Lawyers for the Purchaser, AarKel Testing Technologies Inc.
BORCHE NORTH AMERICA INC. 10825 7 TH ST., Suite D Rancho Cucamonga, CA 91730 Hans Chen Tel: (909) 498-4691 Email: borchusa@gmail.com	

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

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- and -

INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

**NOTICE OF MOTION
(Returnable August 22, 2024, 12:00 p.m.)**

Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as Court-appointed receiver (the "**Receiver**") appointed pursuant to the Order of the Honourable Justice Steele dated May 26, 2023 (the "**Receivership Order**") of the Property, as defined in the Receivership Order, of Injection Technologies Inc., Moldco Plastics Inc., and Moldco Holdings Inc., will make a Motion to a Judge presiding over the Commercial List:

PROPOSED METHOD OF HEARING: The Motion is to be heard:

- ☐ In writing under subrule 37.12.1 (1) because it is on consent;
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

On Thursday, August 22, 2024, at 12:00 p.m., or as soon after that time as the Motion can be heard by judicial teleconference via Zoom at Toronto, Ontario, with Zoom particulars to follow.

THE MOTION IS FOR:

1. An Order for certain relief, including the following:
 - a. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today, and hereby dispensing with further service and confirmation hereof;
 - b. Approving the Third Report of the Receiver dated July 9, 2024 (the “**Third Report**”), and the activities of the Receiver as set out therein, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval;
 - c. Seeking the Court’s direction with respect to the priority of The Toronto-Dominion Bank (“**TD**”) and The 2013 Gary Paul Cluthe Family Trust (“**Cluthe**”) to the sale proceeds held by the Receiver and relating to the Property of the Respondent, Moldco Plastics Inc. (“**MPI**”) and the “**Plastics Proceeds**”, respectively);
 - d. Should this Court find that TD’s interest is in priority to that of Cluthe in the Plastics Proceeds, an Order that the portion of the Holdbacks (as defined in the Receiver’s Second Report dated December 21, 2023 (the “**Second Report**”) relating to Cluthe be included in the Final Distribution, also as defined in the Second Report; and,

- e. Should this Court find that Cluthe's interest is in priority to that of TD in the Plastics Proceeds, an Order that the portion of the Holdbacks (as defined in the Receiver's Second Report dated December 21, 2023 (the "**Second Report**") relating to Cluthe be distributed by the Receiver to Cluthe, up to the total amount of the Cluthe Claimed Indebtedness, as defined below.
2. The costs of this motion on a substantial indemnity basis, if requested by the Receiver.
3. Such further and other relief as counsel may request and this honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

The Debtor and the Appointment of the Receiver

1. The Respondent, MPI, is a company originally incorporated pursuant to the laws of Ontario on June 20, 2013, at which time it was known as "Moldco Inc."
2. MPI was continued into British Columbia on January 29, 2021, at which time it changed its name to MPI's current name of "Moldco Plastics Inc."
3. On May 26, 2023, TD obtained the Appointment Order, appointing Deloitte as Receiver over MPI, as well as the other Respondents, Injection Technologies Inc. and Moldco Holdings Inc.
4. As detailed below, the Receiver is holding certain Holdback funds for distribution to either of TD or Cluthe. Each of TD and Cluthe claim priority over these funds to be distributed by the Receiver.

The Cluthe Holdback and the Distribution Order

5. On January 15, 2024, the Receiver brought a motion for, *inter alia*, the following relief, which was granted pursuant to a Discharge and Distribution Order dated January 15, 2024 (the "**Distribution Order**"):

- a. An order that the Receiver was authorized to maintain certain Holdbacks (as defined in the Second Report) from funds held in the Respondents' Estate, including a Holdback of funds in the sum of \$200,000.00 (the "**Cluthe Holdback**") sufficient to satisfy the claim of Cluthe to a priority security interest in all personal property of MPI pursuant to the Cluthe MPI GSA (as defined below) (the "**Cluthe Claimed Security Interest**"), if such claim is determined to be a valid and perfected secured claim in priority to TD, or to be paid to TD if such claim is determined invalid or subordinate to TD;
 - b. A distribution to each of the Applicant and Bank of Montreal, as secured creditors of the Respondents, of monies held by the Receiver, including any portion of the Holdbacks not utilized by the Receiver to satisfy other claims; and,
 - c. The release and discharge of the Receiver following the completion of its mandate.
6. With the exception of the herein matter regarding Cluthe, the Receiver has completed the majority of its activities required to complete its administration of the Respondents' Estates and obtain its discharge.

The TD Security

7. Receiver's counsel has reviewed and provided the Court with an opinion on the security of TD, as included in the Second Report.
8. It is the opinion of Receiver's counsel that TD holds an attached and perfected general security interest in all personal property of MPI, pursuant to a general security agreement provided to TD by MPI in June of 2021 (the "**TD Security Interest**").
9. The issues before this Court are:
 - a. Is the Cluthe Claimed Security Interest a valid and perfected security interest in the property of MPI?

- b. If valid and perfected, is the Cluthe Claimed Security Interest in priority to the TD Security Interest?

Advice and Directions – Attachment and Priority

10. The Receiver has corresponded with counsel for each of Cluthe and TD with respect to this issue. The Receiver has been provided evidence in the form of affidavits from the following parties, each of which is summarized herein and detailed in the Third Report:

- a. Gary Cluthe, as principal of Cluthe; and,
- b. Matthew Lafortune, as a representative of TD.

Background - Share Purchase

- 11. On February 29, 2020, 1241704 BC Ltd. (“**124**”) entered into a share purchase agreement with Cluthe to purchase shares of each of MPI (at that time, known as Moldco Inc.) and the Respondent, Moldco Holdings Inc. (at that time known as 2426496 Ontario Inc.), from Cluthe (the “**Share Purchase**” and the “**Share Purchase Agreement**”).
- 12. Pursuant to the Share Purchase Agreement, consideration for the Share Purchase was to be a partial cash payment from 124 to Cluthe, with the remaining balance secured by a vendor take-back promissory note from 124 (the “**Cluthe 124 Note**”), and by a general security agreement over all assets of 124.
- 13. The Share Purchase was completed on February 29, 2020, at which time 124 paid to Cluthe the cash consideration and provided the Cluthe 124 Note. At the same time, MPI provided Cluthe with a General Security Agreement (the “**Cluthe MPI GSA**”).
- 14. MPI is not a party to the Cluthe 124 Note and is not a guarantor of the Share Purchase Agreement. 124 is not a party to the Cluthe MPI GSA.

15. A registration pursuant to the Ontario *Personal Property Security Act* (“**PPSA**”) in favour of Cluthe as against MPI, under its former name of Moldco Inc., was made on March 11, 2020, intended to perfect the Cluthe Claimed Security Interest.
16. Cluthe amended its registration on January 10, 2024 to change the name of MPI from Moldco Inc. to the current name of Moldco Plastics Inc.
17. Cluthe has claimed that the sum of \$176,000 remains due and owing to it pursuant to the Share Purchase Agreement as at February 9, 2024 (the “**Cluthe Claimed Indebtedness**”).

Position of Cluthe

18. Cluthe claims that it is a secured creditor of MPI, pursuant to the Cluthe Plastics GSA, and that the Cluthe Claimed Security Interest is an attached and perfected security interest in the property of MPI in priority to the interest of TD in same.
19. Pursuant to the provisions of the PPSA, and in the event that the Cluthe Claimed Security Interest is found to be valid, Cluthe was required to amend its PPSA registration within 30 days of the date that it became aware of MPI’s change of name, in order to retain its priority over TD.
20. Cluthe has taken the position that it first became aware of the name change on December 13, 2023, when its counsel received an email from Receiver’s counsel regarding the issue of priorities as between Cluthe and TD.
21. Cluthe’s subsequently amended its PPSA registration on January 10, 2024, within 30 days of the Receiver’s email, and takes the position that the Cluthe Claimed Security Interest remains perfected in priority to that of TD as a result.

Position of TD

22. TD disputes the validity and priority of the Cluthe Claimed Security Interest on several grounds:

- a. TD disputes the existence of an underlying debt of MPI to Cluthe, which would be secured by the Cluthe Plastics GSA, for the following reasons:
 - i. MPI was not a party to the Cluthe 124 Note, did not agree to provide any security to Cluthe thereunder, and provided no consideration to Cluthe and received no benefit from the Share Purchase;
 - ii. MPI did not guarantee 124's indebtedness under the Shareholder Agreement;
- b. In the event that MPI is found to be indebted to Cluthe such that the Cluthe Claimed Security Interest is valid, TD disputes Cluthe's priority on the following basis:
 - iii. Cluthe received notice of MPI's change of name as early as May 18, 2023, when it was served with TD's application to appoint the Receiver, in which MPI's change of name was explicitly referenced at several points;
 - iv. Cluthe received notice of MPI's name change in subsequent court documents served in the herein proceedings, including specific referenced to Cluthe's lack of a PPSA registration as against MPI;
 - v. Cluthe acknowledged the continuation of Moldco Inc. into British Columbia in the Share Purchase Agreement.

23. It is TD's position that as no value was given by MPI to Cluthe under the Share Purchase Agreement, no interest of Cluthe attached to MPI's property.

24. In the event that attachment under the PPSA occurred, TD takes the position that the Cluthe Claimed Security Interest was not re-perfected within 30 days of Cluthe receiving notice of MPI's change of name, such that the Cluthe Claimed Security Interest became unperfected and was re-perfected subsequent in priority to the perfected interest of TD.

Directions

25. Pursuant to paragraph 28 of the Appointment Order, the Receiver is entitled to apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. As an officer of the Court, the Receiver is required to avoid preferencing any of the secured creditors of MPI. There are issues of fact and law in this matter, such that the direction and disposition of this Court is required in order to avoid the perception of any such preference by the Receiver.
27. The Receiver requires the direction of the Court in this regard in order to determine whether: (i) Cluthe holds an attached security interest in the property of MPI, and (ii) Cluthe's interest in such property, if attached, is perfected in priority to the attached and perfected interest of TD in the property of MPI.
28. This Court also possesses the power and jurisdiction to determine this issue pursuant to s. 67 of the Ontario *Personal Property Security Act*.
29. Should this Court find that TD holds a priority interest in MPI's property, and the proceeds thereof, such proceeds shall be distributed to TD in the Final Distribution, as provided for in the Distribution Order.
30. Should this Court find that Cluthe holds a priority interest in MPI's property, and the proceeds thereof, such proceeds shall be distributed to Cluthe pursuant to the Order sought herein.
31. Section 243 of the *BIA*.
32. Section 100 of the *Courts of Justice Act*.
33. Rules 2, 3, and 37 of the *Rules of Civil Procedure*.
34. Sections 11, 48(3), and 67 of the Ontario *Personal Property Security Act*.
35. The grounds as detailed in the Third Report.

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

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

1. The Receivership Order;
2. The Third Report of the Receiver and the Appendices thereto;
3. Such materials as counsel may advise and this Honourable Court may permit.

July 25, 2024

HARRISON PENSA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #69806O)

Tel: 519-679-9660

Fax: 519-667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Solicitors for the Receiver,
Deloitte Restructuring Inc.

To: Service List

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Applicant

-and-

INJECTION TECHNOLOGIES INC., et al.

Respondents

Court File No. CV-23-00699663-00CL

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

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

NOTICE OF MOTION

HARRISON PENZA LLP

Barristers and Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #69806O)

Tel: (519) 679 9660

Fax: (519) 667 3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Receiver,
Deloitte Restructuring Inc.

Tab 2

ONTARIO
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BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.**

Respondents

**THIRD REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS THE RECEIVER AND MANAGER
DATED JULY 8, 2024**

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APPENDICES

APPENDIX	DESCRIPTION
A	Receivership Order
B	Pre-Filing Report (Without Appendices)
C	First Report (Without Appendices)
D	Second Report (Without Appendices)
E	Distribution and Discharge Order
F	Cluthe Affidavit (Without Exhibits)
G	Share Purchase Agreement
H	Receipt of Purchase Price
I	Cluthe 124 Note
J	Cluthe MPI GSA
K	PPSA Search – Moldco Inc.
L	PPSA Search – Moldco Plastics Inc.
M	Lafortune Affidavit (Without Exhibits)
N	Affidavit of Matthew Lafortune sworn May 15, 2023 (without exhibits)

INTRODUCTION

1. On May 26, 2023, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (collectively, the “**Property**”) of Injection Technologies Inc. (“**ITI**”), Moldco Plastics Inc. (“**MPI**”), and Moldco Holdings Inc. (“**Moldco Holdings**”, and together with ITI and MPI, the “**Debtors**”) pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.
2. Copies of the Receivership Order, together with other materials filed with the Court, Receiver’s reports and stakeholder notices (e.g., BIA s.245 and 246 notices) with respect to this matter are available on the Receiver’s case website at www.insolvencies.deloitte.ca/en-ca/InjectionTechnologies.
3. MPI was originally incorporated pursuant to the laws of Ontario on June 20, 2013, at which time it was known as “Moldco Inc.”.
4. MPI was continued into British Columbia on January 29, 2021, at which time it changed its name its current name of “Moldco Plastics Inc.”
5. A copy of the Pre-Filing Report of the Receiver dated May 19, 2023 (without Appendices) as referred to in the First Report is attached hereto as **Appendix “B” (“Pre-Filing Report”)**.
6. On August 15, 2023, the Receiver issued its first report (the “**First Report**”) to the Court to, among other relief, request approval of certain sale transactions of the Debtors’ assets

(collectively, the “**Transactions**”). A copy of the First Report without Appendices is attached hereto as **Appendix “C”**.

7. On August 25, 2023, the Court issued Orders approving the Transactions, and also ordered certain other Ancillary relief.
8. On December 21, 2023, the Receiver issued its second report (the “**Second Report**”) to the Court to advise on the Receiver’s actions since the closing of the Transactions, as well as certain relief, including:
 - (a) Authorizing certain distributions to The Toronto Dominion Bank (“**TD Bank**”) and Bank of Montreal (“**BMO**”) from the proceeds of the Transactions;
 - (b) Authorizing the Holdbacks (as defined in the Second Report) consisting of certain funds from the proceeds of the Transactions in relation to any costs or payments required to complete the administration of the estate, and provide for potential unasserted or proven claims, including the Cluthe Claimed Security Interest (as defined below);
 - (c) Authorizing the distribution of any Holdback funds remaining after completion of the administration of the Estate to TD Bank; and,
 - (d) Discharging Deloitte as Receiver on the completion of the administration of the Estate upon the filing of a Receiver certificate, and releasing the Receiver from liability for its actions while acting in such capacity, save and except for the Receiver’s gross negligence or willful misconduct.

A copy of the Second Report without Appendices is attached hereto as **Appendix “D”**.

9. On January 15, 2024, the Court issued an Order approving the relief sought in the Second Report (the “**Distribution and Discharge Order**”). A copy of this Order is attached hereto as **Appendix “E”**.
10. The Receiver has carried out the majority of its remaining responsibilities for the administration of the Estate, including the BMO Distribution and the Interim TD Distribution, each as defined in the Second Report.
11. The disposition of the portion of the Holdback disputed as between TD Bank and Cluthe remains the final major undertaking of the Receiver prior to the Receiver finalizing its discharge.
12. The purpose of this report is to provide information to the Court about the Cluthe Claimed Security Interest and seek the Court’s direction as to the priority of this claimed interest.

TERMS OF REFERENCE

13. In preparing this Third Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors’ books and records, and discussions with management of the Debtors (“**Management**”) (collectively, the “**Information**”). Except as described in this Third Report:
 - (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional

Accountants Canada Handbook, and, accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

- (b) Deloitte has prepared this Third Report in its capacity as the Receiver for solely the purposes noted herein. Parties using this Third Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

- 14. Unless otherwise stated, all dollar amounts contained in the Report are expressed in Canadian dollars.
- 15. Capitalized terms not defined herein shall have the meaning ascribed to them in the Receivership Order, Pre-Filing Report, the First Report, or the Second Report, as applicable.

CLUTHE CLAIMED SECURITY INTEREST AND PRIORITY DISPUTE

Background

- 16. As referenced in the Second Report, Cluthe claims an interest as a secured creditor in the property of MPI in priority to that of TD Bank (collectively, the “**Cluthe Claimed Security Interest**”), and the Receiver did designate a portion of the Holdback approved under the Distribution and Discharge Order to address Cluthe’s potential priority claim.
- 17. Each of Cluthe and TD Bank claim a priority interest in the assets of MPI. The Receiver has reviewed the positions of each party and has set them out herein. The Receiver seeks

direction from the Court as to the priority of the Cluthe Claimed Security Interest which will impact the distribution of the Holdback funds.

Cluthe Security and Position

18. As at the time of the Second Report, Cluthe had not provided the Receiver with documentation to support the Cluthe Claimed Security Interest, including its security documents and documents evidencing the underlying debt claimed as owing to Cluthe by MPI.
19. Cluthe has since provided the Receiver with an affidavit of Gary Cluthe, a trustee of Cluthe, sworn March 18, 2024 (the “**Cluthe Affidavit**”). A copy of the Cluthe Affidavit without exhibits is attached hereto as **Appendix “F”**.
20. The following documents are attached as Exhibits to the Cluthe Affidavit:
 - (a) Share Purchase Agreement between Cluthe as vendor and 1241704 B.C. Ltd. (“**124**”) as purchaser, for the purchase of the shares of each of 2426496 Ontario Inc. (now Moldo Holdings) and Moldco Inc. (now MPI) dated February 29, 2020 (the “**Share Purchase Agreement**”), signed by the target corporations as additional parties, and attached hereto as **Appendix “G”**;
 - (b) Receipt of Purchase Price dated February 29, 2020 and attached hereto as **Appendix “H”**;
 - (c) Promissory Note from 124 to Cluthe dated February 29, 2020 in the sum of \$480,000 (the “**Cluthe 124 Note**”) and attached hereto as **Appendix “I”**;

- (d) General Security Agreement from MPI (known as Moldco Inc. at that time) dated 2020 (the “**Cluthe MPI GSA**” and attached hereto as **Appendix “J”**;
21. Pursuant to the Share Purchase Agreement, 124 purchased all shares of MPI (known as Moldco Inc. at that time) and Moldco Holdings (known as 2426496 Ontario Inc. at that time), from Cluthe (the “**Share Purchase**”).
22. Consideration for the Share Purchase Agreement was specified to be a partial cash payment from 124 to Cluthe, with the remaining balance to be secured by the Cluthe 124 Note, and by a GSA to be granted by 124 to Cluthe.
23. MPI is not a party to the Cluthe 124 Note nor a guarantor under the Share Purchase Agreement. 124 is not a party to the Cluthe MPI GSA.
24. Pursuant to the Share Purchase Agreement, 124 was the party required to provide a general security agreement. MPI was not required to provide a general security agreement, or to provide a guarantee of 124’s indebtedness to Cluthe.
25. The Share Purchase was completed on February 29, 2020, at which time 124 paid to Cluthe the cash consideration and provided the Cluthe 124 Note. At the same time, MPI provided the Cluthe MPI GSA although pursuant to the Share Purchase Agreement, the GSA was to be granted by 124 rather than MPI.
26. A registration pursuant to the Ontario Personal Property Security Act (“**PPSA**”) in favour of Cluthe as against MPI, under its former name of Moldco Inc., was made on March 11, 2020, intended to perfect the Cluthe Claimed Security Interest. A copy of a PPSA Search against Moldco Inc. current to July 2, 2024 is attached hereto as **Appendix “K”**.

27. Pursuant to the Cluthe Affidavit, Cluthe has claimed that the sum of \$176,000 remains due and owing to it pursuant to the Share Purchase Agreement as at February 9, 2024 (the **“Cluthe Claimed Indebtedness”**).
28. In an email dated December 13, 2023, Receiver’s counsel contacted counsel for Cluthe to advise it that it held no PPSA registration against MPI under its current corporate name and that its interest may have become unperfected, as it had failed to amend this registration following MPI’s change of name from “Moldco Inc.” to “Moldco Plastics Inc.” within 30 days of the name change.
29. In response, and as set out in the Cluthe Affidavit, Cluthe advised that it had first become aware of MPI’s change of name as a result of Receiver’s counsel’s December 13, 2023 email. Cluthe amended its registration on January 10, 2024 to change the name of MPI under the PPSA registration from Moldco Inc. to the current name of Moldco Plastics Inc. A copy of a PPSA Search against Moldco Inc. current to July 2, 2024 is attached hereto as **Appendix “L”**.
30. Cluthe takes the position that it amended its PPSA registration within 30 days from the date it first became aware of MPI’s change of name, being December 13, 2023, and that MPI is indebted to Cluthe pursuant to the Share Purchase Agreement, the Cluthe 124 Note, and the Cluthe MPI GSA.

TD Bank Security and Position

31. As set out in the Second Report, Receiver’s counsel reviewed the security of TD Bank over the assets of MPI and found TD’s general security interest in MPI’s personal property to

be validly attached and perfected pursuant to the PPSA (collectively, the “**TD Security Interest**”).

32. The Receiver has reviewed the affidavit of Matthew Lafortune of TD Bank sworn April 16, 2024 (the “**Lafortune Affidavit**”). A copy of the Lafortune Affidavit (without exhibits) is attached hereto as **Appendix “M”**. A copy of the affidavit of Matthew Lafortune (without exhibits) sworn May 15, 2023 as referenced in the Lafortune Affidavit is also attached hereto as **Appendix “N”**.
33. Pursuant to the Lafortune Affidavit, TD disputes the validity and attachment of the Cluthe Claimed Security Interest on several grounds:
 - (a) TD disputes the existence of an underlying debt of MPI to Cluthe, which would be secured by the Cluthe MPI GSA, for the following reasons:
 - (i) MPI was not a party to the Cluthe 124 Note, did not agree to provide any security to Cluthe thereunder, and provided no consideration to Cluthe and received no benefit from the Share Purchase;
 - (ii) MPI did not guarantee 124’s indebtedness under the Shareholder Agreement;
34. In the event that MPI is found to be indebted to Cluthe such that the Cluthe Claimed Security Interest is valid, TD disputes the priority of the Cluthe Claimed Security Interest over the TD Security Interest on the following basis:
 - (a) Cluthe received notice of MPI’s change of name as early as May 18, 2023, when it was served with TD’s application to appoint the Receiver, in which MPI’s change of name was explicitly referenced at several points;

- (b) Cluthe received notice of MPI's name change in subsequent court documents served in the herein proceedings, including specific referenced to Cluthe's lack of a PPSA registration as against MPI at paragraph 50 of the Receiver's First Report dated August 15, 2023 for use at a sale approval hearing held August 25, 2023;
- (c) Cluthe acknowledged the continuation of Moldco Inc. into British Columbia in the Share Purchase Agreement.

- 35. It is TD's position that as no value was given by MPI to Cluthe under the Share Purchase Agreement, no interest of Cluthe attached to MPI's property.
- 36. In the event that attachment under the PPSA occurred, TD takes the position that the Cluthe Claimed Security Interest was not re-perfected within 30 days of Cluthe receiving notice of MPI's change of name, such that the Cluthe Claimed Security Interest became unperfected and was re-perfected subsequent in priority to the perfected TD Security Interest.

Directions

- 37. Pursuant to paragraph 28 of the Appointment Order, the Receiver is entitled to apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 38. As an officer of the Court, the Receiver is required to avoid preferencing any of the secured creditors of MPI. There are issues of fact and law in this matter, such that the direction and disposition of this Court is required in order to avoid the perception of any such preference by the Receiver.

39. The Receiver requires the direction of the Court in this regard in order to determine whether: (i) Cluthe holds an attached security interest in the property of MPI, and (ii) Cluthe's interest in such property, if attached, is perfected in priority to the attached and perfected interest of TD in the property of MPI.
40. Should this Court find that TD holds a priority interest in MPI's property, and the proceeds thereof, such proceeds shall be distributed to TD in the Final Distribution, as provided for in the Distribution Order.
41. Should this Court find that Cluthe holds a priority interest in MPI's property, and the proceeds thereof, such proceeds shall be distributed to Cluthe pursuant to the Order sought herein, and up to the total amount of the Cluthe Claimed Indebtedness which can be proven by Cluthe at the time of such payment.

REMAINING TASKS TO COMPLETE RECEIVERSHIP

42. The task remaining to complete the administration of the Receivership include:
 - (a) Respond to CRA's audit inquiries in respect of the Debtors' payroll accounts and resolving the source deduction deemed trust amount;
 - (b) Resolve the Cluthe Claimed Security Interest; and,
 - (c) Issue the Final Distribution to TD Bank, consisting of the balance of funds in the estate, less any amounts utilized by the Receiver from the Fee Accrual and/or utilized by the Receiver in relation to the Holdbacks;

- (d) If necessary and should this Court find that the Cluthe Claimed Security Interest is in priority to the TD Security Interest, issue a distribution to Cluthe from the Holdbacks up to the total amount of the Cluthe Claimed Indebtedness.

RECEIVER'S PROFESSIONAL FEES

- 43. The Receiver and its legal counsel have incurred fees and disbursements in the undertaking of its duties as set out herein, and in the preparation of the herein motion and this Third Report.
- 44. The Receiver is of the view that the fees and disbursements of it and its legal counsel are reasonable and are consistent with the purpose of the Fee Accrual already approved by this Court pursuant to the Distribution and Discharge Order, and absent any opposition from responding parties to the herein motion, intends to pay such fees and disbursements from the Fee Accrual.

RECEIVER'S RECOMMENDATIONS

- 45. For the reasons set out above, the Receiver recommends that the Court make Orders:
 - (a) Approving this Third Report, and the activities of the Receiver and its legal counsel, HP set out therein;
 - (b) Seeking the Court's direction with respect to the priority of Cluthe Claimed Security Interest and the TD Security Interest;
 - (c) Should this Court find that TD's interest is in priority to that of Cluthe in the Plastics Proceeds, an Order that the portion of the Holdbacks as defined in the Second Report

relating to Cluthe be included in the Final Distribution, also as defined in the Second Report; and,

- (d) Should this Court find that Cluthe's interest is in priority to that of TD in the Plastics Proceeds, an Order that the portion of the Holdbacks relating to Cluthe be distributed by the Receiver to Cluthe, up to the total amount of the Cluthe Claimed Indebtedness.

All of which is respectfully submitted this 9th day of July, 2024.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
Receiver of Injection Technologies Inc.,
Moldco Plastics Inc., and Moldco Holdings
Inc., and without personal or corporate
liability

Per:



Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX "A"

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

THE HONOURABLE MADAM)	FRIDAY, THE 26 TH
)	
JUSTICE STEELE)	DAY OF MAY, 2023

THE TORONTO-DOMINION BANK

Applicant

and

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.**

Respondents

**ORDER
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Injection Technologies Inc., Moldco Plastics Inc., and Moldco Holdings Inc. (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mathieu Lafortune sworn May 15, 2023 and the Exhibits thereto, and the Pre-Filing Report of Deloitte dated May 19, 2023, and on hearing the submissions of counsel for the Applicant, the Receiver and the Respondents, no else appearing

although duly served as appears from the affidavit of service of Matilda Lici sworn May 17, 2023 and on reading the consent of Deloitte to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its

discretion may deem appropriate, including in accordance with the processes of disposition as described and proposed in the pre-filing report of Deloitte dated May 19, 2023 filed with the Court on this application (the “**Pre-Filing Report**”);

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$1,000,000, provided that the aggregate consideration for all such transactions does not exceed \$5,000,000, all before applicable taxes; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to file an assignment into bankruptcy, and to act as trustee in bankruptcy, on behalf of all or any of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. 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, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver 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 manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of

the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility services, leases of equipment or premises, or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the

employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that, pending further Order of the Court, for a period of fifteen (15) calendar days following the date of this Order (the "**Interim Comeback Period**"), the Receiver's Borrowing Charge shall not extend to collateral that is subject to a properly perfected security interest that is in priority to the Bank's security, including purchase money security interests. Any secured creditor that wishes to take the position that the priority charges granted pursuant to this Order should not extend to collateral subject to their security interest shall serve a motion on notice to the Receiver and the Bank within fifteen (15) calendar days of the date of this Order, seeking such relief. In the absence of an Order being granted in respect of such motion that is served within the Interim Comeback Period, all priority charges under this Order including the Receiver's Borrowings Charge set forth in paragraph 21 above, will apply to all assets, including those subject to purchase money security interests, equipment leases or other interests that may be in priority to the Bank's security, immediately upon the conclusion of the Interim Comeback Period without any further steps being taken.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.insolvencies.deloitte.ca/en-ca/InjectionTechnologies.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier,

personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

29. THIS COURT ORDERS that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include Aird & Berlis LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may arise.

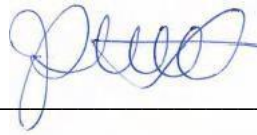
30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

DELOITTE RESTRUCTURING INC., solely in
its capacity as Receiver of the Property, and not
in its personal capacity

Per: _____

Name:

Title:

THE TORONTO-DOMINION BANK

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO
PLASTICS INC., AND MOLDCO HOLDINGS INC.**

Applicant

Respondents

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

RECEIVERSHIP ORDER

AIRD & BERLIS LLP

Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

D. Robb English (LSO # 19862F)

Tel: (416) 865-4748
Email: renglish@airdberlis.com

Matilda Lici (LSO #79621D)

Tel: (416) 865-3428
Email: mlici@airdberlis.com

Lawyers for The Toronto-Dominion Bank

APPENDIX "B"

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.**

Respondents

**REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS THE PROPOSED RECEIVER OF
INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.
DATED MAY 19, 2023**

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APPENDICES

APPENDIX	DESCRIPTION
A	The Proposed Receiver's Sale Process Document

INTRODUCTION

1. An application has been made before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by The Toronto-Dominion Bank (“**TD**” or the “**Bank**”) for an order (the “**Receivership Order**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C.43, as amended (the “**Receiver**”), of the assets, undertakings and properties (collectively, the “**Property**”) of Injection Technologies Inc. (“**ITI**”), Moldco Plastics Inc. (“**MPI**”), and Moldco Holdings Inc. (“**Moldco Holdings**”, and together with ITI and MPI, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors.
2. ITI and MPI operate as injection molded plastic parts manufacturers from two facilities located in Windsor and Kitchener. Moldco Holdings is the owner of certain equipment used in the operations. Historically, production focused on automotive customers and later expanded into consumer and medical instrument products in Kitchener.
3. The Windsor operations also include a longstanding tryouts/trials (“**Tryouts**”) business from which customers use equipment and personnel at the Windsor Facility to test molds prior to mass production at their own facilities.
4. TD is the senior secured lender to the Debtors pursuant to credit, loan, and equipment lease agreements (the “**TD Loan Agreements**”) granted by TD (the “**TD Indebtedness**”) and is owed in excess of Cdn \$13.0 million and US \$1.9 million as at May 1, 2023, all before legal costs, applicable disbursements, and accrued interest.
5. In February 2023, Deloitte was retained as financial advisor to TD to, among other things, review the Debtors’ current operations, financial position, and business viability.
6. As set out below, and in the Lafortune Affidavit (defined below), the Debtor is facing significant financial and operational issues, has run out of liquidity, and has lost the support of TD. A receivership will allow for an immediate marketing of the Debtors’ assets and business on an expedited basis to maximize recovery for the stakeholders.
7. Deloitte is a licensed trustee within the meaning of section 2 of the BIA and has consented to act as Receiver in these proceedings in the event that this Court grants the Receivership Order. The purpose of this report (the “**Report**”) as proposed Receiver of the Debtors (the “**Proposed Receiver**”) is to:

- (a) provide the Court with an overview of the Debtors' business and Property, including its corporate structure, certain assets and liabilities, unusual and unexplained events and account balances, and the current state of the affairs of the business; and
- (b) describe the proposed sale process (the "**Sale Process**") in respect of the assets and operations of the Debtors which, subject to Court approval, is to be commenced forthwith following the issuance of the Receivership Order.

TERMS OF REFERENCE

8. In preparing this Report, Deloitte has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors' books and records, and discussions with management of the Debtors ("**Management**") (collectively, the "**Information**"). Except as described in this Report:
- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook, and, accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) Deloitte has prepared this Report in its capacity as the Proposed Receiver to support the Court's consideration of the relief being sought by TD in its application for the Receivership Order and, subject to the granting of the Receivership Order, the relief being sought by the Proposed Receiver in its motion for approval of the Sale Process. Parties using the Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
9. Unless otherwise stated, all dollar amounts contained in the Report are expressed in Canadian dollars.
10. Reference is made to the Affidavit of Mathieu Lafortune, sworn May 15, 2023 (the "**Lafortune Affidavit**"), in support of TD's application for the appointment of Deloitte as receiver of the Property, and approval of the Sale Process.
11. Unless otherwise provided, all other capitalized terms not otherwise defined in this Report are as defined in the Lafortune Affidavit.

BACKGROUND

Overview

12. ITI is a Windsor-based injection molded plastic parts manufacturer and customer tryouts/trials facility in operation since 1990. Historically, ITI specialized in mold try-outs and service business, and expanded its short batch and extended run production following the MPI acquisition in March 2020.
13. ITI operates from the Windsor Facility (defined below) which it owned until completing a sale-leaseback transaction in March 2022. MPI is a guarantor under that lease.
14. Pursuant to a share purchase agreement dated February 29, 2020 (the “**MPI Purchase Agreement**”), 1241704 BC Ltd. (“**124 BC**”) purchased the shares of Moldco Inc. and 2426496 Ontario Inc. (“**242 Ontario**”) from the 2013 Gary Paul Cluthe Family Trust (the “**Cluthe Family Trust**”) for cash consideration plus a vendor take-back promissory note (the “**Cluthe VTB**”).
15. Subsequently, Moldco Inc. changed its name to “Moldco Plastics Inc.” and 242 Ontario changed its name to “Moldco Holdings Inc.”. In addition to ITI and MPI, the Company also operates under the banners Inject Tech Plastics, MoldCo Inc., and IT Group.
16. MPI is a Kitchener-based injection molded plastic parts manufacturer specializing in small batch and extended run production along with sub-assembly of molded components. As detailed later in this Report: (i) MPI moved into the Kitchener Facility (defined below) for which ITI is the named tenant, and (ii) MPI subleases the Old Kitchener Premises (defined below) to a major customer.
17. While ITI and MPI are distinct legal entities, they are being operated as though they are a single entity in certain circumstances (e.g. purchase orders issued to one entity but production performed at both plants, ITI being the named tenant on MPI’s real property lease, etc.). All MPI production is conducted at the Kitchener Facility. However, ITI production is conducted at both the Windsor Facility and the Kitchener Facility. Tryouts are conducted solely by ITI at the Windsor Facility.
18. Management advised that Moldco Holdings owns certain fixed assets located in Kitchener, but has no operations, employees, or other known assets.
19. The Debtors have a July 31st fiscal year-end (“**FY**”) date. On a combined basis, the Debtors’ internal unaudited financial statements report FY2022 revenues of approximately \$25.5 million. The Debtors’ internally unaudited financial statements report fiscal year-to-date sales to January 31, 2023 of approximately \$14.2 million.

20. The Debtors' workforce consists of 160 employees, of which 140 are hourly staff and 20 are salaried staff. Further, 82 employees are classified under "Windsor" payroll and 78 employees under "Kitchener" payroll. None of the employees are represented by a union and the Debtors do not sponsor a pension plan.
21. Moldco Holdings did not have any employees and was administered by ITI and MPI management.
22. A summary of the Debtors' leased locations, production summary, production profile, and approximate headcount as of April 2023 is as follows:

Description	ITI	MPI	Moldco Holdings
Plant Premises	4350 Industrial Drive, Windsor, ON (the " Windsor Facility ") <ul style="list-style-type: none"> • Sale-Leaseback in March 2022 • Term: 20 years • Square Feet: 47,885 • Guarantor on lease: MPI 	41 Ardelt Place, Kitchener, ON (the " Kitchener Facility ") <ul style="list-style-type: none"> • Term: October 1, 2020 to September 30, 2027 • Square Feet: 67,550 • Tenant: Lease in the name of Injection Technologies Inc. 	N/A
Offsite Warehouse Premises	2051 Ambassador Drive, Windsor, ON (the " Windsor Warehouse ")	965 Wilson Ave., Kitchener, ON (the " Old Kitchener Premises ") <ul style="list-style-type: none"> • Customer Sublease Agreement of October 29, 2021, extended to November 30, 2023. 	N/A
Production Summary	Mold tryouts, service, short batch, and extended run production. 2 shifts / day (16-hour coverage), 5 days / week. Currently operating at 60-65% of plant capacity	Small batch and extended run production, assembly of molded components. 3 shifts / day (24-hour coverage), 5 days / week. Currently operating at 45% of plant capacity	N/A – Fixed Assets

23. As described later in this Report, the Debtors failed to effectively integrate the Windsor and Kitchener businesses, which were further complicated by, among other things, (i) an expansion into a new, larger and costly leased facility in Kitchener, (ii) the departure of its longstanding CEO in mid-2022 and a rapid series of unsuccessful replacements, (iii) challenges in using two unintegrated

accounting systems, (iv) the FY 2022 audited financial statements and tax returns remain outstanding after 9 months with no immediate timeline to completion, (v) unexplained excessive inventory value build-up and recently disclosed \$6.2 million inventory impairment, (vi) an outstanding accounting of the uses of net proceeds from the 2022 sale lease-back transaction for the Windsor Facility to the satisfaction of the Proposed Receiver, (vii) significant accumulated sales tax and unremitted payroll tax liabilities, and Canada Revenue Agency (“CRA”) has recently commenced a payroll trust exam, (viii) the Debtors are in default of the TD credit agreement, (ix) the Debtors filed monthly borrowing limit certificates with TD which reported major margin shortfalls of \$5.1 million and \$6.7 million as at December 31, 2022 and January 31, 2023, respectively, (xi) the Debtors have forecast a reliance on the out-of-margin availability of the majority of the \$10 million TD line of credit for the next 12 months; (xii) certain suppliers have placed the Debtors on cash-on-demand (COD) terms, and (xiii) the Debtors are thinly capitalized and out of liquidity.

Corporate Background

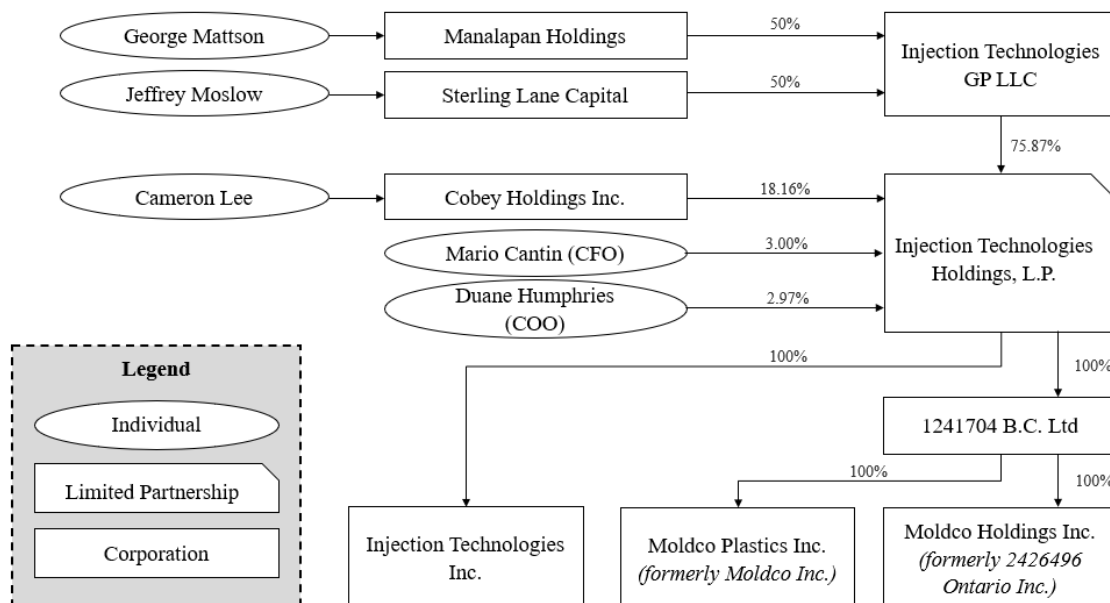
24. ITI is a British Columbia (“BC”) corporation formed by the amalgamation of Injection Technologies Acquisition Company Inc. and Injection Technologies Inc. (an Ontario corporation) on July 31, 2015.
25. MPI is a BC corporation, originally incorporated in Ontario on June 20, 2013 as Moldco Inc. and continued in BC as of January 29, 2021.
26. Moldco Holdings is a BC corporation, originally incorporated in Ontario on July 15, 2014 as 2426496 Ontario Inc. and continued in BC as of January 29, 2021. It is extra-provincially registered in Ontario.
27. ITI, MPI, and Moldco Holdings share a stated registered office in Vancouver, BC, however, none of the Debtors have any BC-based employees, management, or operations.
28. Based on Deloitte’s review of corporate searches for each of the Debtors:
 - (a) George Mattson (“**Mattson**”) and Jeffrey Moslow (“**Moslow**”) are directors (the “**Directors**”) of each of the Debtors;
 - (b) Cameron Lee (“**Lee**”) is listed as registered officer of ITI, and there are no registered officers of MPI and Moldco Holdings; and
 - (c) Each of the Debtors are “not in good standing” with the BC Registry Services.
29. Injection Technologies Holdings, L.P. (“**Injection Holdings**”) owns 100% of ITI and 124 BC.

30. 124 BC was incorporated in February 2020 and owns 100% of MPI and Moldco Holdings.

31. The ultimate shareholders of Injection Holdings, 124 BC, ITI, MPI, and Moldco Holdings are as follows:

- (a) Mattson and Moslow are the majority shareholders and are experienced senior finance professionals and investors based in the United States;
- (b) Lee who served as Chief Executive Officer of ITI from 2006 and later the combined Company until taking a leave of absence in mid-2022 on which in remains as of the date of this Report;
- (c) Mario Cantin is the Chief Financial Officer (“**Cantin**” or “**CFO**”) and was hired in early 2022 and is based in Kitchener; also assumed role of interim General Manager of the Kitchener operations following the departure of Lee and other interim General Managers; and
- (d) Duane Humphries, a longstanding ITI employee based in Windsor, and was appointed as Chief Operating Officer (“**Humphries**” or “**COO**”) in 2022.

32. The Proposed Receiver understands that the corporate structure of the Debtor is as follows:



SELECT HISTORICAL FINANCIAL POSITION AND OPERATING RESULTS

33. The Debtors reported revenue of \$25.3 million and \$25.5 million on a combined basis in FY2021 and FY2022, respectively.
34. On March 18, 2022, ITI closed a sale-leaseback transaction (the “**Windsor Sale-Leaseback**”) with respect to its interest in the land and building constituting the Windsor Facility. This resulted in an accounting and taxable gain for FY 2022.
35. The Windsor Sale-Leaseback did not improve the Debtor’s liquidity. Management advises that a portion was used to partially pay certain payroll tax arrears and the balance of surplus funds was used to pay trade payables owing to suppliers. A detailed accounting for the use of the Windsor Sale-Leaseback proceeds remains outstanding.

CERTAIN ASSETS

Inventory

36. The Debtor recently disclosed to TD a downward inventory provision of \$6.2 million (the “**Inventory Provision**”). Management advised the Proposed Receiver that the Debtors became aware that inventory was overstated on or about July 2022, and that it took until early 2023 to arrive at a final amount of the provision. However, they have not yet provided a reasonable explanation or detailed accounting of the Inventory Provision, but have cited the following possible reasons:
 - (a) Possible write-off of raw materials upon transfer from the Old Kitchener Premises to the new Kitchener Facility, although management has not confirmed nor provided details on whether these were expired/obsolete/unsubstantiated raw materials which should have written down on the acquisition or move date;
 - (b) Internal costing and accounting system limitations; and
 - (c) Certain customer inventory stored by the Debtors may have been incorrectly counted as owned by MPI.
37. Management informed the Proposed Receiver that the Inventory Provision has not yet been processed through the income statement as the FYE 2022 audit remains in-progress. Should it be appointed, the Proposed Receiver intends to liquidate the finished goods inventory to existing customers. Raw materials will be used in ongoing production or otherwise liquidated.

Fixed Assets

38. The Debtors' fixed assets are primarily comprised of machinery and equipment located the Windsor Facility, Kitchener Facility, and Windsor Warehouse.
39. Certain of the machinery and equipment appear to be subject to leases, such as: TD (various), Bank of Montreal (one large machine), Wells Fargo (lease payments appear complete), and De Lage Landen (forklifts). As described later in this Report, should it be appointed, the Proposed Receiver will (i) compile and review lease documentation and (ii) retain independent legal counsel to conduct a security review.
40. As described later in this Report, the Proposed Receiver's proposed Sales Process contemplates offering the fixed assets for sale to interested bidders and/or auctioneers.

CREDITORS

Secured Creditors

41. Based on a review of the Debtors books and records, and PPSA registrations, the following are the Debtor's primary secured creditors:
 - (a) TD is the senior secured lender and is owed in excess of Cdn \$13.0 million and US \$1.9 million as at May 1, 2023, all before legal costs, applicable disbursements, and accrued interest. This consists of a line of credit, term loans, and equipment leases;
 - (b) Bank of Montreal is a secured creditor pursuant to a lease for a large equipment unit at the Windsor Facility;
 - (c) De Lage Landen is a secured creditor pursuant to operating leases for forklifts located in Windsor and Kitchener;
 - (d) BMW Group Financial Services Canada is a secured creditor pursuant to a vehicle lease;
 - (e) Meridian OneCap Credit Corp is a secured creditor with respect to certain equipment; and
 - (f) The Cluthe Family Trust is a secured creditor pursuant to a general security agreement in connection with the Cluthe VTB.
42. The Proposed Receiver intends to retain Harrison Pensa LLP as independent legal counsel to, among other things, conduct a review of the security granted by the Debtors to each of the secured

parties listed above and report to the Court on the results of that security review in a subsequent motion.

Trade Creditors

43. The Debtors' have accounts payable and accrued liabilities owing to numerous vendors located in Canada and the United States of which the largest balances are payable to resin suppliers.

Taxes

44. ITI has an unremitted HST liability of \$695,000 as at January 31, 2023, which balance has accumulated over a year. In early 2023, CRA and ITI agreed to a monthly payment plan to repay this HST liability.
45. Management disclosed that ITI accumulated an unremitted employee source deductions balance during a period when ITI manually processed payroll internally. Management advised that this issue was remedied on a go-forward basis once ITI transitioned its payroll to an external payroll services provider in October 2021 for ongoing remittances. Management advised that ITI has subsequently remitted payments and has calculated a reduced balance of \$488,000 as at January 31, 2023. However, the CRA payroll account statements indicate that \$1.3 million remains outstanding. Management indicated that \$859,000 of ITI payments on account of payroll tax arrears were inadvertently applied by CRA to MPI's payroll tax number. Management and its external accountant advised that supporting documentation has been furnished to CRA to correct this error, however, it is unclear if CRA has made the appropriate corrections to their records. The Proposed Receiver understands that the CRA is conducting a review of the Debtors payroll and HST accounts.
46. The Debtors' external accountant has not finalized the FY2022 audit and corporate income tax returns. On a preliminary basis, the external accountant estimated (i) modest corporate income tax refunds for each of the Debtors, and (ii) modest SR&ED refunds for ITI and MPI.

Government Loans

47. The Debtors have two loans with respect to the Federal Economic Development Agency for Southern Ontario (Regional Relief and Recovery Fund), which Management advises are unsecured loans.

THE CURRENT CIRCUMSTANCES FACING THE DEBTORS

48. The above events have left the Debtors in the following situation:

- (a) the business continues to generate losses and is operating at under-capacity, particularly the Kitchener Facility;
- (b) they have intertwined their operations and obligations, and have a non-integrated financial reporting structure;
- (c) they have disclosed significant payroll tax and sales tax arrears;
- (d) cash resources have been almost entirely depleted, and it has no sources of equity injections or funding. The Debtors are unable to maintain payments to its lenders, vendor payment terms have been stretched and they have inadequate operating cash levels. The Debtors are in a significant margin shortfall under the TD line of credit, and are relying on the maximum \$10 million borrowing limit to maintain operations; and
- (e) they are in default of the TD Loan Agreements and TD is enforcing on its security. The Debtors are unable to repay or refinance the secured indebtedness owed to TD under the TD Loan Agreement.

49. Based on the foregoing, the Proposed Receiver is of the view that the Debtor is insolvent.

THE RECEIVER'S PROPOSED SALE PROCESS

Business and Asset Lots for Sale

- 50. Should it be appointed, the Proposed Receiver intends to temporarily operate the business from the Windsor Facility and Windsor Warehouse (the “**Windsor Business**”) to a certain extent with the view of finding a going-concern purchaser and realize value on its legacy Tryouts business. This is contingent on, among other things, the Proposed Receiver negotiating payment terms with customers to the satisfaction of the Proposed Receiver.
- 51. Management acknowledged that operations at the Kitchener Facility were not viable in their current form, and it had formulated a preliminary plan to winddown its Kitchener operations and transfer certain customers and machinery to the Windsor Facility. That plan has not been implemented as of the date of this Report. The Proposed Receiver also notes that operations at the Kitchener Facility require significant capital, liquidity, and operational investments in order to make it viable. In addition, the Kitchener operations' high monthly overhead cost structure, unclear product

costing, disorganized financial reporting platform, and significant excess capacity make it unlikely it would sell on a going concern basis with full operations. However, the Proposed Receiver will evaluate the commercial reasonableness of maintaining partial operations at the Kitchener Facility with a view to continuing production for specific customer contracts for a limited period. Consequently, the Proposed Receiver proposes to market the Windsor Business as well as the assets located in Windsor and Kitchener.

52. As a result, the Proposed Receiver has developed a proposed sales process which is set out in the attached **Appendix “A”** (the “**Sale Process**”). The Sales Process involves separating the various assets into lots by location and sub-lots (the “**Lots**” and “**Sub-Lots**”, respectively) as listed in an electronic data room (the “**Data Room**”) to be established by the Proposed Receiver. Bids can be submitted for the Windsor Business and/or any or all of the Lots or Sub-Lots, which can be summarized as follows:

- (a) **The Windsor Business:** The operations and assets, including in Lots 1 and 3, used in the Windsor Business. A bid for the Windsor Business shall specify which of the following numbered lots are included;
- (b) **Lot 1:** Fixed assets, including machinery and equipment, located at the Windsor Facility;
- (c) **Lot 2:** Fixed assets, including machinery and equipment, located at the Kitchener Facility;
- (d) **Lot 3:** Fixed assets, including machinery and equipment, located at the Windsor Warehouse;
- (e) **Lot 4:** All raw material inventory, work-in-process inventory, and finished goods inventory, which are not otherwise used in operations or sold to customers at each of:
 - (i) Lot 4(a) - The Windsor Facility,
 - (ii) Lot 4(b) – The Kitchener Facility;
 - (iii) Lot 4(c) - The Windsor Warehouse; and
- (f) **Lot 5:** All intellectual property of the Debtors, excluding any intellectual property which may be included in a transaction for the Windsor Business.

53. The accounts receivable of the Debtors may be made available for an assignment or sale to a Prospective Bidder, in the sole discretion of the Proposed Receiver.

54. The Proposed Receiver reserves its right to add or remove assets from the Lots and Sublots prior to the Bid Deadline.
55. Purchasers seeking only to purchase the Windsor Business and assets located at the Windsor Facility and Windsor Warehouse are only required to submit one Binding Bid. If such parties are also interested in assets located in Kitchener, a separate bid(s) will be required for Lots or Sublots 2, 4, and 5 in respect of the Kitchener assets.

Timeline

56. The Sale Process is a robust process intended to broadly market the assets in a reasonable timeframe. A chronology of the key activities to be undertaken by the Proposed Receiver is set out below.

Timing	Activity
Day 1 to 5	<ul style="list-style-type: none"> • Identification of potential purchasers (each, a “Potential Purchaser”). • Preparation of a marketing teaser (the “Teaser”) and form of non-disclosure agreement (“NDA”) for circulation to Potential Purchasers. • Compile and review information that will be required by Potential Purchasers to assess their offer(s) for the assets. • Establish and commence populating the Data Room with information for Potential Purchasers who executed an NDA to assess the equipment and acquisition opportunity.
Day 5 to 7	<ul style="list-style-type: none"> • Launch the market outreach campaign with an email distribution of the Teaser and NDA to Potential Purchasers. • Advertise in an industry publication. • Commence arranging third-party inspection of assets and preparation of equipment listing for use by Potential Purchasers. • Respond to in-bound calls and inquiries.
Day 15-20	<ul style="list-style-type: none"> • The Receiver’s template forms of offer to be posted in the Data Room for use by Prospective Bidders: <ul style="list-style-type: none"> ○ Agreement of Purchase and Sale re Windsor Business – The Receiver’s template form of Agreement of Purchase and Sale ○ Asset Purchase Agreement / Auction Proposal – The Receiver’s template form of Asset Purchase Agreement and/or Terms and Conditions for an auction proposal
Day 8 to 30	<ul style="list-style-type: none"> • Continue outreach to Potential Purchasers, respond to inquiries, and execution of NDAs. • Ongoing compilation and review of information, updating the Data Room.

Timing	Activity
	<ul style="list-style-type: none"> Coordinate site visits and review of assets by Prospective Bidders.
Day 31	<ul style="list-style-type: none"> Bid deadline for submission of bids, including conditions, supplemental bidder information about its operational background, experience, corporate disclosures, and financial capability (the “Bid Deadline”).
Day 31 to 35	<ul style="list-style-type: none"> Review of bids (each, a “Bid”), selection of shortlisted Bids (each, a “Shortlisted Bid”), correspondence and clarifying questions with Shortlisted Bids, and consultations with stakeholders.
Day 35	<ul style="list-style-type: none"> Selection of the most advantageous Shortlisted Bid(s), conditional on Court approval.
Day 35 to 40	<ul style="list-style-type: none"> Negotiation with the successful bidder(s) and execution of a definitive agreement (a “Definitive Agreement”).
Day 45 to 50	<ul style="list-style-type: none"> Projected date to seek the Court’s approval of the successful purchaser and the corresponding Definitive Agreement (the “Sale Approval Hearing”).
Day 51 to 55	<ul style="list-style-type: none"> Close the transaction (the “Sale Transaction”) set out in the Definitive Agreement. Implement terms of the Definitive Agreement (if applicable). Targeted date for removal of all Property and vacate associated leased premises.
TBC - Auction Timing	<ul style="list-style-type: none"> Period and terms of continued occupancy to facilitate an auction at each or all of the Windsor Facility, Kitchener Facility, and Windsor Warehouse to be negotiated and subject to the Receiver’s discretion.

57. The condensed timeline proposed in the table above reflects the lack of liquidity to fund ongoing protective disbursements, including ongoing Windsor payroll and interim occupancy costs with multiple leased locations. Accordingly, the Receiver believes the Sale Process is reasonable in the circumstances set out above. However, the Proposed Receiver reserves the right to modify or extend the timeframes set out above should it deem it necessary to maximize the realizations from the Property.

Other Terms and Conditions

58. The following is a summary of other key terms and conditions of the Sale Process:

- Purchasers are only required to submit one bid for the Windsor Business and assets located in Windsor.

- Prospective Bidders that operate as an auctioneer (an “**Auctioneer**”) shall submit two bids required for the assets as follows:
 - Cash Purchase Price – An offer to purchase and take title to all of the Property, Lots, or Sublots. Such offers must ascribe bid values to permit the Proposed Receiver to allocate them between other secured creditors as may be applicable and required; and
 - Net Minimum Guarantee – Bidder offers to pay a specified minimum amount for all the machinery and equipment to be auctioned (a “**Net Minimum Guarantee**” or “**NMG**”), plus the proceeds from auction above the NMG would be shared by allocation between the bidder and the Proposed Receiver based upon a negotiated / proposed structure
- Each Auctioneer bid shall (i) provide a brief description of its corporate background, including but not limited to prior experience for projects of this size/scope, and any prior experience in the automotive or manufacturing industry; (ii) demonstrate an in-depth knowledge of the various asset classes available and clear insight on the appropriate channels to market these assets to maximize recovery; (iii) provide evidence of financial ability to close the proposed transaction (e.g. Proof of Funds letter) and appropriate insurance to conclude the transaction; and (iv) specify any partners that would participate in the transaction.
- Each Auctioneer shall outline an opinion on the estimated value range of recovery/price per asset/unit on the asset listing included in the Data Room.
- A listing of the assets will be provided to Potential Purchasers; however, as a starting point interested parties are responsible to conduct their own diligence on the assets. An asset sale is meant to include all assets wall-to-wall, floor-to-ceiling with the exception of items that must remain affixed to building, leased items, and items that would typically remain with a leased building (e.g. HVAC, lighting, doors, electrical, plumbing, etc.).
- All assets will be sold “as-is”, “where-is” without warranty or liability.
- Each bidder to provide its opinion on the estimated value range of recovery/price per asset on the asset listing and in total.
- Bidders will be responsible for: (i) coordinating with the local management on-site appropriate documentation to facilitate sale and asset removal; (ii) coordinating removal of all assets using bonded and insured riggers and service providers; and (iii) leaving the

respective leased facility in an orderly condition and for restoring any damages caused to the premises that occurs as a result of the asset removal.

- The Receiver will assess and consider whether the Bids, if any, are likely to be consummated and in the best interest of stakeholders.
- The Receiver shall review all such Bids and may, but shall have no obligation to, enter into a Definitive Agreement with the Potential Purchaser or Potential Purchasers who submitted the best, highest, or otherwise most favourable bid. The Receiver reserves its right not to accept any bid or to vary the terms of or terminate the Sale Process. The Receiver reserves the right to deal with one or more bidders to the exclusion of others and to accept a bid or bids for some or all of the Property.

59. For greater certainty, paragraphs 52 to 58 this Report are of a summary nature and the terms provided for in the Sales Process at Appendix “A” shall govern.

RECEIVER’S BORROWINGS

60. The draft Receivership Order provides for the Proposed Receiver to borrow up to \$2.0 million by way of Receiver’s certificates. Based on its preliminary analysis, the Receiver believes this should be sufficient to fund receivership operations until the Sale Process can be implemented and proceeds from the sale of the Property collected. In the event that circumstances dictate that the Proposed Receiver would require further funding beyond the maximum set out above, it will return to Court to seek to have the maximum borrowing capacity increased. TD Bank has agreed to provide funding through Receiver’s Certificates throughout the receivership process.
61. The Receiver expects that borrowings may be required to fund existing and ongoing obligations, including but not limited to: payroll, rent, security, utilities, various other protective disbursements, and professional and legal costs that will be incurred during the receivership. The Receiver believes that such borrowings are necessary and appropriate for the benefit of all stakeholders and to enhance value in undertaking the Sale Process. The Receiver intends to utilize such borrowings subject to the timing of collections of A/R and inventory sales.

PROPOSED RECEIVER’S RECOMMENDATIONS

62. For the reasons set out above, and in the event the Court grants the Appointing Order, the Receiver recommends that the Court approve the processes of disposition as described and proposed in this Report.

All of which is respectfully submitted at Toronto, Ontario this 19th day of May, 2023.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the proposed
Court-appointed Receiver of
Injection Technologies Inc., Moldco Plastics
Inc., and Moldco Holdings Inc., and
without personal or corporate liability



Per:

Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President



Stefano Damiani, CPA, CA, CIRP, LIT
Senior Vice-President

THE TORONTO-DOMINION BANK

v.

INJECTION TECHNOLOGIES INC., et al.

Applicant

Respondents

Court File No. CV-23-00699663-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

REPORT OF THE RECEIVER

HARRISON PENZA ^{LLP}

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #69806O)

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Receiver,
Deloitte Restructuring Inc.

APPENDIX "C"

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.**

Respondents

**FIRST REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS THE RECEIVER AND MANAGER
DATED AUGUST 15, 2023**

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APPENDICES

APPENDIX	DESCRIPTION
A	Pre-Filing Report of the Proposed Receiver dated May 19, 2023
B	Receivership Appointment Order dated May 26, 2023
C	Endorsement of Justice Steele dated May 26, 2023
D	Asset Purchase Agreement between AarKel Testing Technologies Inc. and Deloitte Restructuring Inc. dated July 28, 2023 – Redacted Version
E	Asset Purchase Agreement between Corporate Assets Inc. and Deloitte Restructuring Inc. dated August 4, 2023 – Redacted Version
F	Receiver's Statement of Receipts and Disbursements

CONFIDENTIAL APPENDICES

CONFIDENTIAL APPENDIX	DESCRIPTION
1	Comparative Summary of Offers from Going Concern Purchasers
2	Comparative Summary of Auction Proposals
3	Asset Purchase Agreement between AarKel Testing Technologies Inc. and Deloitte Restructuring Inc. dated July 28, 2023 – Unredacted Version
4	Asset Purchase Agreement between Corporate Assets Inc. and Deloitte Restructuring Inc. dated August 4, 2023 – Unredacted Version

INTRODUCTION

1. The Toronto-Dominion Bank (“**TD**” or the “**Bank**”) brought an application returnable May 26, 2023 before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (the “**Receiver**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C.43, as amended, of the assets, undertakings and properties (collectively, the “**Property**”) of Injection Technologies Inc. (“**ITI**”), Moldco Plastics Inc. (“**MPI**”), and Moldco Holdings Inc. (“**Moldco Holdings**”, and together with ITI and MPI, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors.
2. ITI and MPI operated as injection molded plastic parts manufacturers from two facilities located in Windsor and Kitchener. Moldco Holdings is the owner of certain equipment used in the operations in Kitchener. Historically, production focused on automotive customers and later expanded into consumer and medical instrument products made in the Kitchener location.
3. The Windsor operations also include a longstanding tryouts/trials (“**Tryouts**”) business from which customers use equipment and personnel at the Windsor Facility (defined below) to test molds prior to the completion of molds and release for mass production of parts.
4. TD is the senior secured lender to the Debtors pursuant to credit, loan, and equipment lease agreements (the “**TD Loan Agreements**”) granted by TD (the “**TD Indebtedness**”) and was owed in excess of Cdn \$13.0 million and US \$1.9 million as at May 1, 2023. This amount excludes all legal costs, disbursements, and accrued interest.
5. In February 2023, Deloitte was retained as financial advisor to TD to, among other things, review the Debtors’ current operations, financial position, and business viability.
6. On May 19, 2023, Deloitte issued its pre-filing report (the “**Pre-Filing Report**”) in its capacity as the proposed receiver (the “**Proposed Receiver**”) for the purpose of, among other things, (i) providing information in respect of the Debtors’ financial affairs, creditors and Property, and (ii) summarizing the Proposed Receiver’s suggested marketing process for the sale of the Debtors’ assets and operations (the “**Sale Process**”). A copy of the Pre-Filing Report is attached hereto as **Appendix “A”**.
7. On May 26, 2023, the Court issued an order (the “**Receivership Order**”) appointing Deloitte as the Receiver of the Property. Copies of the Receivership Order and the Endorsement of Justice Steele are attached hereto as **Appendix “B”** and **Appendix “C”**, respectively.

8. Copies of the Receivership Order, together with other Court documents, Receiver's reports and stakeholder notices with respect to this matter are available on the Receiver's website at www.insolvencies.deloitte.ca/en-ca/InjectionTechnologies.
9. Section 3(j) of the Receivership Order authorized the Receiver to market by way of the Sale Process any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, including in accordance with the processes of disposition as described and proposed in the Pre-Filing Report.
10. Further, section 3(k)(i) of the Receivership Order authorized the Receiver to sell, convey, transfer, lease or assign the Property or parts of the Property out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$1,000,000, provided that the aggregate consideration for all such transactions does not exceed \$5,000,000, all before applicable taxes.
11. This first report of the Receiver (the "**First Report**") is filed in connection with the Receiver's motion to, among other things:
 - (a) provide the Court with additional information in respect of the Debtors and the Property;
 - (b) provide the Court with an evidentiary basis to make Orders:
 - (i) approving this First Report¹ and the activities of the Receiver, including steps taken in dealing with the Property, as described in this First Report, including, without limitation, the steps taken by the Receiver relating to the Sale Process (as defined below), collection of accounts receivable, realizations derived from continued production and Tryouts revenue, employee matters, and communications with equipment lessors and landlords;
 - (ii) approving the sale transaction (the "**AarKel Transaction**") to be effected through an asset purchase agreement dated and executed on July 28, 2023 (the "**AarKel APA**") between the Receiver and AarKel Testing Technologies Inc. ("**AarKel**"), a newly incorporated subsidiary of Zynik Manufacturing Group, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, for the sale of certain of the Property located at the Debtors' premises in Windsor, Ontario (the "**Windsor Property**") as described in the AarKel APA and the

¹ Noting that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way any approval of the First Report, if granted by the Court

schedules thereto, and vesting the Debtors' right, title and interest in the Windsor Property, and authorizing and directing the Receiver to carry out the terms of the AarKel APA;

- (iii) authorizing and directing the Receiver to enter into and carry out the terms of the Auction Services Agreement between the Receiver and Corporate Assets Inc. (the "**Auctioneer**") dated August 4, 2023 (the "**Auction Agreement**"), together with any further amendments thereto deemed necessary by the Receiver in its sole discretion, and vesting the right, title and interest of the Receiver and the Debtors in and to certain of the Property listed in Schedule A to the Auction Agreement comprising substantially all of the machinery and equipment located at the Debtors' premises at the Kitchener Plant (defined below) and certain residual assets located at the Windsor Plant (defined below) (the "**Auctioneer Purchased Assets**"), in and to the Auctioneer upon closing of the sale transaction under the Auction Agreement (the "**Auction Transaction**");
- (iv) authorizing and directing the Receiver to enter into negotiations to sell the Property to any other party identified through the Sale Process or otherwise if the AarKel APA and/or the Auction Agreement are terminated;
- (v) temporarily sealing from the public record, pending further order of the Court, (i) the Summary of Offers (as defined herein), attached as **Confidential Appendix "1"**; (ii) the Summary of Auction Proposals (as defined herein), attached as **Confidential Appendix "2"**, (iii) the unredacted version of the AarKel APA as **Confidential Appendix "3"**, and (iv) the unredacted version of the Auction Agreement, attached as **Confidential Appendix "4"**; and
- (vi) approving the Receiver's Statement of Receipts and Disbursements for the period May 26, 2023 to July 31, 2023.

TERMS OF REFERENCE

12. In preparing this First Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors' books and records, and discussions with management of the Debtors ("**Management**") (collectively, the "**Information**"). Except as described in this First Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants Canada Handbook, and, accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) Deloitte has prepared this First Report in its capacity as the Receiver in connection with the relief sought by the Receiver described herein. Parties using this First Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
- 13. Unless otherwise stated, all dollar amounts contained in the Report are expressed in Canadian dollars.

BACKGROUND

- 14. ITI is a Windsor-based injection molded plastic parts manufacturer and customer tryouts/trials facility that has been in operation since 1990. Historically, ITI specialized in mold try-outs and service business, and later expanded its short batch and extended run production following the acquisition of MPI in March 2020.
- 15. Historically, ITI operated solely from premises located at 4350 Industrial Drive, Windsor, Ontario (the “**Windsor Facility**”) which it owned until completing a sale-leaseback transaction in March 2022. The Windsor Facility is now subject to a long-term lease with 2856808 Ontario Inc., and MPI is a guarantor under that lease.
- 16. More recently, ITI also operated from the Kitchener Facility (defined below).
- 17. ITI maintains a warehouse at 2051 Ambassador Drive, Windsor, Ontario (the “**Windsor Warehouse**”) pursuant to a lease with 1088168 Ontario Ltd. The Windsor Warehouse is primarily used for storing raw materials and finished goods inventory, and has two presses for limited production, as necessary.
- 18. Pursuant to a share purchase agreement dated February 29, 2020 (the “**MPI Purchase Agreement**”), 1241704 BC Ltd. (“**124 BC**”) purchased the shares of Moldco Inc. and 2426496 Ontario Inc. (“**242 Ontario**”) from the 2013 Gary Paul Cluthe Family Trust (the “**Cluthe Family Trust**”) for cash consideration plus a vendor take-back promissory note (the “**Cluthe VTB**”). The

Receiver's counsel is in correspondence with counsel to the Cluthe Family Trust and is reviewing the Cluthe Family Trusts claim.

19. Subsequently, Moldco Inc. changed its name to "Moldco Plastics Inc." and 242 Ontario changed its name to "Moldco Holdings Inc.". In addition to ITI and MPI, the Debtors also operate under the trade name banners of Inject Tech Plastics, MoldCo Inc., and IT Group.
20. Prior to this receivership proceeding, MPI was a Kitchener-based injection molded plastic parts manufacturer specializing in small batch and extended run production along with sub-assembly of molded components. Historically, MPI operated from leased premises located at 965 Wilson Ave., Kitchener, Ontario (the "**Old Kitchener Premises**") pursuant to a lease with Taylor Made Holdings Limited.
21. In October 2020, ITI entered into a lease agreement in respect of a large facility located at 41 Ardel Place, Kitchener, Ontario (the "**Kitchener Facility**"). 41 Ardel Management Group Limited is the current landlord in respect of the Kitchener Facility. MPI moved into the Kitchener Facility and subleased the Old Kitchener Premises to a major customer which remains active.
22. Both Tryouts and parts production operations at the Windsor Facility continued without any significant interruption since the date of the Receivership Order. There are approximately 67 employees based in Windsor at this time.
23. As detailed later in this First Report, operations at the Kitchener Facility were temporarily suspended until the Receiver developed a commercially reasonable and limited parts production schedule. There are approximately 38 employees currently working at the Kitchener Facility until the Receiver completes the wind-down of production and final shipments as described in more detail later in this First Report.
24. None of the employees are represented by a union and the Debtors do not sponsor a pension plan.
25. Management advised that Moldco Holdings owns certain fixed assets located in Kitchener, but had no operations, employees, or other assets except the shares of the operating companies.
26. Paragraphs 24 to 32 of the Pre-Filing Report set out additional details in respect of the Debtors' corporate structure and their principals.

RECEIVER'S ACTIVITIES

27. The Receiver has undertaken the following activities in accordance with the terms of the Receivership Order:

- (a) attended at the Windsor Facility, Windsor Warehouse, and the Kitchener Facility and took possession of the Property located at those locations;
- (b) arranged for a change of locks, engaged third-party security services, and made arrangements for the continuation of utilities at the Windsor Facility, Windsor Warehouse, and Kitchener Facility;
- (c) met with members of Management and all employees at each facility to advise them of the Receivership Order and the Receiver's mandate;
- (d) issued receivership notification letters to each of the four landlords;
- (e) corresponded with the landlords of the four leased premises regarding, among other things, occupation rent and the required occupancy period pursuant to the AarKel APA and the Auction Agreement;
- (f) determined that the temporary continuation of operations by the Receiver in (i) Windsor was an economically viable option, and (ii) in Kitchener was only economically viable on a reduced and customer-targeted basis to maximize any potential going concern value and to assist with other customer order realizations;
- (g) on behalf of the Debtors, terminated the employment of all employees of the Debtors effective as of the date of the Receivership Order, and made arrangements to deliver termination letters to other employees who were not onsite;
- (h) temporarily retained all of the active employees of the Debtors located at the Windsor Facility, the Windsor Warehouse, and certain employees at the Kitchener Facility to, among other things, continue operations to preserve going concern value as the Receiver conducted the Sale Process and to maximize realizations of accounts receivable and inventory, updating the books of the Debtors where possible, and administering amounts due to employees under the *Wage Earner Protection Program Act* ("WEPPA");
- (i) coordinated the delivery of Records of Employment, expedited the issuance of WEPPA letter packages to the employees, and conducting on-site staff meetings led by the Receiver and human resources personnel to assist employees with filing their applications;
- (j) provided access to employees who were not retained by the Receiver to retrieve their personal belongings;

- (k) provided notice of the Receiver's appointment to the existing insurance broker, NFP Canada ("**NFP**"), to confirm ongoing coverage until those policies expired on June 8, 2023 (the "**June 8th Policy**") in respect of a portion of assets and operations in Kitchener and June 30, 2023 (the "**June 30th Policy**") in respect of the assets and operations in Windsor and most of the Kitchener Facility. NFP arranged for (i) a renewal of the June 8th Policy and (ii) a temporary extension of the June 30th Policy to September 5, 2023 and is actively seeking a further extension and alternate options to facilitate continued operations at the Windsor Facility and Windsor Warehouse until closing of the AarKel Transaction, and continued coverage during the auction at the Kitchener Facility;
- (l) implemented the Sale Process in substantially the manner described in the Pre-Filing Report, including correspondence and meetings with interested parties, reviewing bids, and negotiating the terms of an asset purchase agreement and an auction services agreement for the balance of the assets;
- (m) ensured that the Debtors' bank accounts were frozen and that only deposits were accepted, except as otherwise directed by the Receiver;
- (n) restricted access from non-authorized external users to computer systems and servers;
- (o) arranged for back-up of the Debtors' servers, which contain financial and other information;
- (p) notified Canada Revenue Agency ("**CRA**") of the appointment of the Receiver, establishing new payroll and harmonized sales tax ("**HST**") accounts for the post-receivership period, and making requests for audits of the pre-receivership accounts of the Debtors;
- (q) undertook efforts to collect and settle the Debtors' outstanding accounts receivable and other receivables, including comprehensive settlements which resulted in the coordinated release of finished goods and raw materials inventory, tools and molds ("**Tools**"), and Tools design data to customers;
- (r) compiled financial and operational information and equipment listings to facilitate the Sale Process;
- (s) established the Receiver's website and issuing the Notice and Statement of Receiver pursuant to subsections 245(1) and 246(1) of the BIA;
- (t) reviewed and responded to inquiries from creditors;

- (u) retained Aird & Berlis LLP as the Receiver's primary legal counsel and Harrison Pensa LLP as its independent legal counsel;
- (v) provided status updates on the progress of the receivership to TD; and
- (w) addressed additional matters as they arose from time to time.

CONTINUED OPERATIONS AND PRODUCTION

Overview

- 28. Paragraphs 23 and 51 of the Pre-Filing Report set out certain of the difficulties the Debtors' business encountered leading to the Receivership Order.
- 29. Paragraph 50 of the Pre-Filing Report set out the Receiver's plan to temporarily continue the Tryouts business in the Windsor Facility subject to negotiating payment terms with customers.
- 30. Paragraph 51 of the Pre-Filing Report set out challenges in respect of the operations at the Kitchener Facility and the Receiver's plan to evaluate the commercial reasonableness of continuing production.
- 31. Prior to these receivership proceedings, plastic-molded parts for the Debtors' largest customer were produced at both the Windsor Facility and the Kitchener Facility. There were several customers with large accounts receivable balances and inventory on-hand which were at risk of disputes for potential material set-off. The Receiver analyzed the estimated contribution margins of active purchase orders, held meetings with local Management and key operations personnel, and contacted resin suppliers who initially refused to continue supply due to arrears.
- 32. The Receiver determined that continued Tryouts and limited production during the Sale Process would be beneficial for accounts receivable and inventory realizations, and for expanding the potential buyer universe to parties interested in a going concern transaction. Moreover, several customers agreed to shortened payment terms and to settle outstanding accounts receivable balances and purchase inventory at full value provided that, among other things, the Receiver was able to facilitate the completion of short-run production orders to mitigate immediate disruptions and/or build an inventory bank until such customers could establish alternate supplier arrangements. Accordingly, the Receiver was able to continue operations while funding ongoing payroll and other obligations without requiring borrowings as authorized by the Receivership Order.

Windsor Tryouts and Parts Production

33. The Receiver negotiated continued Tryouts services with existing customers subject to continued payment of pre-receivership amounts owing to the Debtors.
34. Payroll for skilled and technical employees is the primary cost input for the Tryouts business.
35. Resin used in Tryouts is supplied by the tooling customer and/or end customer, such that the Receiver did not purchase resin for Tryouts.
36. Windsor parts production is primarily conducted at the Windsor Facility and is supplemented by two presses at the Windsor Warehouse. The Receiver continued parts production for customers with active purchase orders and who agreed to the Receiver's terms. The most significant production input costs consist of (i) payroll (paid on a weekly basis), and (ii) raw materials, which were primarily on cash on order payment terms.
37. At the Windsor Facility, the Receiver maintained the Debtors' prior schedule consisting of two daily shifts (16-hour coverage) from Monday to Friday. Tryouts are typically conducted during the first daily shift, and production is maintained during both daily shifts.
38. The Receiver intends to continue Tryouts until closing of the AarKel Transaction.
39. The Receiver has provided notice to Windsor production customers that the Receiver intends to suspend production on or before September 1, 2023. The Receiver is working with AarKel to confirm its intentions and plans in respect of production customers.

Kitchener Parts Production

40. Management informed the Receiver that there were hundreds of customer Tools located at the Kitchener Facility.
41. Immediately upon its appointment, the Receiver initially suspended all production at the Kitchener Facility for a few days and gradually increased production into mid-June until a production plan was formalized and arrangements were made with employees, customers, and suppliers. The Receiver has prioritized production for economically viable purchase orders and select parts only, including for certain large customers with significant accounts receivable and inventory balances.
42. Prior to the date of the Receivership Order, the Debtors operated three shifts with 24-hour coverage from Monday to Friday. The Receiver reduced the production schedule to two (2) daily shifts (16-hour coverage) from Monday to Friday.

43. As described later in this First Report, the assets at the Kitchener Facility will be auctioned. The Receiver has notified active customers and employees that production at the Kitchener Facility will be suspended on or before August 18, 2023. The Receiver has established a wind-down program and will be steadily reducing employee headcount by the end of September 2023.
44. Due to the voluminous number of Tools, including obsolete tools not used by customers or the Debtors for many years, the Receiver instructed the limited tooling personnel to undertake a program to tag and prepare Tools for future release. The Receiver has also deployed certain Windsor employees with tooling experience to assist at the Kitchener Facility.
45. The Receiver will continue to coordinate the release of Tools on a scheduled basis, and subject to staff availability and physical access limitations at the Kitchener Facility. The Receiver anticipates that all releases will be completed in the month of September 2023.

CREDITORS

Secured Creditors

46. Paragraph 41 of the Pre-Filing Report set out certain secured creditors based on the Receiver's preliminary review of *Personal Property Security Act* (Ontario) (the "PPSA") registrations and the Debtors' books and records:
 - (a) TD is the senior secured lender and is owed in excess of \$13.0 million and US \$1.9 million as at May 1, 2023, all before legal costs, applicable disbursements, and accrued interest. This consists of a line of credit, term loans, and equipment leases;
 - (b) Bank of Montreal ("**BMO**") is a secured creditor pursuant to a lease for a large Krauss Maffei injection molding machine (the "**BMO Unit**") at the Windsor Facility, and is owed approximately \$1.1 million plus interest and costs as at the date of this First Report;
 - (c) De Lage Landen is a secured creditor pursuant to operating leases for forklifts located in Windsor and Kitchener;
 - (d) BMW Group Financial Services Canada is a secured creditor pursuant to a vehicle lease;
 - (e) Meridian OneCap Credit Corp. is a secured creditor with respect to certain equipment; and

- (f) The Receiver's counsel is reviewing the claim made by The Cluthe Family Trust in connection with the Cluthe VTB, to determine if this claim is valid.

Independent Legal Opinion on Security Interests

- 47. Harrison Pensa, in its capacity as independent legal counsel to the Receiver, conducted a review of the security pledged by the Debtors in favour of TD (the "**TD Security**") and in favour of BMO in the BMO Unit.
- 48. Harrison Pensa has confirmed, subject to normal assumptions and qualifications that:
 - (a) the TD Security creates, under Ontario Law, a valid security interest in favour of TD in the property described in the TD Security (which includes certain leased assets and all of the property, assets and undertakings, and interest in the property of the Debtors) and the security interests created by the TD Security in the personal property described in the TD Security to which the Personal Property Security Act (Ontario) ("**PPSA**") applies have been perfected by registration under the provisions of the PPSA;
 - (b) BMO's security interest in the BMO Unit creates, under Ontario Law, a valid security interest in favour of BMO in the BMO unit and BMO's security interest in the BMO Unit is a valid and senior claim in the BMO Unit that has been perfected by registration under the provisions of the PPSA; and,
 - (c) the only other registrations under the PPSA are registrations relating to specific assets by:
 - (i) De Lage Landen Financial Services Canada Inc.;
 - (ii) Meridian OneCap Credit Corp;
 - (iii) CWB National Leasing Inc.;
 - (iv) BMW Canada Inc.; and
 - (v) Chillers Inc.
- 49. Wells Fargo Equipment Finance Company does hold a PPSA registration against ITI, and the Receiver has confirmed that ITI is no longer indebted to Wells Fargo.

50. The Receiver continues to review the claim of the Cluthe Family Trust, noting that at the date of this first Report, the Cluthe Family Trust does not hold a PPSA registration against ITI, MPI nor Moldco Holdings.
51. TD Bank is the sole secured creditor of MPI and Moldco Holdings under the PPSA.

HST

52. Paragraph 44 of the Pre-Filing Report disclosed an unremitted HST liability of ITI in the amount of approximately \$695,000 as at January 31, 2023.
53. The Receiver requested post-receivership HST accounts to be opened and will be filing corresponding returns in due course.

Employee Source Deductions

54. Paragraph 45 of the Pre-Filing Report set out \$1.3 million of unremitted payroll source deductions according to CRA. ITI accumulated a large balance of unremitted payroll source deductions when ITI manually processed payroll internally before transitioning to an external payroll services provider in October 2021 for ongoing remittances. Management advises that the actual obligation is approximately \$488,000 as Management remitted and provided evidence to the Receiver that \$859,000 of ITI payments on account of payroll tax arrears were inadvertently applied by CRA to MPI's payroll tax number. Management and its external accountant were unsuccessful in completely addressing this matter with CRA prior to the date of the Receivership Order.
55. The Receiver has delivered information to CRA in connection with this matter and made repeated requests in this regard. The Receiver will follow up with CRA in respect of the status of its examination of the payroll accounts.
56. The Receiver has made repeated requests to CRA to establish a separate ITI branch payroll account in respect of employees temporarily retained for the receivership. The Receiver has been remitting post-receivership payroll source deductions directly to CRA and will arrange a final payroll trust examination in due course.

WEPPA and BIA Section 81.4 Priority Claims

57. The Receiver arranged for the funding of the Debtors' final normal course payroll due in early June 2023 which included accrued wages, salary, and payroll taxes for the immediate period prior to the

date of the Receivership Order in the total amounts of \$77,635 for Windsor and \$62,934 for Kitchener.

58. As set out earlier in this First Report, the Receiver expedited the performance of WEPPA obligations and mailing of WEPPA packages to eligible employees. The Receiver has since communicated with Service Canada and responded to employee inquiries in respect of same.
59. The Receiver's submission to Service Canada set out a total amount of approximately \$376,000 in respect of calculated termination pay, severance pay, and vacation pay due to the former employees of the Debtors under WEPPA, of which approximately \$72,000 may be subject to a limited super priority pursuant to Section 81.4 of the BIA.

THE SALE PROCESS

Overview

60. The Receiver administered the Sale Process in a manner and timing substantially consistent with Appendix "A" to the Pre-Filing Report. Reference is made to paragraphs 55 to 59 of the Pre-Filing Report which summarized the proposed Sale Process, timeline, general lot structure, and additional terms and conditions.
61. The Sale Process was a robust process which broadly marketed the assets and business of the Debtors in a reasonable condensed timeframe which reflected (i) the immediate need for any going concern purchaser to urgently retain the employees and engage with customers and key suppliers, and (ii) the lack of liquidity to fund ongoing protective disbursements, including ongoing payroll and interim occupancy costs with multiple leased locations.
62. A chronology of the key activities undertaken by the Receiver in respect of the Sale Process is as follows:

Timing	Activity
May 26, 2023 to June 1, 2023	<ul style="list-style-type: none">Identified and prepared of a list of potential purchasers (each, a "Potential Purchaser").Prepared a marketing document (the "Teaser") describing the opportunity and form of non-disclosure agreement ("NDA") for circulation to Potential Purchasers.Compiled and reviewed information that would likely be required by Potential Purchasers to assess their offer(s) for the assets.

Timing	Activity
	<ul style="list-style-type: none"> Responded to in-bound calls and inquiries. Established and commenced populating the secure electronic data room (the “Data Room”) with financial and operational information.
June 2, 2023	<ul style="list-style-type: none"> Launched the market outreach campaign with an initial email distribution of the Teaser and NDA to Potential Purchasers.
June 7, 2023	<ul style="list-style-type: none"> The Data Room was made available for access by Potential Purchasers that had signed an NDA.
June 8, 2023 to July 11, 2023	<ul style="list-style-type: none"> Arranged third-party inspection of assets and preparation of equipment listings for use by Potential Purchasers. Coordinated site visits at the Windsor Facility, Kitchener Facility, and the Windsor Warehouse, including meetings with the Receiver and local management. Advertised in industry publications such as Manufacturing Automation (https://www.automationmag.com/) and Canadian Metalworking (https://www.canadianmetalworking.com/). The Receiver made available a Sale Process timeline in the Data Room and provided bid instructions to Potential Purchasers for both going concern purchasers / operators and auctioneer bids. Posted the following bid documentation in the Data Room: <ul style="list-style-type: none"> Detailed lot listings and descriptions (each, a “Lot Listing”) for assets located at the Windsor Facility (including a standalone subplot for the BMO Unit and auxiliary equipment), the Windsor Warehouse, the Kitchener Facility. Template bid forms (“Bid Form”) for (i) operators and going concern purchasers, setting out, among other things, the purchase price and deposit amounts, and (ii) auctioneers setting out cash purchase price, net minimum guarantee (“NMG”) price and proposed sharing structure, estimated value range, and deposit amount. Template form of asset purchase agreement for going concern operators. Responded to inquiries and made additional information available in the Data Room.
July 11, 2023	<ul style="list-style-type: none"> Bid deadline for submission of bids, including conditions, supplemental bidder information about its operational background, experience, corporate disclosures, and financial capability (the “Bid Deadline”).
July 11, 2023 to July 17, 2023	<ul style="list-style-type: none"> Review of bids (each, a “Bid”), selection of shortlisted Bids (each, a “Shortlisted Bid”), correspondence and clarifying questions with parties who submitted Shortlisted Bids (each, a “Shortlisted Bidder”), and consultations with stakeholders. Rejection of certain offers and return of deposits related thereto. Rejection of offers from the Shortlisted Bidders and request for resubmitted offers using the Receiver’s forms of bid documentation.

Timing	Activity
July 18, 2023	<ul style="list-style-type: none"> Deadline for resubmission of offers by the Shortlisted Bidders (the “Amended Bid Deadline”)
July 18, 2023 to July 27, 2023	<ul style="list-style-type: none"> Review and selection of the most advantageous amended bids (the “Amended Bids”) and negotiations with the two respective successful Purchasers (i.e., AarKel and Corporate Assets), conditional on Court approval.
July 28, 2023	<ul style="list-style-type: none"> Execution of the AarKel APA and commenced transition planning activities with respect to the Windsor Property, including seeking consents from BMO and the landlords of the Windsor Facility and Windsor Warehouse.
August 4, 2023	<ul style="list-style-type: none"> Execution of the Auction Agreement and commenced pre-marketing activities by the Auctioneer.
August 25, 2023 (future date)	<ul style="list-style-type: none"> Scheduled Court hearing (the “Sale Approval Hearing”) seeking, among other things, approval of the AarKel APA and the Auction Agreement.
September 5, 2023 (future date)	<ul style="list-style-type: none"> Target closing date for the AarKel APA with respect to the Windsor Property, subject to satisfaction of conditions including Court Approval
Late September 2023 (future date)	<ul style="list-style-type: none"> Estimated date for the auction to be conducted pursuant to the Auction Agreement.
Early October 2023 to mid-December 2023 (future period)	<ul style="list-style-type: none"> Rigging and removal of equipment from the Kitchener Facility and Windsor Facility. Vacating and concluding the Receiver’s occupancy at the Kitchener Facility.

63. In total, 97 parties were provided with the Teaser, including strategic industry participants, private equity firms, and auctioneers. Of those 97 parties, 38 executed an NDA and were granted access to the Data Room. Of those 38 parties, 15 conducted site visits and tours of the Debtors premises in Windsor and Kitchener. Of those 15 parties, 15 parties (7 going concern purchasers and 8 auctioneers) submitted offers by the Bid Deadline (the “**Bidders**”).

64. A summary of the 7 Bids received from going concern purchasers (the “**Summary of Offers**”) is attached hereto as **Confidential Appendix “1”**.

65. A summary of the 8 Bids received from auctioneers (the “**Summary of Auction Proposals**”) is attached hereto as **Confidential Appendix “2”**.

66. The Receiver reviewed the financial and qualitative aspects of the 15 Bids, including supplemental information thereto, held consultations with stakeholders, and segregated the Bids as follows:

- (a) Six Shortlisted Bids from four going concern purchasers and two auctioneers were identified as the most advantageous offers;
 - (b) The remaining nine offers which were determined to be less advantageous were rejected and deposits were returned to these offerors;
 - (c) The Receiver deemed it appropriate to seek additional clarifying information from the Shortlisted Bidders which ultimately did not resolve all of the Receiver's questions;
 - (d) The Receiver informed the Shortlisted Bidders that their offers could not be accepted in their current form, and requested the resubmission of offers using the Receiver's template documentation due by the Amended Bid Deadline of July 18, 2023; and
 - (e) All six Shortlisted Bidders submitted Amended Bids which are also summarized in the Summary of Offers and Summary of Auction Proposals described above.
67. There was significant interest in the Windsor Property from both operators and auctioneers. In the Receiver's view, no commercially reasonable offers were received from going concern operators for the business and operations conducted at the Kitchener Facility. Auctioneers submitted offers for the standalone and *en bloc* auctions for the assets located in both Windsor and Kitchener.
68. The Receiver conducted a detailed review of the offers and further consulted with TD, and ultimately selected (i) AarKel as the successful Purchaser for the going concern sale of the Windsor business and assets, and (ii) Corporate Assets as the successful purchaser for the auction of the Kitchener assets and certain residual assets in Windsor.
69. The AarKel APA is conditional on Court approval, the consent of BMO in respect of the sale of the BMO Unit, and consents to lease assignments from the landlords of the Windsor Facility and Windsor Warehouse.
70. The Auction Agreement is conditional on Court approval.
71. The Receiver rejected the remaining Amended Bids and returned deposits to the respective Bidders.

ANALYSIS OF THE AARKEK APA

Terms of Successful Bid re Windsor

72. A redacted copy the AarKel APA is attached hereto as **Appendix “D”**, and the unredacted copy is attached as **Confidential Appendix “3”**.
73. A summary of the non-commercially sensitive key terms of the AarKel APA is provided below.

Summary of the Asset Purchase Agreement	
Purchaser	<ul style="list-style-type: none"> AarKel Testing Technologies Inc.
Transaction Type	<ul style="list-style-type: none"> Sale of assets Form of Approval and Vesting Order appended to the AarKel APA
APA Date	<ul style="list-style-type: none"> July 28, 2023
Purchase Price	<ul style="list-style-type: none"> Confidential
Deposit Received	<ul style="list-style-type: none"> Confidential
Outside Closing Date	<ul style="list-style-type: none"> August 31, 2023 in order to satisfy the conditions to closing in favour of the Purchaser, or up to an additional 30 days if extended by the Receiver
Purchased Assets	<ul style="list-style-type: none"> Machinery and equipment and other assets located at the Windsor Facility as particularized in Exhibits G and H to the AarKel APA: (i) Lot 1(a), excluding certain residual assets to be sold under the Auction Agreement, and (ii) Lot 1(b) re the BMO Unit Machinery and equipment and other assets located at the Windsor Warehouse particularized Lot 3 in Exhibit J to the AarKel APA Intellectual property used exclusively for the Windsor business
Employees	<ul style="list-style-type: none"> Purchaser intends to continue Tryouts operations and certain parts production after the closing date. The AarKel APA contemplates AarKel making an offer of employment to employees it elects to hire on terms substantially similar to those existing as of the closing date.
Landlords	<ul style="list-style-type: none"> The assignment of each of the real property leases for the Windsor Facility and Windsor Warehouse are a condition to closing in favour of the Purchaser

Excluded Assets	<ul style="list-style-type: none"> • Any lots other than the Windsor Property, including certain residual equipment located at the Windsor Facility which will form part of the purchased assets pursuant to the Auction Agreement • Cash and cash equivalents • Accounts receivables • Inventory • Tax rebates, grants, refunds, or other amounts recoverable • Amounts due from related parties and shareholders • Amounts recoverable from potential transactions at undervalue, preferences, or other settlements • Corporate records, minute books, tax records and returns, and records having to do with the corporate organization of the Debtors • Information not specifically related to or used in connection with the business
Conditions to Closing	<ul style="list-style-type: none"> • Approval and Vesting Order issued by the Court • Purchaser's payment of the balance of the Purchase Price to the Receiver • Consents to the assignment of real property leases from the landlords of the Windsor Facility and Windsor Warehouse • Delivery of title to the BMO Unit to the Purchaser, free and clear of any encumbrances, and BMO's consent to the price allocated to the BMO Unit pursuant to the AarKel APA • Filing of the Receiver's Certificate in the form substantially similar to the Approval and Vesting Order

The Receiver's Observations

74. The Receiver makes the following observations with respect to the AarKel Transaction for consideration by the Court:

- (a) the Sale Process was authorized by the Court pursuant to section 3(j) of the Receivership Order;
- (b) the Receiver has conducted a fair, transparent, and commercially reasonable sale process which effectively canvassed the market, generated significant interest and exposure with the Potential Purchasers, and resulted in the receipt of multiple bids supported by deposits;
- (c) no party is objecting to the conclusion of the AarKel Transaction;

- (d) the Purchaser and its private equity sponsor have satisfied the Receiver of their ability to close the AarKel Transaction, and have also disclosed operational qualifications;
- (e) the Purchaser's senior management are active industry participants and are familiar with the Windsor Property and business as a long-standing Tryouts customer of ITI;
- (f) the Receiver believes the AarKel Transaction represents commercially reasonable value;
- (g) the AarKel APA represents the most advantageous offer for the Windsor Property and maximizes recoveries;
- (h) among other things, the consummation of the AarKel Transaction contemplates:
 - (i) continued Tryouts services to customers based in Windsor and Southwestern Ontario;
 - (ii) potential continuation of parts production which is currently being evaluated by AarKel; and
 - (iii) the preservation of employment of Tryouts staff and potentially parts production staff and Management personnel;
- (i) BMO has consented to the price allocated by AarKel in respect of the BMO Unit; and
- (j) TD, which will suffer a significant loss on its secured loans to the Debtors, has advised the Receiver that it supports the AarKel Transaction.

75. Accordingly, the Receiver recommends that the Court approve the AarKel Transaction, noting that the Receiver continues to work with the landlords of the Windsor Facility and Windsor Warehouse to meet the condition relating to same under the AarKel Transaction.

ANALYSIS OF THE AUCTION AGREEMENT

Terms of Successful Bid re Kitchener

76. A redacted copy the Auction Agreement is attached hereto as **Appendix "E"**, and the unredacted copy is attached as **Confidential Appendix "4"**.

77. A summary of the non-commercially sensitive key terms of the Auction Agreement is provided below.

Summary of the Auction Agreement	
Purchaser	<ul style="list-style-type: none"> Corporate Assets Inc.
Transaction Type	<ul style="list-style-type: none"> Sale of assets and auction with NMG Form of Approval and Vesting Order
APA Date	<ul style="list-style-type: none"> August 4, 2023
Net Minimum Guarantee Amount	<ul style="list-style-type: none"> Confidential
Net Minimum Guarantee Sharing Formula	<ul style="list-style-type: none"> The Receiver is entitled to an agreed share of any proceeds of sale of the Auctioneer Purchased Assets realized by the Auctioneer in excess of the NMG plus an expense reimbursement amount in favour of the Auctioneer The Auctioneer may solicit offers to purchase the Auctioneer Purchased Assets prior to closing. The proceeds of any of the Auctioneer Purchased Assets sold to a party other than the Auctioneer pursuant to a private sale shall be paid to the Receiver and credited against the amount of the NMG payable on closing
Deposit Received	<ul style="list-style-type: none"> Confidential
Purchased Assets	<ul style="list-style-type: none"> The tangible assets of the Debtors listed in Schedule A of the Auction Agreement, consisting primarily of machinery and equipment located at the Kitchener Facility and certain residual equipment at the Windsor Facility
Landlords	<ul style="list-style-type: none"> Following closing of the Auction Transaction, the Auctioneer will conduct the Auction and shall have access to the Kitchener Facility and Windsor Facility up to and including December 15, 2023 to allow for the sale and removal of the Auctioneer Purchased Assets The costs of occupation in respect of the Kitchener Facility are to be borne by the Receiver The Receiver has communicated with the landlords of these premises and advised them of the occupation period contemplated in the Auction Agreement, and AarKel has agreed to provide reasonable access to the Windsor Facility in respect of the residual Windsor assets which form part of the Auction Agreement
Conditions to Closing	<ul style="list-style-type: none"> The Auction Transaction is subject to certain conditions, including within 30 days of the date of the Auction Agreement obtaining an order of the Court:

	<ul style="list-style-type: none"> ○ authorizing the Receiver to enter into the Auction Agreement ○ permitting the Receiver to provide access to the Auctioneer for the purpose of the sale to December 15, 2023 ○ following closing of the Auction Transaction, permitting the Auctioneer to conduct the sale or re-sale of the Auctioneer Purchased Assets to one or more purchasers by way of public or private sale in accordance with the Auction Agreement ○ conveying to the Auctioneer on closing the right, title and interest of the Receiver, if any, in the Auctioneer Purchased Assets free and clear of all liens and encumbrances • The Auction Transaction contemplates the delivery by the Receiver to the Auctioneer on the closing date of a bill of sale conveying to the Auctioneer the right, title, and interest of the Debtors and the Receiver in and to the Auctioneer Purchased Assets free from all liens and encumbrances on an “as is, where is” basis without representation or warranty.
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The Receiver’s Observations

78. The Receiver makes the following observations with respect to the Auctioneer Transaction for consideration by the Court: The Receiver recommends that the Court approve the Auctioneer Transaction, authorize and approve the execution of the Auction Agreement by the Receiver, direct the Receiver to take such steps necessary to complete the Auctioneer Transaction, and vest in the Auctioneer the right, title and interest of the Receiver and the Debtors in and to the Auctioneer Purchased Assets on closing of the Auctioneer Transaction, free and clear of all liens and encumbrances, for the following reasons:

- (a) the Sale Process was authorized by the Court pursuant to section 3(j) of the Receivership Order;
- (b) as set out above, the Receiver has conducted a fair, transparent, and commercially reasonable sale process which effectively canvassed the market, generated significant interest and exposure with the Potential Purchasers, and resulted in the receipt of multiple bids supported by deposits;
- (c) the cost of removing the Auctioneer Purchased Assets from the respective premises would be prohibitive relative to their value, with the result that any sale of such assets must be conducted from the premises. Given the ongoing costs of occupation of the premises, the limited time available to the Receiver to occupy the premises and the responses received from interested parties pursuant to the Sale Process, the Receiver has determined that continued marketing of the Auctioneer Purchased Assets and business

conducted at the Kitchener Facility is unlikely to produce a superior net realization as compared to the Auctioneer Transaction;

- (d) the Sale Process was robust in the circumstances and sufficiently exposed the Property to prospective purchasers and produced significant participation from prospective purchasers, resulting in the best transaction in the circumstances;
- (e) in the Receiver's view, no commercially reasonable offers were submitted from going concern purchasers for the business conducted at the Kitchener Facility;
- (f) the Auctioneer specializes in the industrial marketplace and conducts numerous industrial sales and liquidations per year;
- (g) the Auctioneer provided the highest NMG offer among the Shortlisted Bidders and the proposed terms and conditions generally complied with those requested by the Receiver. The period of occupancy at the Premises requested was similar to that of other auctioneers who participated in the Sale Process;
- (h) the Auctioneer has attended at the Kitchener Facility and Windsor Facility, and has commenced pre-marketing activities to take steps necessary to prepare for the Auction subject to Court approval; and
- (i) TD, which will suffer a significant loss on its secured loans to the Debtors, has advised the Receiver that it supports the Auctioneer Transaction.

SEALING ORDER

- 79. If the Court does not approve the AarKel APA and the Auction Agreement, or if the AarKel APA and Auction Agreement are approved by the Court but are not completed for other reasons, public disclosure of the Summary of Offers, the Summary of Auction Proposals, and the unredacted versions of the AarKel APA and Auction Agreement could materially prejudice the Receiver's ability to re-market the Property and maximize the proceeds of sale of the Property.
- 80. The Receiver is therefore seeking an order of this Court sealing (i) the Summary of Offers; (iii) the Summary of Auction Proposals, and (iv) the unredacted versions of the AarKel APA and Auction Agreement pending further order of the Court or the completion of the transactions and auction under both of the AarKel APA and Auction Agreement.

COLLECTION EFFORTS TO DATE

81. The Receiver utilized the Debtors' books and records and held discussions with the remaining financial management of the Debtors to determine the respective amounts owed from each customer, and to determine accurate levels of finished goods, raw materials, and components inventory on hand applicable to such customers. The Receiver provided customers with supporting documentation and negotiated payment terms as agreed to by certain customers.
82. As at July, 31, 2023, the Receiver had entered into 21 interim and final settlement and release agreements with certain customers of the Debtors which provide for, among other things, payment to the Receiver of an agreed amount with respect to outstanding accounts receivable, the sale of inventory on hand and/or additional parts to be produced by the Receiver to mitigate disruptions, and the coordinated removal of customer Tools and, in certain cases, assisting with compilation of CAD and other design data.
83. The table below sets out total cash recoveries of pre-receivership A/R and post-receivership operations to July 31, 2023 in the approximate amounts of \$4.1 million plus US \$864,000:

Description	CAD (in 000's)	USD (in 000's)
Collection of outstanding accounts receivable as at May 25, 2023	2,374	634
Collections from post-receivership sales (net of HST)	1,727	230
Total cash receipts from A/R and post-receivership sales to July 31, 2023	4,101	864

STATEMENT OF RECEIPTS AND DISBURSEMENTS

84. Attached as **Appendix "F"** is a cumulative Statement of Receipts and Disbursements for the period May 26, 2023 to July 31, 2023. As at July 31, 2023, the closing cash balance was approximately (i) Cdn \$2.588 million plus (ii) approximately US\$135,000.

RECEIVER'S RECOMMENDATIONS

85. For the reasons set out above, the Receiver recommends that the Court make Orders:
- (a) approving this First Report and the activities of the Receiver, including steps taken in dealing with the Property, as described in this First Report;
 - (b) approving the AarKel Transaction and authorizing and directing the Receiver to enter into and carry out the terms of the AarKel APA, together with any further amendments thereto deemed necessary by the Receiver in its sole discretion, and vesting the right,

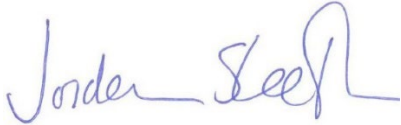
title, and interest of the Receiver and the Debtors in and to AarKel in respect of the Windsor Property upon closing of the AarKel Transaction;

- (c) approving the Auction Transaction and authorizing and directing the Receiver to enter into and carry out the terms of the Auction Agreement, together with any further amendments thereto deemed necessary by the Receiver in its sole discretion, and vesting the right, title, and interest of the Receiver and the Debtors in and to Corporate Assets in respect of the Auctioneer Purchased Assets upon closing of the Auction Transaction;
- (d) authorizing and directing the Receiver to enter into negotiations to sell the Property to any other party identified through the Sale Process or otherwise if the AarKel APA and/or Auction Agreement are terminated in accordance with their terms;
- (e) temporarily sealing from the public record pending further order of the Court (i) the Summary of Offers attached as **Confidential Appendix “1”**; (ii) the Summary of Auction Proposals, attached as **Confidential Appendix “2”**, (iii) the unredacted version of the AarKel APA as **Confidential Appendix “3”**, and (iv) the unredacted version of the Auction Agreement, attached as **Confidential Appendix “4”**;
- (f) approving the Receiver’s Statement of Receipts and Disbursements for the period May 26, 2023 to July 31, 2023.

All of which is respectfully submitted at Kitchener, Ontario this 15th day of August, 2023.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
Receiver of Injection Technologies Inc., Moldco
Plastics Inc., and Moldco Holdings Inc., and
without personal or corporate liability

Per:



Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President



Stefano Damiani, CPA, CA, CIRP, LIT
Senior Vice-President

THE TORONTO-DOMINION BANK

v.

INJECTION TECHNOLOGIES INC., et al.

Applicant

Respondents

Court File No. CV-23-00699663-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

FIRST REPORT OF THE RECEIVER

HARRISON PENZA ^{LLP}

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #69806O)

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com

rdanter@harrisonpensa.com

Lawyers for the Receiver,
Deloitte Restructuring Inc.

APPENDIX "D"

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.**

Respondents

**SECOND REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS THE RECEIVER AND MANAGER
DATED DECEMBER 21, 2023**

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APPENDICES

APPENDIX	DESCRIPTION
A	Receivership Order
B	First Report (Without Appendices)
C	Pre-Filing Report (Without Appendices)
D	AarKel AVO
E	Auction AVO
F	Ancillary Order
G	Receiver's Certificate (AarKel Transaction)
H	Receivables and Inventory Purchase Agreement dated September 22, 2023
I	Receiver's Certificate (Auction Transaction)
J	Receiver's Statement of Receipts and Disbursements
K	TD Opinion
L	Affidavit of Jordan Sleeth sworn December 20, 2023
M	Affidavit of Matilda Lici sworn December 20, 2023
N	Affidavit of Thomas Masterson sworn December 21, 2023

INTRODUCTION

1. On May 26, 2023, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (collectively, the “**Property**”) of Injection Technologies Inc. (“**ITI**”), Moldco Plastics Inc. (“**MPI**”), and Moldco Holdings Inc. (“**Moldco Holdings**”, and together with ITI and MPI, the “**Debtors**”) pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.
2. Copies of the Receivership Order, together with other materials filed with the Court, Receiver’s reports and stakeholder notices (e.g., BIA s.245 and 246 notices) with respect to this matter are available on the Receiver’s case website at www.insolvencies.deloitte.ca/en-ca/InjectionTechnologies.
3. On August 15, 2023, the Receiver issued its first report (the “**First Report**”) to the Court to:
 - (a) request approval of the transaction contemplated by the Asset Purchase and Sale Agreement dated July 28, 2023, between the Receiver and AarKel Testing Technologies Inc. (“**AarKel**”) for the sale of certain Property located at the Debtors’ premises in Windsor, Ontario (the “**Windsor Facility**”) (consummated as the “**AarKel Transaction**”);
 - (b) request approval of the transaction contemplated by the Auction Service Agreement between the Receiver and Corporate Assets Inc. (the “**Auctioneer**”) dated August 4, 2023 (the “**Auction Agreement**”). The Auction Agreement included

substantially all the machinery and equipment located at the Debtors' premises in Kitchener, Ontario (the "**Kitchener Facility**") and certain residual assets located at the Windsor Plant (the "**Auctioneer Purchased Assets**") to be included in an auction conducted by the Auctioneer under the Auction Agreement (the "**Auction Transaction**").

4. A copy of the First Report without Appendices is attached hereto as **Appendix "B"**.
5. A copy of the Pre-Filing Report of the Receiver dated May 19, 2023 (without Appendices) as referred to in the First Report is attached hereto as **Appendix "C" ("Pre-Filing Report")**
6. On August 25, 2023, the Court issued the following Orders:
 - (a) An Approval and Vesting Order with respect to the Aarkel Transaction (the "**AarKel AVO**");
 - (b) An Approval and Vesting Order with respect to the Auction Transaction (the "**Auction AVO**");
 - (c) An Ancillary Order approving the First Report and the Statement of Receipts and Disbursements in the First Report, and sealing the Confidential Appendices (the "**Ancillary Order**"); and,
 - (d) Copies of the AarKel AVO, Auction AVO and Ancillary Order are attached hereto as **Appendix "D", "E" and "F"** respectively.
7. This purpose of this second report of the Receiver (the "**Second Report**") is to:

- (a) provide the Court with an update in respect of the activities of the Receiver since it issued the First Report, including the Receiver's ongoing efforts to collect all remaining amounts due to the Debtors and supervision of the Kitchener Facility;
- (b) provide an update on the closing of the AarKel Transaction and the post-closing working capital transaction;
- (c) provide an update on the closing of the Auction Transaction and the results of the Auction Transaction;
- (d) advise the court of the bankruptcy of ITI and MPI;
- (e) advise the Court of the various security interests in the Debtors' property;
- (f) advise the Court on the status of CRA's review of the Debtors' and the Receiver's payroll, HST and income tax account filings and audits;
- (g) advise the Court of the tasks remaining in the administration of the Receivership;
- (h) provide the Court with an evidentiary basis to make orders:
 - i. approving this Second Report¹ and the activities of the Receiver as described herein;
 - ii. approve the Receiver's Statement of Receipts and Disbursements for the period May 26, 2023 to November 30, 2023;
 - iii. authorizing the BMO Distribution (as defined below) to Bank of Montreal ("**BMO**");

¹ Noting that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way any approval of the Second Report, if granted by the Court.

- iv. authorizing the Interim TD Distribution (as defined below) to The Toronto Dominion Bank (“**TD Bank**”);
- v. authorizing the Holdbacks (as defined below) in relation to any costs or payments required to complete the administration of the estate;
- vi. authorizing the Fees and the Fee Accrual (each as defined below), and payment of same;
- vii. authorizing the Final Distribution (as defined below) to TD Bank, up to the indebtedness owing to TD Bank under credit agreements with the Debtors and security granted by the Debtors to TD Bank;
- viii. approving the fees and costs of the Receiver and its legal counsel as described herein and in the fee affidavits appended to this Second Report (the “**Fees**”) and a Fee Accrual (as defined below), and payment of same; and,
- ix. discharging Deloitte as the Receiver on the filing of the Certificate of Completion as provided for in this Second Report, and releasing the Receiver from liability for its actions while acting in such capacity, save and except for the Receiver’s gross negligence or willful misconduct.

TERMS OF REFERENCE

- 8. In preparing this Second Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors’ books and records, and

discussions with management of the Debtors (“**Management**”) (collectively, the “**Information**”). Except as described in this Second Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook, and, accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) Deloitte has prepared this Second Report in its capacity as the Receiver for solely the purposes noted herein. Parties using this Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
9. Unless otherwise stated, all dollar amounts contained in the Report are expressed in Canadian dollars.
10. Capitalized terms not defined herein shall have the meaning ascribed to them in the Receivership Order, Pre-Filing Report, or the First Report, as applicable.

UPDATE ON THE RECEIVER’S ACTIVITIES SINCE ITS APPOINTMENT

11. In addition to the activities outlined in the First Report, the Receiver has undertaken the following activities in accordance with the terms of the Receivership Order:

- (a) routinely attended the Windsor Facility and Windsor Warehouse up to the date of lease assignment on September 6, 2023;
- (b) routinely attended the Kitchener Facility;
- (c) concluded security services at the Kitchener Facility;
- (d) concluded production of parts at the Kitchener Facility on August 31, 2023, sending a discontinuation notice to all remaining customers;
- (e) terminated the retention agreements with those Debtor employees retained by the Receiver prior to September 25, 2023;
- (f) terminated and released several leased forklifts and printers;
- (g) secured insurance coverage to permit production at both locations until August 18, 2023 (Kitchener) and September 5, 2023 (Windsor). The Kitchener facility remains insured for loss and damage until December 31, 2023;
- (h) retained a former employee, to check in at the Kitchener facility daily and ensure all chattels remain in place and the property is secured appropriately;
- (i) monitor and record daily receipts and disbursements;
- (j) pursued collection of amounts due to the Debtors pursuant to the settlement agreements entered into with customers;
- (k) secured and imaged the laptop of the Debtors' former Controller to preserve all financial information related to the operating period of the Receivership;

- (l) prepared and filed HST returns with the CRA for the Receivership period from May 26 to October 31, 2023 and making remittances up to and including July 31, 2023;
- (m) updated the Receiver's website with all relevant information to creditors, including a letter advising tool owners of the Receiver's intention to dispose of obsolete tools and information related to the bankruptcy filings of ITI and MPI (discussed herein);
- (n) reviewed and responded to inquiries from creditors;
- (o) provided status updates on the progress of the receivership to TD Bank; and
- (p) addressed additional matters as they arose from time to time.

COLLECTION EFFORTS TO DATE

12. As at November 30, 2023, the Receiver entered into interim and final settlement and release agreements with 63 customers of the Debtors that provided for, among other things, payment to the Receiver of an agreed amount with respect to outstanding accounts receivable, the sale of inventory on hand and/or additional parts produced by the Receiver and set-off claims of certain customers. These claims also provided for the return of customers' tools, the sale of customer specific component parts and the return of Computer-Aided Design drawings and other design data.
13. The table below sets out total cash recoveries of pre-receivership A/R and post-receivership operations to November 30, 2023, in the approximate amounts of CAD \$7.5 million plus US \$2.0 million:

Description (amounts are presented in 000s)	Net book value²	CAD	USD	Total (CAD)	Recovery %
Collection of outstanding accounts receivable as at May 25, 2023	4,113	2,592	709	3,555	86.4%
Collections from post-receivership sales	N/A	5,023	1,298	6,991	N/A
Total cash receipts to November 30, 2023		7,455	1,993	10,546	

UPDATE ON CLOSING OF THE AARKEL TRANSACTION

14. As detailed in the First Report, on July 28, 2023, the Receiver entered into an agreement to sell assets located at the Windsor Facility to AarKel Testing Technologies Inc. (“**AarKel**”). As outlined in the First Report, the assets purchased in the AarKel APA included:

- (a) machinery, equipment and other assets described in Lot 1(a) excluding certain residual assets to be sold under the Auction Transaction;
- (b) machinery described in Lot 1(b) re the BMO Unit (the “BMO Asset”);
- (c) machinery, equipment and other assets described in Lot 3; and
- (d) intellectual property used exclusively in the Windsor business.

15. As detailed in the First Report, there were several conditions required to close the AarKel Transaction whereby the Receiver and AarKel worked to address the conditions and close the transaction, including:

- (a) the Receiver obtained the Aarkel AVO, the Auction AVO and the Ancillary Order;

² This amount represents the net book value of accounts receivable at May 25, 2023, measured in Canadian dollars at the November 30, 2023, USD to CAD foreign exchange rate of 1.3582.

- (b) AarKel paid the balance of the purchase price to the Receiver on September 6, 2023;
 - (c) the Receiver obtained consent to assign the real property lease from the landlords of the Windsor Facility and Windsor Warehouse, which included the resolution of cure costs that were paid by the Receiver;
 - (d) BMO agreed to the price allocated to the BMO Asset, amounting to \$976,000, and the Receiver delivered title to the BMO unit to AarKel, free and clear of any encumbrances;
 - (e) the Receiver's Certificate, substantially in the forms appended to the AarKel AVO certifying that the subject transaction closed, was filed with the Court on September 6, 2023. A copy of the Receiver's Certificate in relation to the AarKel Transaction is attached hereto as "**Appendix G**".
16. Following the closing of the AarKel Transaction, the Receiver and AarKel negotiated an agreement whereby AarKel purchased select raw material inventory, resins and spare parts and substantially all of the accounts receivable pertaining to the Windsor tryout business (the "**Receivables and Inventory Purchase Agreement**"). A copy of the Receivables and Inventory Purchase Agreement is attached hereto as "**Appendix H**".
17. A summary of the non-commercially sensitive key terms of the Receivables and Inventory Purchase Agreement is provided below.

Summary of the Receivables and Inventory Purchase Agreement	
Purchaser	<ul style="list-style-type: none"> AarKel Testing Technologies Inc.
Transaction Type	<ul style="list-style-type: none"> Sale of assets
Date of Execution	<ul style="list-style-type: none"> September 22, 2023

Summary of the Receivables and Inventory Purchase Agreement	
Purchased Assets	<ul style="list-style-type: none"> • Certain accounts receivable in respect of the Debtors' tryout business, as set out in Schedule A of the Receivables and Inventory Purchase Agreement. • Certain raw material inventory, resins and spare parts, as set out in Schedule B of the Receivables and Inventory Purchase Agreement.
Purchase Price	<ul style="list-style-type: none"> • Certain accounts receivable were sold at an amount equal to the full value (the Receivables Price”). • Certain inventory was purchased at an agreed upon price.
Payment of Purchase Price	<ul style="list-style-type: none"> • AarKel retained an amount equal to 10% of the Receivables Price to allow for a period where the Receiver may collect payments on behalf of AarKel in the event customers send payments to the Receiver.

18. The Receivables and Inventory Purchase Agreement was entered into to facilitate collections of tryout amounts due to the Debtors while minimizing confusion for customers remaining with the tryout business acquired by AarKel. Further, raw material inventory sold pursuant to this agreement was to reimburse the Debtors for raw materials purchased in bulk quantities prior to closing the AarKel Transaction that AarKel would use post closing. The value of this transaction was \$746,621.
19. As of November 30, 2023, the Receiver and AarKel have reconciled amounts due between the parties pursuant to the Receivables and Inventory Purchase Agreement and AarKel remitted the balance due to the Receiver. Accordingly, the Receivables and Inventory Purchase Agreement is complete.
20. The total transaction value pursuant to the Receivables and Inventory Purchase Agreement was less than the \$1 million threshold for the Receiver to complete transactions without

the approval of the Court. As this supplementary transaction was essentially an advance on accounts receivable and recovery of purchased inventory done to facilitate the post-closing customer transition, the Receiver proceeded to consummate and complete this transaction without the prior approval of the Court.

UPDATE ON THE CLOSING OF THE AUCTION TRANSACTION

21. As detailed in the First Report, the Receiver entered into an auction agreement with Corporate Assets Inc. (“**Corporate Assets**” or the “**Auctioneer**”) on August 4, 2023, to sell substantially all assets at the Kitchener Facility and select assets in the Windsor Facility. Corporate Assets offered the Receiver a net minimum guarantee (“**NMG**”) amount with profit sharing above a set threshold in excess of the NMG. Corporate Assets auctioned these assets online in October and November, 2023 and is arranging their removal by December 15, 2023 (which deadline has been extended by the Receiver to December 22, 2023).
22. As detailed in the First Report, the Auction Transaction was subject to several conditions to be satisfied prior to closing. On August 25, 2023, the Court granted an Approval and Vesting Order in respect of the Auction Agreement with Corporate Assets, subject to the delivery of a Receiver Certificate to Corporate Assets.
23. Following the Auction AVO, the Receiver completed a bill of sale conveying to the Auctioneer the right, title and interest of the Debtors’ interest in and to the Auctioneer Purchased Assets free from all liens and encumbrances on an “as is, where is” basis.

24. Corporate Assets paid the balance of the NMG to the Receiver on October 11, 2023. The results of the auctions did not exceed the profit-sharing threshold.
25. The Receiver issued the Receiver Certificate to Corporate Assets on December 20, 2023 and has subsequently filed same with the Court. A copy of the Receiver's Certificate in relation to the Auction Transaction is attached hereto as "**Appendix I**".
26. Pursuant to the Auction Agreement, Corporate Assets is to return the Kitchener Facility to the Receiver in a broom-swept condition by December 15, 2023 (which deadline has been extended by the Receiver to December 22, 2023). Following this, the Receiver will return the property to the landlord.

INJECTION TECHNOLOGIES INC. AND MOLDCO PLASTICS INC. BANKRUPTCY

27. Pursuant to paragraph 3(p) of the Receivership Order, the Receiver has the powers to "file an assignment into bankruptcy, and act as trustee in bankruptcy, on behalf of any or all of the Debtors", which includes ITI and MPI.
28. On October 11, 2023 (the "**Date of Bankruptcy**"), the Receiver assigned ITI and MPI into bankruptcy and the Official Receiver named Deloitte as the Licensed Insolvency Trustee (in such capacity, the "**Trustee**") of both bankrupt estates. The bankruptcy assignments will allow for an orderly and efficient wind-down of ITI and MPI while allowing for the alignment of priority claims and crystallizing of various creditor claims.
29. Since the Date of Bankruptcy, the Trustee has complied with the notice requirements set out in the BIA. The first meeting of creditors of ITI and MPI (the "**FMOC**") was held virtually on November 1, 2023. Deloitte's appointment as trustee in bankruptcy was affirmed at the FMOC of both ITI and MPI.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

30. Attached as **Appendix “J”** is a consolidated Statement of Receipts and Disbursements (“**R&D**”) for the period May 26, 2023 to November 30, 2023 including the Receiver’s estimate of future amounts to be realized and incurred. As at November 30, 2023, the closing cash balance was approximately CAD \$9.5 million plus approximately US \$983,000. A summary of the R&D is presented below.

Receipts and Disbursements amounts presented in 000s	Combined		
	\$ CAD	\$ USD	Total in \$ CAD
Receipts			
Sale of Assets	7,153	-	7,153
Collection of opening accounts receivable	2,592	709	3,555
Collection from new sales	5,023	1,298	6,786
HST collected	857	38	909
Transfers between Receivership trust accounts	(0)	(0)	(0)
Interest & other cash receipts	95	6	103
Total Receipts	15,739	2,051	18,524
Disbursements			
Payroll and related benefits	(2,017)	-	(2,017)
Cost of Goods Sold	(344)	(959)	(1,647)
Rent	(706)	-	(706)
Overhead Costs	(312)	(28)	(349)
Utilities	(245)	-	(245)
Other manufacturing costs	(84)	(1)	(85)
Other operating costs	(39)	0	(39)
HST paid	(512)	(80)	(621)
Professional Fees	(1,985)	-	(1,985)
Total disbursements	(6,244)	(1,068)	(7,694)
Ending cash balance	9,495	983	10,831

31. As outlined in the R&D at Appendix J, which includes estimates for certain receipts and disbursements to finalize the receivership, there are select amounts that remain to be realized as follows:

- (a) Collections from certain customers for the production of parts throughout the Receivership period. A significant portion of the remaining amounts to be collected

is due from one customer. The Receiver remains in communication with this customer and expects the payment to be made in the near term; and

- (b) The Receiver is attempting to resolve CRA's deemed trust claim in ITI on account of unremitted payroll source deductions (described in Paragraph 45 of the Pre-Filing Report). The CRA account statements indicate that a payroll source deduction obligation of approximately \$1.35 million is owing from ITI. However, the MPI payroll account statements indicate that a refund is due to MPI of approximately \$859,000 as the Debtors incorrectly remitted ITI payroll source deductions under the MPI CRA payroll account. Once the Receiver responds to CRA's audit inquiries, it anticipates that the refund on MPI's account will be refunded and then used to fund the ITI deemed trust obligation, along with approximately \$489,000 from realizations from ITI's assets.

32. As outlined in the R&D at Appendix J, there are costs to be incurred by the Receiver to finalize its administration and certain claims against the funds realized that have or may have priority to TD's security (collectively, the "**Holdbacks**"). The following summarizes each of the reserves:

- (a) Since the First Report, the Receiver has refiled WEPPA in connection with the Bankruptcy of ITI and MPI. Based on the employee information provided to Service Canada calculated the Receiver estimates that approximately \$69,000 may be subject to a limited super priority pursuant to Section 81.4 of the BIA. Payment of this claim to Service Canada once it files a claim will be in priority to TD's security;
- (b) The Receiver will continue to incur holding costs related to the Kitchener facility until it is returned to the landlord on or prior to December 31, 2023;

- (c) The Receiver estimates that it will collect HST in excess of input tax credits resulting in an HST liability to the CRA of approximately \$300,000, which amounts will be remitted to the CRA as the Receiver completes the administration of the receivership;
 - (d) The Receiver continues to review the claim of the Cluthe Family Trust (“**Cluthe**”), noting that at the date of this Second Report, Cluthe does not hold a PPSA registration against ITI, MPI nor Moldco Holdings; however, such liability is recorded in the Debtor’s accounts. As such, a reserve has been provided for this potential claim. Counsel for the Receiver did contact counsel for Cluthe on August 15, 2023 to request Cluthe’s security documents and evidence of the underlying debt but did not receive a reply. Counsel for the Receiver has attempted to contact Cluthe counsel again as at December 12, 2023 and December 18, 2023 with no response as of the date of this Second Report.
 - (e) The Receiver is aware that the Ministry of Labour (“**MoL**”) has commenced proceedings as against ITI pursuant to the *Occupational Health and Safety Act* (“**OSHA**”) (the “**MoL Proceeding**”). The MoL Proceeding relates to an injury suffered by an ITI employee in August 2022, which the MoL alleges was caused due to certain OSHA breaches by ITI. It is the Receiver’s position that any fine or penalty arising from the MoL Proceeding would constitute an unsecured claim in these proceedings, and the Receiver does not intend to expend estate assets in defending the MoL Proceeding as a result.
33. After considering each of the remaining realizations, costs and distributions to creditors with priority claims, the Receiver estimates that the net amount available to TD Bank will be approximately \$7.4 to \$8.5 million depending on how potential priority claims are

settled. This represents a shortfall of approximately \$7.0 to \$8.1 million on TD's secured advances to the Debtors.

34. As reported in the First Report, the security held by TD Bank has been reviewed by Harrison Pensa LLP ("**HP**") as independent counsel for the Receiver, and it is the opinion of Receiver's counsel that TD Bank's security with respect to the Debtors is valid and perfected pursuant to the provisions of the PPSA. Attached as **Appendix "K"** is a copy of HP's opinion to the Receiver (the "**TD Opinion**").
35. As reported in the First Report, HP has reviewed the security held by BMO and has confirmed that such security is valid and enforceable over the BMO Asset.

RECEIVER'S COMMENDATION TO MAKE AN INTERIM DISTRIBUTION

36. Based on the TD Opinion, a review of the security pledged by the Debtors concluded in favour of the TD Security and in favour of BMO, with respect to the BMO Unit. As such, TD has security with a first ranking, with the exception of the BMO Unit, over the funds in the Receiver's trust accounts, subject to any claims with statutory or other priority that ranks ahead of TD's or BMO's claims.
37. The Receiver is seeking the Court's approval to make a final distribution to BMO from the funds held by the Receiver with respect to BMO's security over the BMO Unit, outlined herein and in the Security Opinion (the "**BMO Distribution**"). The agreed amount is \$976,000.
38. The Receiver is seeking the Court's approval to make an interim distribution to TD Bank of approximately \$7.5 million, being the net estimated realizations in the receivership less

amounts due BMO, Service Canada, CRA, the Fee Accrual, and the Holdbacks reserve for unforeseen disbursements (the “**Interim TD Distribution**”). The Receiver is also seeking the Court’s approval to make a final distribution to TD Bank all remaining funds held by the Receiver after the completion of the administration of the receivership up to the value of TD Bank’s advances (the “**Final Distribution**”). As noted in the Receiver’s Statement of Receipts and Disbursements in Schedule B, the amount due to TD Bank is approximately \$15.6 million and anticipated net realizations will not be sufficient to repay TD Bank in full.

REMAINING TASKS TO COMPLETE RECEIVERSHIP

39. The task remaining to complete the administration of the Receivership include:
- (a) Collecting outstanding amounts due from five customers;
 - (b) The Receiver is in the process of negotiating the assignment of MPI’s lease over the Kitchener Premises to the current sublessor, Clek Inc., and will continue to communicate with Clek Inc. and the landlord of the Kitchener Premises in this regard;
 - (c) Respond to CRA’s audit inquiries in respect of the Debtors’ payroll accounts and resolving the source deduction deemed trust amount;
 - (d) Remit amounts due to Service Canada in respect of its claim in the Receivership related to former employees’ WEPPA claims;
 - (e) Monitor the auctioneer’s exit of the Kitchener premises and return the property to the landlord;
 - (f) Issue the BMO Distribution and the Interim TD Distribution; and

- (g) Issue the Final Distribution to TD Bank, consisting of the balance of funds in the estate, less any amounts utilized by the Receiver from the Fee Accrual and/or utilized by the Receiver in relation to the Holdbacks.

RECEIVER'S PROFESSIONAL FEES

40. The Receiver, and its legal counsel, HP and A&B, have maintained detailed records of their professional time and costs since the date of the Receivership Order.
41. The total fees of the Receiver during the period from May 26, 2023 to December 2, 2023 total \$1,792,088, together with expenses and disbursements in the sum of \$47,476 and HST in the amount of \$239,143, totalling \$2,078,708. The aforementioned has been particularly described in the Affidavit of Jorden Sleeth sworn December 20, 2023 attached hereto as Appendix "L" (the "**Sleeth Affidavit**").
42. The total fees of A&B, in its capacity as counsel to the Receiver, during the period from June 1, 2023 to September 22, 2023, total \$118,054.50, together with expenses and disbursements in the sum of \$41.40 and HST in the amount of \$15,352.47, totalling \$133,448.37. The aforementioned has been particularly described in the Affidavit of Matilda Lici sworn December 20, 2023 attached hereto as Appendix "M" (the "**Lici Affidavit**").
43. The total fees of Harrison Pensa, in its capacity as counsel to the Receiver, during the period from May 15, 2023, to November 30, 2023 total \$60,205, together with expenses and disbursements in the sum of \$4,130.45 and HST in the amount of \$6,880.79, totalling \$71,216.24. The aforementioned has been particularly described in the Affidavit of

Thomas Masterson sworn December 21, 2023, attached hereto as Appendix “N” (the “**Masterson Affidavit**”).

44. The Receiver is of the view that the fees and disbursements of its legal counsel are reasonable. The Receiver’s fees and disbursements as well as those of its legal counsel have been presented to TD Bank and it has no objections or concerns with the fees presented. The Receiver is currently seeking the approval of the Court of the Receiver’s activities and its fees and disbursements, including the fees and disbursements of its legal counsel, as described in this Second Report.
45. Provided there is no opposition to the relief sought in the Receiver’s Motion and that such relief is granted, the Receiver estimates that the additional fees and disbursements necessary to complete these proceedings will be approximately \$250,000 not including disbursements and HST. Such accrual includes invoices issued but not paid as of November 30, 2023 with fees that total approximately \$135,000 (collectively, the “**Fee Accrual**”).

Holdbacks

46. In addition to the Fee Accrual, the Receiver will utilize the Holdbacks to complete the administration of the Receivership.

RECEIVER’S RECOMMENDATIONS

47. For the reasons set out above, the Receiver recommends that the Court make Orders:
 - (a) approving this Second Report and the activities of the Receiver, including steps taken in dealing with the Property, as described in this Second Report;

- (b) authorizing the BMO Distribution in the sum of \$976,000;
- (c) authorizing the Interim TD Distribution in the sum of \$7,500,000;
- (d) authorizing the Receiver to hold the sum of approximately \$1.25 million as the Holdbacks, for the purposes set forth herein;
- (e) authorizing the Receiver to hold the sum of \$250,000 in relation to the Fee Accrual, and authorizing payment of same;
- (f) authorizing the Final Distribution to TD Bank up to the value of its secured advances to the Debtors;
- (g) approving the Receiver's Statement of Receipts and Disbursements for the period May 26, 2023 to November 30, 2023;
- (h) approving the Receiver's fees and disbursements as set out in the Sleeth Affidavit, and authorizing payment of same;
- (i) approving the fees and disbursements of A&B as set out in the Lici Affidavit, and authorizing payment of same;
- (j) approving the fees and disbursements of Harrison Pensa as set out in the Masterson Affidavit, and authorizing payment of same; and,
- (k) ordering that the Receiver be discharged on filing a certificate of completion with this Court, and releasing the Receiver from liability for its actions while acting in such capacity, save and except for the Receiver's gross negligence or willful misconduct.

All of which is respectfully submitted this 21st day of December, 2023.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
Receiver of Injection Technologies Inc.,
Moldco Plastics Inc., and Moldco Holdings
Inc., and without personal or corporate
liability

Per:



Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

THE TORONTO-DOMINION BANK

v.

INJECTION TECHNOLOGIES INC., et al.

Applicant

Respondents

Court File No. CV-23-00699663-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

SECOND REPORT OF THE RECEIVER

HARRISON PENZA ^{LLP}

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #69806O)

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Receiver,
Deloitte Restructuring Inc.

APPENDIX "E"



Court File No. CV- 23-00699663-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE *MR.*)
JUSTICE *H.J. WILTON-SIBER*)

MONDAY, THE 15th
DAY OF JANUARY, 2024

Haw-S

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.

Respondents

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Injection Technologies Inc., Moldco Plastics Inc., and Moldco Holdings Inc. (collectively, the "**Debtors**"), for an order for the distribution of proceeds, providing for the discharge of the Receiver, and for other associated relief was heard this day by way of judicial teleconference via Zoom at the Court House, 330 University Avenue, Toronto, Ontario .

ON READING the Receiver's Notice of Motion dated December 21, 2023, the Second Report of the Receiver dated December 21, 2023 (the "**Second Report**") and all appendices thereto, the affidavits of the Receiver and its counsel as to the Fees (the "**Fee Affidavits**"), the Factum and Book of Authorities of the Receiver dated January 8, 2024, and on hearing the submissions of counsel for the Receiver and any other parties or counsel in attendance, no one else appearing although served as evidenced by the Affidavits of Service of Isabelle Stacey sworn

E1054

December 22, 2023 and January 8, 2024, and the affidavit of service of Emma Benaway sworn December 27, 2023, filed;

1. THIS COURT ORDERS that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispensing with further service and confirmation hereof.

2. THIS COURT ORDERS that the Second Report, and the activities and conduct of the Receiver as set forth therein, including the completion of the Receivables and Inventory purchase Agreement, are hereby approved and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report, as detailed herein.

3. THIS COURT ORDERS that the Statement of Receipts and Disbursements (as defined and detailed in the Second Report) be and is hereby approved.

4. THIS COURT ORDERS that the Fees and the Fee Accrual, as defined and set out in the Second Report and the Fee Affidavits, and payment thereof, be and are hereby approved .

5. THIS COURT ORDERS that the Receiver is authorized to maintain the Holdbacks (as defined and detailed in the Second Report), for the purposes set forth in the Second Report.

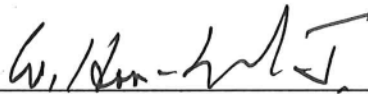
6. THIS COURT ORDERS that, after payment of the Fees herein approved, and subject to the Fee Accrual and any amounts utilized by the Receiver from the Holdbacks, the Receiver be and is authorized and directed to make the following distributions, as detailed and described in the Second Report:

- (a) The BMO Distribution;
- (b) The Interim TD Distribution; and,
- (c) The Final Distribution.

7. THIS COURT ORDERS that upon payment of the amounts set out in paragraphs 4,5, and 6 hereof and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Second Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its

discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte Restructuring Inc. in its capacity as Receiver.

8. THIS COURT ORDERS AND DECLARES that Deloitte Restructuring Inc. is hereby released and discharged from any and all liability that Deloitte Restructuring Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte Restructuring Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Deloitte Restructuring Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.



Justice, Ontario Superior Court of Justice (Commercial List)

SCHEDULE "A"
CERTIFICATE OF COMPLETION

Court File No. CV- 23-00699663-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.,
AND MOLDCO HOLDINGS INC.**

Respondents

CERTIFICATE OF COMPLETION

RECITALS

- A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 26, 2023 (the "**Appointment Order**"), Deloitte Restructuring Inc. was appointed as receiver (the "**Receiver**") of the Property (as defined in the Appointment Order) of the Respondents, Injection Technologies Inc., Moldco Plastics Inc., and Moldco Holdings Inc. (the "**Debtors**")
- B. Pursuant to an Order of the Court dated [], 2024, granted by the Honourable Justice [] (the "**Discharge Order**"), the Court authorized and directed the Receiver to make certain distributions and to hold back certain funds, as proposed in the Receiver's Second Report to the Court dated December 21, 2023 (the "**Second Report**"), and to carry out certain final outstanding matters (the "**Outstanding Matters**") that were outlined in the Second Report, and further provided that upon the Receiver filing a Certificate of Completion with

E1057

this Court certifying that the administration of the Debtors' estate, including the Outstanding Matters, had been completed, the Receiver shall thereby be immediately discharged and the Receiver and all of its directors, officers, partners, employees, agents, attorneys and counsel released from any and all claims in respect of all acts or omissions of any such parties in the performance or intended performance of the Receiver's mandate or any activity related thereto.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Receiver has completed the administration of the Debtors' estate, including the Outstanding Matters, in accordance with the terms of the Second Report and the Discharge Order, such that the discharge and release of the Receiver should now be effective.

DATED at Toronto, Ontario this day of _____, 2023.

**DELOITTE RESTRUCTURING INC.,
in its capacity as Receiver of the Property
of Injection Technologies Inc., Moldco Plastics
Inc., and Moldco Holdings Inc.,
and not in its personal or corporate capacity**

Per: Jorden Sleeth, LIT

E1825

THE TORONTO-DOMINION BANK

v.

INJECTION TECHNOLOGIES INC., et al.

Applicant

Respondents

Court File No. CV-23-00699663-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

**ORDER
(DISTRIBUTION AND DISCHARGE)**

HARRISON PENSEA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #698060)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Receiver,
Deloitte Restructuring Inc.

E1059

APPENDIX "F"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC.
and MOLDCO HOLDINGS INC.

Respondents

AFFIDAVIT

I, Gary Cluthe, of the City of Kitchener, in the Regional Municipality of Waterloo,
MAKE OATH AND SAY:

1. I am a trustee of 2013 Gary Paul Cluthe Family Trust (the "Trust") and as such I have knowledge of the matters to which I hereinafter depose. Where I indicate that I obtained this knowledge from other sources, I believe that information to be true.
2. The Trust is a secured creditor of the Respondent, Moldco Plastics Inc., formerly Moldco Inc. ("Moldco"). I make this Affidavit in support of the Trust's claim for distribution of funds held by the Receiver in this proceeding, in satisfaction of the debt owing to the Trust by Plastics.
3. The Trust is the former owner of all of the shares of Moldco. Moldco's indebtedness to the Trust arose from a Share Purchase Agreement dated February 29, 2020 through which the Trust sold all of the shares of Moldco (and a related company) to 1241704 B.C. Ltd. (the "SPA"). Attached as **Exhibit "A"** is a copy of the SPA.
4. The SPA provided for the following terms in relation to payment:

- (a) The purchase price for the shares was \$3,100,000. (section 2.2)
- (b) The purchase price was payable by way of a payment on closing of \$2,620,000 and a promissory note in favour of the Trust in the amount of \$480,000 (the "Vendor Note"). (section 2.3)
- (c) The Vendor Note was to be secured by way of a General Security Agreement over all of the assets and property of Moldco (the "GSA"). (section 2.6)

5. The share purchase transaction was completed on February 29, 2020. The purchaser delivered at that time payment of the lump sum due on closing, the Vendor's Note for the remaining purchase price of \$480,000, and the GSA. Attached as **Exhibit "B"** is a copy of the Receipt of Purchase Price. Attached as **Exhibit "C"** is a copy of the Vendor Note. Attached as **Exhibit "D"** is a copy of the GSA.

6. By virtue of the arrangements and the GSA, the Trust became a secured creditor of Moldco. Our counsel caused a registration of the Trust's security interest to be made under the Ontario PPSA registration system on March 11, 2020 (the "PPSA Registration"). Attached as **Exhibit "E"** is a copy of the covering letter that was sent to Moldco confirming this registration as well as the PPSA Registration.

7. The balance owing under the Vendor Note was subject to interest at the rate of 5% per annum and was payable pay way of equal annual instalments of \$160,000 plus accrued interest, payable on February 28, 2021, February 28, 2022, and February 28, 2023.

8. Moldco made the first payment due on the Vendor's Note as prescribed. This payment was in the amount of \$184,000 (\$160,000 principal plus \$24,000 interest) and was made on February 26, 2021.

9. Moldco was late in making the second payment due on the Vendor's Note. This payment was made in April 2022. Because the payment was late, there was an additional late payment fee of \$4,000 charged. The total amount paid at that time was \$180,000 (\$160,000 principal plus \$16,000 interest plus \$4,000 late payment fee).

10. Attached as **Exhibit “F”** are copies of the Trust’s bank statements showing these payments.

11. The final payment owing under the Vendor Note was due on February 28, 2023. Moldco failed to make this payment as required or at all. We were in the process of engaging counsel to pursue this debt when we received notice of the receivership in this matter.

12. Moldco remains indebted to the Trust for the total sum of \$160,000 plus accrued interest at 5% per annum for the balance owing on the Vendor’s Note. The total amount owing to the Trust as of February 29, 2024 is \$176,000 (\$160,000 principal plus \$8,000 interest (2022 – 2023) and \$8,000 interest (2023 – 2024).

13. Under the terms of the GSA, Moldco was required to notify the Trust promptly of any change in its business name. I learned recently that Moldco had changed its business name in January 29, 2021 from Moldco Inc. to Moldco Plastics Inc.. Moldco did not provide the Trust with notice of this change of name as required by the GSA. The first time I or the Trust became aware of this name change was in December 2023 when the issue was raised by the receiver’s counsel as outlined below.

14. I am advised by our counsel, Justin Heimpel, that he received an email from Rob Danter, counsel for the receiver, on December 13, 2023 where counsel raised the issue of this name change in the context of priorities in relation to proceeds obtained through the receivership. Attached as **Exhibit “G”** is a copy of this email.

15. This email is the first time that the business name change came to the attention of the Trust. As indicated above, Moldco did not provide notice of the change as required under the GSA. While we had been served with the voluminous application materials in relation to receivership application, I did not discover from my brief review of the same that there had been a name change of Moldco or that there was anything significant in relation to the name of the business until the issue was raised by counsel.

16. After learning of the name change in December 2023, we arranged for our counsel to file an Amended PPSA Registration to reflect the change of the business name from

Moldco Inc. to Moldco Plastics Inc. on January 10, 2024 (the “PPSA Amendment Registration”). Attached as **Exhibit “H”** is a copy of the PPSA Amendment Registration.

17. I understand that the Personal Property Security Act provides that a security interest against an entity that changes its name remains perfected against the entity under the new business name if the secured party registers a financing change statement to amend the registration to reflect the new business name within thirty days of when it learned of the business name change. The Trust complied with this provision in that we caused the PPSA Amendment Registration to be registered within thirty days of learning that Moldco had changed its name.

18. The Trust maintains that its original to security interest as registered in March 2020 remains perfected and enforceable. The Trust relies on this registration and security interest and claims priority over the security interest registered by the Toronto-Dominion Bank on June 4, 2021.

19. I make this Affidavit in support of the Trust’s claim in this matter and for no improper purpose.

Sworn remotely at the City of Waterloo
on March 18, 2024 in accordance with
O. Reg. 431/20, Administering Oath or
Declaration



Commissioner for Taking Affidavits



Gary Cluthe

THE TORONTO-DOMINION BANK
Plaintiff

-and- INJECTION TECHNOLOGIES INC. et al.
Defendant

Court File No. CV-23-00699663-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT

TORONTO

AFFIDAVIT

SORBARA, SCHUMACHER, MCCANN LLP
31 Union Street East
Waterloo, ON N2J 1B8

Justin Heimpel
LSO# 43807W

T: 519-741-8010 ext. 224
F: 519-576-1184
E: justin@sorbaralaw.com

Lawyers for 2103 Gary Paul Cluthe Family Trust

RCP-E 4C (July 1, 2007)

APPENDIX "G"

MLF V1-V2
clean

SHARE PURCHASE AGREEMENT

Sign off

THIS AGREEMENT made as of the 29th day of February, 2020,

BETWEEN:

1241704 B.C. LTD.,

a corporation incorporated under the Laws of the Province of Ontario,
(the "**Purchaser**")

and

2013 GARY PAUL CLUTHE FAMILY TRUST,

a trust situate in the Province of Ontario,
(hereinafter called the "**Vendor**")

and

2426496 ONTARIO INC. and MOLDCO INC.,

each a corporation incorporated under the Laws of the Province of Ontario
(hereinafter collectively called the "**Corporations**" and each a "**Corporation**")

RECITALS:

A. The Vendor is the registered and beneficial owner all issued and outstanding shares in the capital of the Corporations, being the following (collectively, the "**Purchased Shares**"):

- (i) One Hundred (100) Common shares of 2426496 Ontario Inc.; and
- (ii) One Thousand (1000) Common shares of Moldco Inc.

B. The Purchaser wishes to purchase, and the Vendor wishes to sell, the Purchased Shares in the capital of the Corporations on the terms and conditions in this Agreement.

C. The Vendor controls the Corporations.

The Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement and in the schedules, the following terms and expressions have the following meanings:

- (a) "**Adjustment**" has the meaning ascribed in Section 2.4;
- (b) "**Agreement**" means this share purchase agreement and all instruments amending it; "hereof", "hereto" and "hereunder" and similar expressions mean and refer to this

Agreement and not to any particular Article, Section, or other subdivision; “Article”, “Section” or other subdivisions of this Agreement followed by a number means and refers to the specified Article, Section or other subdivision of this Agreement;

- (c) “**assessment**” shall include a reassessment or additional assessment and the term “assessed” shall be interpreted in the same manner;
- (d) “**Business**” means the business carried on by each of the Corporations which primarily involves plastic injection molding;
- (e) “**Business Day**” means any day other than a Saturday, a Sunday or a statutory holiday in the Province of Ontario or any other day on which the principal chartered banks located in the City of Windsor are not open for business during normal banking hours;
- (f) “**Claim**” has the meaning ascribed in Section 7.3;
- (g) “**Closing**” means the completion of the Transactions pursuant to this Agreement at the Closing Time;
- (h) “**Closing Date**” means February 29, 2020 or such other date as the Parties may agree upon for the closing of the transaction contemplated herein;
- (i) “**Closing Date Financial Statements**” means the balance sheet of the Corporations at the Closing Time and the income statement for the period then ended from the date of the Financial Statements, to be prepared in accordance with Section 2.5;
- (j) “**Closing Time**” means in the City of Windsor on the Closing Date or such other time on the Closing Date as the Parties may agree upon as the time at which the Closing shall take place;
- (k) “**Closing Time Year**” means the taxation year for each of the Corporations ending at the Closing Time;
- (l) “**Consent**” means a license, permit, approval, consent, certificate, registration or authorization (including, without limitation, those made or issued by a Regulatory Authority, in respect of a Contract, or otherwise);
- (m) “**Contract**” means any agreement, understanding, indenture, contract, lease, deed of trust, license, option, instrument or other commitment, whether written or oral;
- (n) “**Corporations**” means collectively Moldco Inc. and 2426496 Ontario Inc. and “**Corporation**” means each one of them, respectively;
- (o) “**Direct Claim**” has the meaning ascribed in Section 7.3;
- (p) “**Due Diligence Review**” has the meaning ascribed in Section 5.1(7);
- (q) “**Employee Plans**” has the meaning ascribed in Section 3.1(38)(a);
- (r) “**Encumbrances**” means mortgages, charges, pledges, security interests, liens, encumbrances, actions, claims, demands and equities of any nature whatsoever or

howsoever arising and any rights or privileges capable of becoming any of the foregoing;

- (s) “**Environmental Consents**” has the meaning ascribed in Section 3.1(37)(a)(ii);
- (t) “**Environmental Laws**” has the meaning ascribed in Section 3.1(37)(a)(i);
- (u) “**Financial Statements**” means the unaudited financial statements of each of the Corporations for the fiscal year ended July 31, 2019, consisting of a balance sheet, an income statement, a statement of changes in financial position and a statement of retained earnings together with the accompanying notes, a copy of which is attached as Schedule 3.1(16);
- (v) “**GAAP**” means the Generally Accepted Accounting Principles so described and promulgated by the Accounting Standards Board of the Canadian Institute of Chartered Accountants in the Handbook of the Canadian Institute of Chartered Accountants, which are applicable on the date on which any calculation is to be effective or at the date of any financial statements referred to herein, as the case may be;
- (w) “**Hazardous Substance**” has the meaning ascribed in Section 3.1(37)(a)(iii);
- (x) “**Indemnified Party**” has the meaning ascribed in Section 7.3;
- (y) “**Indemnifying Party**” has the meaning ascribed in Section 7.3;
- (z) “**Intellectual Property**” has the meaning ascribed in Section 3.1(40);
- (aa) “**Interim Financial Statements**” means the unaudited financial statements of each of the Corporations for the period ended **December 31, 2019** consisting of a balance sheet and an income statement, a copy of which is attached as Schedule 3.1(16);
- (bb) “**Interim Period**” means the period from and including the date of this Agreement to and including the Closing Date;
- (cc) “**ITA**” means the *Income Tax Act* (Canada);
- (dd) “**Law**” or “**Laws**” means all requirements imposed by statutes, regulations, rules, ordinances, by-laws, decrees, codes, policies, judgments, orders, rulings, decisions, approvals, notices, permits, guidelines or directives of any Regulatory Authority;
- (ee) “**Lease**” has the meaning ascribed in Section 3.1(36)(b);
- (ff) “**Leased Premises**” means the real property municipally known as 965 Wilson Ave., Kitchener, ON N2C 1J1 leased by the Moldco Inc. pursuant to the Lease;
- (gg) “**Net Working Capital**” shall be determined in accordance with the Closing Date Financial Statements and means the current assets of the Corporations, which specifically excludes accounts receivable aged 90 days or more and specifically excludes value of the T2 corporate tax recovery amount for the fiscal year ending July

31, 2019, less the current liabilities of the Corporations, calculated in accordance with past practices, using the taxes payable method of accounting for income taxes.

- (hh) **“NI 45-106”** means National Instrument 45-106 Prospectus and Registration Exemptions adopted by the Ontario Securities Commission;
- (ii) **“Non-Cash Net Working Capital”** means the Net Working Capital less cash on-hand at Closing;
- (jj) **“Non-Competition Agreement”** has the meaning ascribed to it in Section 5.1(5)(a);
- (kk) **“Parties”** means the Vendor, the Purchaser, and the Corporations and any other person that may become a party to this Agreement and Party means any one of them;
- (ll) **“Permitted Encumbrances”** means:
 - (i) liens for Taxes, assessments and governmental charges due and being contested in good faith and diligently by appropriate proceedings (and for the payment of which adequate provision has been made);
 - (ii) servitudes, easements, restrictions, rights of parties in possession, zoning restrictions, encroachments, reservations, rights-of-way and other similar rights in real property or any interest therein, provided the same are not of such nature as to materially adversely affect the validity of title to or the value, marketability or use of the property subject thereto by the Corporations;
 - (iii) liens for Taxes either not due and payable or due but for which notice of assessment has not been given;
 - (iv) undetermined or inchoate liens, charges and privileges incidental to current construction or current operations and Encumbrances claimed or held by any Regulatory Authority that have not at the time been filed or registered against the title to the asset or served upon the Corporations pursuant to law or that relate to obligations not due or delinquent;
 - (v) assignments of insurance provided to landlords (or their mortgagees) pursuant to the terms of any Lease and liens or rights reserved in any Lease for rent or for compliance with the terms of such Lease;
 - (vi) security given in the ordinary course of the Business to any Regulatory Authority in connection with the operations of the Business, other than security for borrowed money;
 - (vii) the reservations in any original grants from the Crown of any real property or interest therein and statutory exceptions to title that do not materially detract from the value of the real property concerned or materially impair its use in the operation of the Business; and
 - (viii) the Encumbrances described in Schedule 1.1(kk);

- (mm) “**person**” includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, governmental agency and any other form of entity or organization;
- (nn) “**Purchase Price**” has the meaning ascribed in Section 2.1;
- (oo) “**Purchased Shares**” has the meaning ascribed in the Recitals;
- (pp) “**Records**” means all technical, business and financial records relating to the Business, including, without limitation, customer lists, operating data, files, financial books, correspondence, credit information, research materials, contract documents, title documents, leases, surveys, records of past sales, supplier lists, employee documents, inventory data, accounts receivable data, financial statements and any other similar records in any form whatsoever (including written, printed, electronic or computer printout form);
- (qq) “**Regulatory Authority**” means any government, regulatory or administrative authority, agency, commission, utility or board (federal, provincial, municipal or local, domestic or foreign) having jurisdiction in the relevant circumstances and any person acting under the authority of any of the foregoing and any judicial, administrative or arbitral court, authority, tribunal or commission having jurisdiction in the relevant circumstances;
- (rr) “**Release**” has the meaning ascribed in Section 3.1(37)(a)(iv);
- (ss) “**Securities Act**” means the *Securities Act* (Ontario);
- (tt) “**Senior Lender**” has the meaning ascribed in Section 2.6;
- (uu) “**Senior Security**” has the meaning ascribed in Section 2.6;
- (vv) “**Statements Date**” means the date of the balance sheet included in the Financial Statements;
- (ww) “**Subsidiaries**” means any corporation all of the issued and outstanding shares of which are held by the Corporations;
- (xx) “**Tax**” and “**Taxes**” have the meaning ascribed in Section 3.1(35)(a)(i);
- (yy) “**Tax Return**” has the meaning ascribed in Section 3.1(35)(a)(ii);
- (zz) “**Transactions**” means the purchase and sale of the Purchased Shares and all other transactions contemplated by this Agreement; and
- (aaa) “**Vendor’s Note**” has the meaning ascribed in Subsection 2.3(c).
- (bbb) “**Vendor’s Security**” has the meaning ascribed in Subsection 2.6.

1.2 Best Knowledge

Any reference herein to “the best of the knowledge” of the Vendor will be deemed to mean the actual knowledge of the Vendor and/or the Corporations, together with the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter.

1.3 Currency

Unless otherwise indicated, all references to dollar amounts in this Agreement are expressed in Canadian currency.

1.4 Governing Law

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

1.5 Interpretation Not Affected by Headings

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

1.6 Number and Gender

In this Agreement, unless the context otherwise requires, any reference to gender shall include both genders and words importing the singular number shall include the plural and vice-versa.

1.7 Time of Essence

Time shall be of the essence of every provision of this Agreement.

1.8 Severability

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

1.9 Accounting Terms

All accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP.

1.10 Calculation of Time Periods

Where a time period is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time period includes that day. Where a time period is expressed to begin after or to be from a specified day, the time period does not include that day. Where anything is to be done within a time period expressed after, from or before a specified day, the time period does not include that day. If the last day of a time period is not a Business Day, the time period shall end on the next Business Day.

1.11 Statutory Instruments

Unless otherwise specifically provided in this Agreement, any reference in this Agreement to any Law shall be construed as a reference to such Law as amended or re-enacted from time to time or as a reference to any successor thereto.

1.12 Incorporation of Schedules

The following are the schedules attached to and incorporated by reference into this Agreement:

Schedule 1.1(kk)	Permitted Encumbrances
Schedule 2.3(c)	Vendor's Note
Schedule 3.1(4)	Jurisdictions in which Corporations Conducts Business
Schedule 3.1(13)	Shareholder/Pooling/Voting Trust Agreements
Schedule 3.1(15)	Regulatory and Contractual Consents
Schedule 3.1(16)	Financial Statements
Schedule 3.1(16)	Interim Financial Statements
Schedule 3.1(19)	Undisclosed Liabilities
Schedule 3.1(20)	Consents
Schedule 3.1(26)	Litigation
Schedule 3.1(30)	Material Contracts
Schedule 3.1(31)	Insurance
Schedule 3.1(32)	Bank Accounts and Powers of Attorney
Schedule 3.1(34)	Customers and Suppliers
Schedule 3.1(35)	Taxes
Schedule 3.1(36)	Lease
Schedule 3.1(37)	Environmental Matters
Schedule 3.1(38)	Labour and Employee Matters
Schedule 3.1(39)	Product Warranties
Schedule 3.1(40)	Intellectual Property
Schedule 5.1(5)(a)	Non-Competition Agreement
Schedule 5.1(5)(b)	Consulting Agreement – Duron Plastics Ltd.
Schedule 5.1(5)(c)	Consulting Agreement – Qor Concept Inc.
Schedule 5.1(5)(c)	Release by Vendor
Schedule 5.3(2)	Release by Corporations and Purchaser
Schedule 7.4(1)	Arbitration Rules

ARTICLE 2
PURCHASE AND SALE

2.1 Purchased Shares

On the terms and subject to the fulfilment of the conditions of this Agreement, each Vendor agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from each Vendor, at the Closing Time all of the Purchased Shares.

2.2 Purchase Price

The aggregate purchase price (the “**Purchase Price**”) payable by the Purchaser to the Vendor for the Purchased Shares shall be Three Million One-Hundred Thousand Dollars (\$3,100,000.00), subject to

adjustment in accordance with Section 2.4. The Purchase Price shall be allocated as between the classes of Shares as follows:

100 Common shares of 2426496 Ontario Inc.	=	\$500,000.00
1000 Common shares of Moldco Inc.	=	\$2,600,000.00

2.3 Payment of Purchase Price

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

- (a) At the Closing Time, the Purchaser will pay to the Vendor's solicitor, in trust, or as the Vendor may otherwise direct, by certified cheque, bank draft, wire transfer, or other means of immediately available funds, Two Million Six Hundred Twenty Thousand (\$2,620,000.00) Dollars;
- (b) At the Closing Time, the Purchaser shall deliver a promissory note in favour of the Vendor in the amount of Four Hundred and Eighty-Thousand Dollars (\$480,000.00), substantially in the form as attached hereto as Schedule 2.3(c) (the "**Vendor Note**");

2.4 Adjustment to the Purchase Price

The Purchase Price shall be increased or reduced, as the case may be, on a dollar for dollar basis by the amount which the Net Working Capital of the Corporations is greater than or less than the Net Working Capital target of One Million Two Hundred Thousand (\$1,200,000.00) Dollars as at the Closing Date (the "**Adjustment**").

2.5 Final Determination of Purchase Price.

- (a) Within Ninety (90) days following the Closing Date, the Closing Date Financial Statements shall be initially prepared by Clarke, Starke, Diegel LLP on behalf of the Corporations, and expenses for the initial preparation shall be accrued in the Non-Cash Net Working Capital, and shall be delivered by the Vendor to the Purchaser together with a favourable report thereon by the Vendor's accountants. The Purchaser shall provide access, upon every reasonable request, to the Vendor and its accountants, to all working papers and accounting books and records relating to the Business and the appropriate personnel to verify the accuracy, presentation and other matters relating to the preparation of the Closing Date Financial Statements and the Vendor and the Purchaser shall otherwise fully cooperate with each other in the preparation of the Closing Date Financial Statements. The Vendor and the Purchaser shall each bear the fees and expenses of their respective accountants in reviewing the Closing Date Financial Statements.
- (b) The Purchaser shall be entitled to review the preparation of the Closing Date Financial Statements and the Purchaser's accountants shall be entitled to have access to and to receive copies of the working papers for the Closing Date Financial Statements prior to their issue. The Closing Date Financial Statements shall be final and binding upon the Parties, absent manifest error, unless the Purchaser notifies the Vendor in writing that it disputes any amounts shown therein within Twenty (20) Business Days after receipt by the Purchaser of the Closing Date Financial Statements.
- (c) If the Purchaser disputes any amount shown in the Closing Date Financial Statements, the

Parties will work expeditiously and in good faith in an attempt to resolve such disputes within a further period of Thirty (30) Business Days after the date of notification by the Purchaser to the Vendor of such disputes, failing resolution of which such disputes shall be submitted for determination to an independent firm of chartered professional accountants mutually agreed to by the Vendor and the Purchaser (and, failing such agreement between the Vendor and the Purchaser within a further period of Five (5) Business Days, such independent firm of chartered accountants shall be selected by two such firms, one nominated by each of the Vendor and the Purchaser). The determination of such third firm of chartered accountants shall be final and binding upon the Parties and not subject to appeal. The third firm of chartered professional accountants shall be deemed to be acting as experts and not as arbitrators. The costs and expenses of such third firm of chartered professional accountants shall be borne equally by the Vendor and the Purchaser. The Vendor and the Purchaser shall each bear their own costs in presenting their cases to such third firm of chartered professional accountants.

- (d) Any positive or negative Adjustment to the Purchase Price shall be paid as follows:
- i. In the event of a positive Adjustment to the Purchase Price, the Adjustment shall be payable by cash, certified cheque or bank draft by the Purchaser to the Vendor;
 - ii. In the event of a negative Adjustment to the Purchase Price, the amount equal to the amount of the negative Adjustment shall be set-off against the payments due under the Vendor's Note. For clarity, the negative Adjustment will be set-off against first payment due under the Vendor's Note and all subsequent payment(s) thereafter until the negative Adjustment is satisfied in full.

Any Adjustment to the Purchase Price shall be completed within Three (3) Business Days of the final determination of the Purchase Price pursuant to this Section 2.5.

- (e) Any Adjustment shall be allocated to the Moldco Inc. shares forming the Purchased Shares.

2.6 Security for Vendor's Note.

As security for payment and performance of the Vendor's Note, any Adjustment in the Vendor's favour, and the Purchaser's and the Corporations' obligations set forth in Section 2.5(d) hereof, the Purchaser shall on Closing provide the following security (the "**Vendor's Security**"):

- (a) a general security agreement;
- (b) such further and other documentation as may be necessary to set forth the respective priorities of the security held by Bank of Montreal (the "**Senior Lender**") and the Vendor's Security.

The Vendor hereby acknowledges and understands that the Purchaser has entered into a credit facility letter with the Senior Lender pursuant to which the Purchaser has agreed to grant certain security in favour of the Senior Lender over certain assets and undertakings of the Purchaser and the Corporations to secure certain indebtedness owing or to be owing by the Purchaser and/or the Corporations in favour of the Senior Lender (such security collectively, the "**Senior Security**"). The Vendor hereby acknowledges and confirms that notwithstanding any of the provisions of the Vendor's Note or the Vendor's Security or the time of the giving of or the perfection or registration of the Vendor's Security, or the time or amounts of any advances secured by the Vendor's Note or the Vendor's Security, the Vendor's Security and the indebtedness owing by the Purchaser under the Vendor's Note shall rank subordinate to and be postponed, where required, in favour of the Senior Security, such that the Senior Security shall have priority over the Vendor's Note and

the Vendor's Security in respect of all of the property, assets and undertaking of the Purchaser and the Corporations. The Vendor's Security shall state that the Senior Security shall be a permitted encumbrance over the property, assets and undertaking of the Corporations and the Purchaser. Despite the foregoing, the Senior Lender shall confirm that the Purchaser shall be permitted to make payments owing to the Vendor under the Vendor's Note, provided that neither the Purchaser nor the Corporations are in default under the Senior Security, and the Vendor shall be permitted to accept such payment so long as they have not been given notice by the Senior Lender of any event of default by the Purchaser or the Corporations. The Purchaser and Vendor shall execute and deliver such documents and agreements requested by the Senior Lender, including, but not limited to, an inter-creditor agreement and postponement agreement or such other similar form of agreement setting forth the respective priorities of the Senior Security and the Vendor's Note.

The Vendor further covenants and consents to the continuation of the Corporations to the Province of British Columbia and the post-closing amalgamation of the Corporations with the Purchaser (the "**Post-Closing Transactions**"). The Post-Closing Transactions shall not constitute an event default under the Vendor's Security.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Vendor

The Vendor hereby makes the following representations and warranties to the Purchaser and acknowledge that the Purchaser is relying on such representations and warranties in entering into this Agreement and completing the Transactions:

- (1) Incorporation and Existence of the Corporations. The Corporations are each corporations incorporated and existing under the laws of the Province of Ontario.
- (2) Incorporation. 2426496 Ontario Inc. was incorporated on July 14, 2014. Moldco Inc. was incorporated on June 20, 2013.
- (3) Corporate Power. The Corporations each have the corporate power and authority to own or lease their respective property and to carry on the Business as now being conducted by them.
- (4) Qualification. The Corporations are each duly qualified, licensed or registered to carry on business and is in good standing in the jurisdictions listed in Schedule 3.1(4). The jurisdictions listed in Schedule 3.1(4) include all jurisdictions in which the nature of the Business or the property owned or leased by the Corporations makes such qualification necessary or where the Corporations own or lease any material properties or assets or conducts any material business.
- (5) Subsidiaries. The Corporations each do not own nor have they agreed to acquire, directly or indirectly, any of the outstanding shares or securities convertible into shares of any other corporation.
- (6) Authorized and Issued Capital. The authorized capital of the Corporations consist of the following:
 - a. With respect to 2426496 Ontario Inc, an unlimited number of Common shares, Class A Special shares, Class B Special shares and Class C Special shares of which (i) at the date of this Agreement, One Hundred (100) Common Shares (and no more) have been duly issued and are outstanding as fully paid and non-assessable, and (ii) at the Closing Time,

One Hundred (100) Common Shares (and no more) shall have been duly issued and shall be outstanding as fully paid and non-assessable; and

- b. With respect to Moldco Inc., an unlimited number of Common shares and Class A Special shares of which (i) at the date of this Agreement, One Thousand (1000) Common Shares (and no more) have been duly issued and are outstanding as fully paid and non-assessable, and (ii) at the Closing Time, One Thousand (1000) Common Shares (and no more) shall have been duly issued and shall be outstanding as fully paid and non-assessable

(7) Options. Except for the Purchaser's right in this Agreement, no person has any option, warrant, right, call, commitment, conversion right, right of exchange or other agreement or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an option, warrant, right, call, commitment, conversion right, right of exchange or other agreement for (a) the purchase from the Vendor of any of the Purchased Shares; (b) the purchase, subscription, allotment or issuance of any unissued shares or securities of the Corporations or (c) other than in the ordinary course of the Business.

(8) Title to Purchased Shares. The Purchased Shares are owned by the Vendor as the registered owner for the benefit of the beneficiaries as set forth in its Deed of Settlement with good and marketable title, free and clear of all Encumbrances.

(9) Dividends and Distributions. Since the Statements Date, each Corporation has not, directly or indirectly, declared or paid any dividends or declared or made any other distribution on any of its shares of any class and has not, directly or indirectly, redeemed, purchased or otherwise acquired any of its outstanding shares of any class or agreed to do so.

(10) Corporate Records. The corporate records of each of the Corporations are materially complete and accurate and all corporate proceedings and actions reflected therein have been conducted or taken in compliance with all applicable Laws and with the articles and by-laws of each of the Corporations, respectively, and without limiting the generality of the foregoing, (a) the minute books contain materially complete and accurate minutes of all meetings of the directors and shareholders of each of the Corporations held since its date of incorporation, and all such meetings were duly called and held; (b) the minute books contain all material written resolutions passed by the directors and shareholders of each of the Corporations and all such resolutions were duly passed; (c) the share certificate books, registers of Corporations and registers of securities transfers of the Corporations are complete and accurate, and all transfers of securities have been duly completed and approved and any eligible tax payable in connection with the transfer of any securities of the Corporations has been duly paid; and (d) the registers of directors and officers are complete and accurate and all former and present directors and officers of the Corporations were duly elected or appointed as the case may be.

(11) Validity of Agreement

- (a) The Vendor has all necessary corporate power to own the Purchased Shares and to enter into and perform its obligations under this Agreement, and each of the Vendor and each of the Corporations have all necessary corporate power to enter into and perform their respective obligations under any other agreements or instruments to be delivered or given by it pursuant to this Agreement.
- (b) The Vendor's execution and delivery of, and performance of its obligations under, this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of each of the Vendor and the Corporations.

- (c) This Agreement or any other agreements entered into pursuant to this Agreement to which the Corporations or the Vendor is a party constitute legal, valid and binding obligations of each of the Corporations and the Vendor, as the case may be, enforceable against each of them in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

(12) No Violation. The execution and delivery of this Agreement by the Vendor, the consummation of the Transactions and the fulfilment by the Vendor of the terms, conditions and provisions hereof will not (with or without the giving of notice or lapse of time, or both):

- (a) contravene or violate or result in a breach or a default under or give rise to a right of termination, amendment or cancellation or the acceleration of any obligations of the Vendor or the Corporations under:
 - (i) any applicable Law;
 - (ii) any judgment, order, writ, injunction or decree of any Regulatory Authority having jurisdiction over the Vendor or the Corporations;
 - (iii) the articles, by-laws or any resolutions of the board of directors or shareholders of the Corporations;
 - (iv) any Consent held by the Vendor or the Corporations or necessary to the ownership of the Purchased Shares or the operation of the Business; or
 - (v) the provisions of any Contract to which the Vendor or the Corporations is/are a party to or by which any of them is, or any of their properties or assets are, bound; or
- (b) result in the creation or imposition of any Encumbrance on any of the Purchased Shares or any of the property or assets of the Corporations.

(13) Shareholders' Agreements. There are no shareholders' agreements, pooling agreements, voting trusts or other similar agreements with respect to the ownership or voting of any of the shares of the Corporations or any save and except those as set out in Schedule 3.1(13) annexed hereto.

(14) Private Issuer. The Corporations are each a private issuer as that term is defined in NI 45-106 and the sale of the Purchased Shares by the Vendor to the Purchaser will be made in compliance with the *Securities Act* (Ontario).

(15) Regulatory and Contractual Consents. There is no requirement to make any filing with, give any notice to or obtain any Consent from any Regulatory Authority as a condition to the lawful consummation of the Transactions, except for:

- (a) the application of the *Competition Act* (Canada), if applicable; and
- (b) the application of the *Investment Canada Act* (Canada), if applicable.

There is no requirement under any Contract relating to the Business or to which the Vendor or the

Corporations is/are a party or by which any of them are bound to make any filing with, give any notice to, or to obtain the Consent of, any party to such Contract relating to the Transactions.

(16) Financial Statements. The Financial Statements, the Interim Financial Statements and the Closing Date Financial Statements:

- (a) have been prepared and, in the case of the Closing Date Financial Statements, will be prepared, in accordance with, and on a basis consistent with, past practices of prior fiscal periods;
- (b) are, and in the case of the Closing Date Financial Statements will be, complete and accurate; and
- (c) present, and in the case of the Closing Date Financial Statements will present, fairly the assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial condition of each of the Corporations on a consolidated basis at their respective balance sheet dates, and the consolidated results of operations of the Corporations.

(17) Records. The Records have been duly maintained in accordance with all applicable legal requirements and contain full and accurate records of all material matters relating to the Business. All material financial transactions relating to the Business have been accurately recorded in the Records in accordance with past practices. No Records are in the possession of, recorded, stored, maintained by, or otherwise dependent on, any other person.

(18) No Material Adverse Change. Since the Statements Date, no material adverse change has occurred in any of the assets, business, financial condition, earnings, results of operations or prospects of either of the Corporations nor has any other event, condition, or state of facts occurred or arisen which might have a material adverse effect on the assets, business, financial condition, earnings, results of operations or prospects of either of the Corporations on a consolidated basis.

(19) Absence of Undisclosed Liabilities. Except to the extent reflected or reserved against in the balance sheet (including the notes thereto) forming part of the Financial Statements or incurred subsequent to the date thereof and disclosed in Schedule 3.1(19) and except in respect of normal trade payables arising in the ordinary course of the Business, each of the Corporations do not have any outstanding indebtedness or any liabilities (whether accrued, absolute, contingent or otherwise) nor any outstanding commitments or obligations of any kind.

(20) Consents. The Corporations have each conducted the Business in compliance with, and hold all Consents necessary for the lawful operation of the Business, pursuant to all applicable Laws, all of which Consents are listed on Schedule 3.1(20) and all of which are valid and subsisting and in good standing with no violations as of the date of this Agreement. All such Consents are renewable by their terms or in the ordinary course of the Business without the need for the Corporations to comply with any special qualification or procedures or to pay any amounts other than routine filing fees. The Vendor has provided a true and complete copy of each Consent and all amendments thereto to the Purchaser.

(21) Compliance with Laws. The Corporations have each complied, and the Business is now being conducted in compliance, with all Laws applicable to the Business and the Corporations.

(22) Conduct of Business in Ordinary Course. Since the Statements Date the Business has been carried on in the ordinary course consistent with past practice. The Business is the only business operation carried

on by each of the Corporations, and the property and assets owned or leased by each of the Corporations are sufficient to carry on the Business at the Closing Date.

(23) Location of Tangible Personal Property. With the exception of inventory in transit, all the tangible assets of the Corporation are situated at the Leased Premises.

(24) Condition of Assets. All material tangible personal property used by the Corporations in or in connection with the Business or any part thereof is in good operating condition, repair and proper working order, having regard to its use and age, except only for reasonable wear and tear.

(25) Title to Personal and Other Property. The property and assets of each of the Corporations are owned by the Corporations, respectively, as the beneficial owner with a good and marketable title, free and clear of all Encumbrances other than the Permitted Encumbrances.

(26) Litigation. Except as disclosed in Schedule 3.1(26), there are no actions, suits or proceedings, judicial or administrative, (whether or not purportedly on behalf of each of the Corporations pending or threatened, by or against or affecting either or both of the Corporations, at law or in equity, or before or by any Regulatory Authority. Except for the matters referred to in Schedule 3.1(26), there are no grounds on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success. Except as disclosed in Schedule 3.1(26), there is not presently outstanding against either of the Corporations any judgment, injunction or other order of any Regulatory Authority.

(27) Capital Expenditures. Neither of the Corporations is committed to make any capital expenditures, nor have any capital expenditures been authorized by either of the Corporations at any time since the Statements Date, except for capital expenditures made in the ordinary course of the Business which, in the aggregate, do not exceed Five Thousand (\$5,000) Dollars.

(28) Raw Material Inventories. The inventories of each of the Corporations do not include any material items that are slow moving, except inventory that requires Moldco Inc. to purchase minimum quantities that might not be completely used up in producing a particular product for a Customer at the time the Customer orders the product, below standard quality or of a quality or quantity not useable or saleable in the ordinary course of the Business, the value of which has not been written down on its books of account to net realizable market value. The inventory levels of each of the Corporations have been maintained at such amounts as are required for the operation of the Business as previously conducted and as proposed to be conducted, and such inventory levels are adequate for Business.

(29) Accounts Receivable. The accounts receivable due or accruing to each of the Corporations reflected in the Interim Financial Statements and all accounts receivable of each of the Corporations arising since the date of the Interim Financial Statements arose from *bona fide* transactions in the ordinary course of the Business and are valid, enforceable and fully collectible accounts (subject to a reasonable allowance, consistent with past practice, for doubtful accounts as reflected in the Interim Financial Statements in accordance with past practices or as previously disclosed in writing to the Purchaser). Such accounts receivable are not subject to any defence, set-off or counterclaim.

(30) Material Contracts. The contracts listed in Schedule 3.1(30) constitute all the material Contracts of each of the Corporations. Without limiting the generality of the foregoing, and except as otherwise set out in Schedule 3.1(30), neither Corporation is a party to or bound by any:

- (a) distributor, sales, advertising, agency or manufacturer's representative Contract;
- (b) collective bargaining agreement or other Contract with any labour union;

- (c) continuing Contract for the purchase of materials, supplies, equipment or services involving more than \$5,000 in respect of any such Contract;
- (d) employment or consulting Contract or any other Contract with any officer, employee or consultant other than oral Contracts of indefinite hire terminable by the employer without cause on reasonable notice;
- (e) profit sharing, bonus, stock option, pension, retirement, disability, stock purchase, medical, dental, hospitalization, insurance or similar plan or agreement providing benefits to any current or former director, officer, employee or consultant;
- (f) trust indenture, mortgage, promissory note, loan agreement, guarantee or other Contract for the borrowing of money, the provision of financial assistance of any kind or a leasing transaction of a type required to be capitalized in accordance with past practices, or any Contract creating an Encumbrance relating thereto;
- (g) commitment for charitable contributions;
- (h) Contract for any material capital expenditures in excess of \$5,000 in the aggregate;
- (i) Contract for the sale of any assets, other than sales of inventory to customers in the ordinary course of the Business;
- (j) Contract pursuant to which either of the Corporations is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property material to the Business;
- (k) confidentiality, secrecy or non-disclosure Contract (whether either of the Corporations are a beneficiary or obligor thereunder) relating to any proprietary or confidential information or any non-competition or similar Contract;
- (l) license, franchise or other Contract that relates in whole or in part to any Intellectual Property;
- (m) agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of, or any agreement to provide financial assistance of any kind to, any other person (except for cheques endorsed for collection), other than a U.S. immigration retainer to assist key employee;
- (n) Contract that expires, or may expire if the same is not renewed or extended at the option of any person other than the Corporations, more than one year after the date of this Agreement;
- (o) Contract with any officer, director, employee, shareholder or any other person not dealing at arm's length with either of the Corporations (within the meaning of the ITA); or
- (p) Contract entered into by either of the Corporations other than in the ordinary course of the Business.

Each of the Corporations have performed all of its obligations required to be performed by them and are entitled to all of the benefits under any Contract relating to the Business to which they are a party or by which they are bound. The Contracts listed in Schedule 3.1(30) are all in full force and effect unamended and no default exists on the part of any of the parties thereto. Neither Corporation is in default or in breach of any Contract to which they are a party and there exists no condition, event or act which, with the giving of notice or lapse of time or both would constitute such a default or breach and all such Contracts are in good standing and in full force and effect unamended and the Corporations are entitled to all benefits thereunder. The Vendor has provided to the Purchaser a true and complete copy of each Contract listed in Schedule 3.1(30) and all amendments.

(31) Insurance. Each of the Corporations have their property and assets insured against loss or damage by all insurable hazards or risks on a replacement cost basis and such insurance coverage will be continued in full force and effect to and including the Closing Time. Schedule 3.1(31) sets out all insurance policies (specifying the insurer, the amount of the coverage, the type of insurance, the policy number and any claims) maintained by each of the Corporations on their property and assets or personnel as of the date of this Agreement and true and complete copies of the most recent inspection reports, if any, received from insurance underwriters or others as to the condition of the property and assets of the Corporations. Neither Corporation is in material default with respect to any of the provisions contained in any such insurance policy, nor have they failed to give any notice or present any claim under any such insurance policy in a timely fashion, and neither Corporation has received notice from any insurer denying any claim. The Vendor has provided to the Purchaser a true copy of each insurance policy referred to in Schedule 3.1(31) and all amendments.

(32) Bank Accounts and Powers of Attorney. Schedule 3.1(32) is a correct and complete list showing (i) the name of each bank, trust company or similar institution in which the Corporations have an account or safe deposit box, the number or designation of each such account and safe deposit box and the names of all persons authorized to draw thereon or to have access thereto; and (ii) the names of any persons holding powers of attorney from the Corporations and a summary of the terms.

(33) Brokers. The Vendor and/or the Corporations, have engaged Rincroft Consultants Inc. as a broker in connection with the Transactions. The Vendor shall be responsible for any and all commissions, fees or other remuneration payable to such broker and shall indemnify and hold harmless the Purchaser and the Corporations from any and all such amounts.

(34) Customers and Suppliers. Schedule 3.1(34) sets out the major customers and suppliers of each of the Corporations as of the date of this Agreement and there has been no termination or cancellation of, and no modification or change in, the Corporations' business relationship with any major customer, supplier or group of major customers or suppliers. To the actual knowledge of the Vendor, as of the date of this Agreement, there are no facts or circumstances which would cause the Corporations or the Vendor to believe that the benefits of the relationships with the major customers and suppliers of either of the Corporations will not continue after the Closing Date in substantially the same manner as prior to the date of this Agreement.

(35) Tax Matters

(a) For purposes of this Section 3.1(35), the following definitions shall apply:

- (i) "Tax" and "Taxes" shall mean any or all Canadian federal, provincial, local or foreign (i.e. non-Canadian) income, gross receipts, real property gains, goods and services, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise,

profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, or other taxes, levies, governmental charges or assessments of any kind whatsoever, including, without limitation, any estimated tax payments, interest, penalties or other additions, whether or not disputed.

- (ii) **“Tax Return”** shall mean any return, declaration, report, estimate, information return or statement, or claim for refund relating to, or required to be filed in connection with any Taxes, including information returns or reports with respect to withholding at source or payments to third parties, and any schedules or attachments or amendments of any of the foregoing.
- (b) The Corporations have each filed on a timely basis all Tax Returns required to be filed. All such Tax Returns are complete and accurate in all respects. All Taxes due from or payable by each of the Corporations for periods (or portions thereof) ending on or prior to the date of this Agreement and the Closing Date, as applicable, have been paid or will be provided for in the Closing Date Financial Statements. All instalments or other payments on account of Taxes that relate to periods for which Tax Returns are not yet due have been paid on a timely basis. Neither of the Corporations is currently the beneficiary of any extension of time within which to file any Tax Return. Schedule 3.1(35) contains a complete and accurate summary of all Canadian federal or provincial income tax assessments that have been issued to each of the Corporations covering all past periods up to and including the fiscal years ended on or before the Closing Date that remain open for reassessment. All amounts disclosed on Schedule 3.1(35) have been paid or settled in full. Schedule 3.1(35) contains a complete and accurate summary of all fiscal periods that remain open for assessment of additional Taxes. Assessments for all other applicable Canadian federal or provincial Taxes of the Corporations that are levied by way of assessment have been issued and any amounts owing thereunder have been paid, and only the time periods described in Schedule 3.1(35) remain open for reassessment of additional Taxes. There are no actions, objections, appeals, suits or other proceedings or claims in progress, pending or threatened by or against the Corporations in respect of any Taxes, and in particular there are no currently outstanding assessments or written enquiries which have been issued or raised by any Regulatory Authority relating to any such Taxes. No claim has ever been made by a Regulatory Authority of any jurisdiction where the Corporations do not file Tax Returns that the Corporations are or may be subject to taxation by that jurisdiction. There are no Encumbrances pending on or with respect to any of the assets of either of the Corporations that arose in connection with any failure (or alleged failure) to pay any Tax.
- (c) Each of the Corporations has withheld, collected and paid to the proper Regulatory Authorities all Taxes required to have been withheld, collected and paid in connection with (i) amounts paid, credited or owing to any employee, independent or dependent contractor, creditor, shareholder, non-resident of Canada or other third party, and (ii) goods and services received from or provided to any person.
- (d) To the best of the knowledge of the Vendor, no steps are being taken by any Regulatory Authority to assess any additional Taxes against either of the Corporations for any period for which Tax Returns have been filed and there are no actual or pending investigations of either of the Corporations relating to Taxes. The Purchaser has been provided with correct and complete copies of all Tax Returns of each of the

Corporations, together with any notices of assessment, examination reports or statements of deficiencies assessed against or agreed to by either of the Corporations, for all taxable periods for which the statute of limitations has not yet closed and any correspondence relating thereto.

- (e) The Corporations have each not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to an assessment or deficiency.
- (f) At the Closing Time, the unpaid Taxes of the Corporations attributable to all periods (or portions thereof) ending on or prior to the Closing Date will not exceed the reserve for Tax liability set forth in the Closing Date Financial Statements.
- (g) Each of the Corporations (i) is not a party to any Tax allocation or sharing agreement, (ii) has not been a member of an affiliated, combined or unitary group filing a combined, unitary, or other return for Canadian federal, provincial, local or foreign (i.e. non-Canadian) Tax purposes reflecting the income, assets, or activities of affiliated companies, or (iii) has no liability for the Taxes of any person or entity other than the Corporation under any provision of Canadian federal, provincial, state, local or foreign (i.e. non-Canadian) law, or as a transferee or successor, or by Contract, or otherwise.
- (h) The Corporations are each not a party to any joint venture, partnership or other arrangement or Contract that could be treated as a partnership for Tax purposes.
- (i) The Vendor is not a non-resident person within the meaning of the ITA.
- (j) The Tax basis of the assets of each of the Corporations by category, including the classification of such assets as being depreciable or amortizable as reflected in their respective Tax Returns and related working papers, is true and correct.
- (k) There are no circumstances existing at or prior to the Closing Date which could, in themselves, result in the application of any of Sections 80 to 80.03 of the ITA or any equivalent provincial provisions to the Corporations; the Corporations have each not made (and none will, at or prior to the Closing Time, make) any election pursuant to Section 80.04 of the ITA or any equivalent provincial provision in which it is an eligible transferee; the Corporations have each not filed, nor will they file in respect of its Closing Time Year an agreement pursuant to Section 191.3 of the ITA or any equivalent provincial provision; and neither of the Corporations have claimed and will not in their returns for the Closing Time Year claim any reserve under any of Sections 40(1)(a)(iii) or 20(1)(n) of the ITA or any equivalent provincial provision of any amount that could be included in its income for any period ending after the Closing Date in respect of any such reserve.

(36) Real Property and Leased Premises

- (a) Neither of the Corporations own in whole or in part, any real property. There are no Contracts to purchase or acquire any real properties.
- (b) The Corporations are not a party to and are not bound, as lessee or sublessee, by any lease, sublease, license or other instrument relating to real property save and except for the a lease with respect to the Leased Premises, a copy of which is attached hereto as Schedule 3.1(36)

(the “Lease”). The Lease is in good standing, creates a good and valid leasehold estate in the Property thereby demised and is in full force and effect without amendment. With respect to the Lease, (i) all rents and additional rents have been paid, (ii) no waiver, indulgence or postponement of the lessee’s obligations has been granted by the lessor, (iii) there exists no event of default or event, occurrence, condition or act (including the purchase of the Purchased Shares) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under the Lease, and (iv) to the knowledge of the Vendor, all of the covenants to be performed by any party (other than the Corporations) under the Lease have been fully performed. The Property is adequate and suitable for the purposes for which it is presently being used and the Corporations have adequate rights of ingress and egress into the Property for the operation of the Business in the ordinary course. Schedule 3.1(ff) contains, a description of the leased premises (by municipal address and proper legal description), the term of the Lease, the rental payments under the Lease (specifying any breakdown of base rent and additional rents), any rights of renewal and the term thereof, and any restrictions on assignment or change of control of the Corporations.

- (c) The use by the Corporations of the Leased Premises is not in breach of any Laws, including any building, zoning or other statutes or any official plan, or any covenants, restrictions, rights or easements, affecting such Leased Premises. To the best of the knowledge of the Vendor, all buildings, structures and improvements situated on any of the Leased Premises are located wholly within the boundaries of such Leased Premises and comply with all Laws, covenants, restrictions, rights and easements affecting the same. There are no outstanding work orders, non-compliance orders, deficiency notices or other such notices relative to any of the Property. No part of any of the Leased Premises have been condemned, taken or expropriated by any Regulatory Authority, nor has any notice or proceeding in respect thereof been given, commenced or threatened. Each of the Leased Premises, other than the Leased Premises used solely as a parking lot, is fully serviced by utilities having adequate capacities for the normal operations of the Business. Each of the Leased Premises has adequate rights of access to and from public streets or highways for the normal operations of the Business and there is no fact or circumstance which could result in the termination or restriction of such access. There is no defect or condition affecting any of the Leased Premises (or the soil or subsoil thereof) or any adjoining property which would impair the current use of such Leased Premises.
- (d) No amounts including, without limitation, municipal property Taxes, local improvement Taxes, levies or assessments, are owing by either of the Corporations in respect of any of the Leased Premises to any Regulatory Authority or public utility, other than current accounts which are not in arrears. There are no outstanding appeals on assessments which have been issued or raised by any Regulatory Authority or by the Corporations concerning any realty, business or other Taxes with respect to any of the Leased Premises. All amounts for labour or materials supplied to or on behalf of the Corporations relating to the construction, alteration or repair of or on any of the Leased Premises have been paid in full and no one has filed or has a right to file any construction, builders’, mechanics’ or similar liens.
- (e) To the best of the knowledge of the Vendor, the buildings and structures comprising the Leased Premises are free of any structural defect. The heating, ventilating, plumbing, drainage, electrical and air conditioning systems and all other systems used in any of the Leased Premises are in good working order, fully operational and free of

any defect, except for normal wear and tear.

(37) Environmental Matters

- (a) For the purposes of this Agreement, the following terms and expressions shall have the following meanings:
 - (i) “**Environmental Laws**” means all Laws applicable to the environment, occupational health and safety, product safety, product liability and public safety.
 - (ii) “**Environmental Consents**” includes all Consents issued by or issuable by any Regulatory Authority under Environmental Laws.
 - (iii) “**Hazardous Substance**” means, any material or substance that may impair the quality of the environment or which under Environmental Laws is deemed to be “hazardous”, a “pollutant”, “toxic”, “deleterious”, caustic”, “dangerous”, a “waste”, a “hazardous material”, a “source of contamination” or analogous substance including, without limitation, petroleum and petroleum products, asbestos, polychlorinated biphenyls, and flammable and radioactive materials.
 - (iv) “**Release**” means any release, spill, leak, emission, discharge, leach, dumping, migration, pumping, pouring, emitting, emptying, injecting, spraying, burying, abandoning, incinerating, seeping, escape, disposal or similar or analogous act as defined in any Environmental Laws.
- (b) Except as disclosed in Schedule 3.1(37), the Corporations, the operation of the Business and the assets owned or used by the Corporations have been and are in compliance with all Environmental Laws, including all Environmental Consents.
- (c) Except as disclosed in Schedule 3.1(37): (i) the Corporations have not been charged with or convicted of any offence for non-compliance with Environmental Laws, or been fined or otherwise sentenced or settled any prosecution short of conviction; and (ii) there are no notices of judgment or commencement of proceedings of any nature and the Corporations have never been investigated relating to any breach or alleged breach of Environmental Laws.
- (d) The Corporations have obtained all Environmental Consents necessary to conduct the Business and to own, use and operate their respective properties and assets. All such Environmental Consents are listed in Schedule 3.1(37) and complete and correct copies have been provided to the Purchaser.
- (e) Except as disclosed in Schedule 3.1(37), to the best of the knowledge of the Vendor, there are no Hazardous Substances located on or in or under the surface of the Leased Premises, and no Release of any Hazardous Substances has occurred on, in or from the Leased Premises or has resulted from the operation of the Business and the conduct of activities thereon.
- (f) Except as disclosed in Schedule 3.1(37), the Corporations have not used the Leased Premises to produce, generate, manufacture, treat, store, handle, transport or dispose of any Hazardous Substances except in compliance with Environmental Laws.

- (g) Except as disclosed in Schedule 3.1(37), to the best of the knowledge of the Vendor, there are no underground or above-ground storage tanks or associated piping or appurtenances (active or abandoned), or urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls or radioactive substances located on or in or under the surface of any of the Leased Premises or other assets used thereon.
- (h) Except as disclosed in Schedule 3.1(37), to the best of the knowledge of the Vendor, the Corporations are each not, and there is no basis upon which either of the Corporations could become, responsible for any clean-up or corrective action under any Environmental Laws. The Corporations have provided the Purchaser with copies of any environmental audits, site assessments and studies (including all drafts thereof) concerning the Leased Premises, or that are in any way related to the Business, that it has ever conducted or that are in its possession or control.

(38) Labour and Employee Matters

- (a) Schedule 3.1(38) identifies each retirement, pension, bonus, stock purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or other compensation plan or arrangement or other employee benefit plan that is maintained or otherwise contributed to, or required to be contributed to, by the Corporations for the benefit of employees or former employees of the Corporations (the “**Employee Plans**”) and a true and complete copy of each Employee Plan has been furnished to the Purchaser. Each Employee Plan has been maintained in compliance with its terms and with the requirements prescribed by any and all Laws that are applicable to such Employee Plan. Whereas all Employee Plans shall be continued by the Purchaser following Closing, the Purchaser shall have the option to change providers or the Employee Plans, however, shall ensure they are comparable with existing Employee Plans. Except as described in Schedule 3.1(38):
 - (i) all contributions to and payments from each Employee Plan that may have been required to be made in accordance with the terms of any such Employee Plan, or with the recommendation of the actuary for such Employee Plan, and, where applicable, with the Laws that govern such Employee Plan, have been made in a timely manner;
 - (ii) all material reports, returns and similar documents (including applications for approval of contributions) with respect to any Employee Plan required to be filed with any Regulatory Authority or distributed to any Employee Plan participant have been duly filed on a timely basis or distributed;
 - (iii) there are no pending investigations by any Regulatory Authority involving or relating to an Employee Plan, threatened or pending claims (except for claims for benefits payable in the normal operation of the Employee Plans), suits or proceedings against either of the Corporations in respect of any Employee Plan or assertions of any rights or claims to benefits under any Employee Plan that could give rise to a liability nor are there any facts that could give rise to any liability in the event of such investigation, claim, suit or proceeding;

- (iv) no notice has been received by either of the Corporations of any complaints or other proceedings of any kind involving the Corporations or any of the employees of the Corporations before any pension board or committee relating to any Employee Plan or to the Corporations; and
 - (v) the assets of each Employee Plan are at least equal to the liabilities of such Employee Plans based on the actuarial assumptions utilized in the most recent valuation performed by the actuary for such Employee Plan, and neither the Purchaser nor any of its associates or affiliates (other than the Corporations) will incur any liability with respect to any Employee Plan as a result of the Transactions.
- (b) Except as described in Schedule 3.1(38), the Corporations have not made any Contract with any labour union or employee association nor made commitments to or conducted negotiations with any labour union or employee association with respect to any future agreements and, except as set out in Schedule 3.1(38), there are no current attempts to organize or establish any labour union or employee association with respect to any employees of the Corporations, nor is there any certification of any such union with regard to a bargaining unit. There are no grievances against the Corporations for which the Corporations have received written notice under any collective agreement.
- (c) Schedule 3.1(38) contains a complete and accurate list of the names of all individuals who are employees of each of the Corporations specifying:
- (i) with respect to the hourly employees, the rate of hourly pay, whether or not such employee is absent for any reason such as lay-off, leave of absence or workers' compensation; and
 - (ii) with respect to salaried employees, the length of service, age, title, rate of salary and commission or bonus structure for each such employee.
- (d) No notice has been received by the Corporations of any complaint filed by any of the employees against either of the Corporations claiming that either of the Corporations have violated any Laws applicable to employee or human rights, or of any complaints or proceedings of any kind involving either of the Corporations or any of the employees of the Corporations before any labour relations board, except as disclosed in Schedule 3.1(38). All levies, assessments and penalties made against the Corporations pursuant to any Laws applicable to workers' compensation have been paid by the Corporations and the Corporations have not been assessed under any such legislation during the past six (6) years.
- (e) All accruals for unpaid vacation pay, premiums for employment insurance, health premiums, Canada Pension Plan premiums, accrued wages, salaries and commissions and employee benefit plan payments have been reflected in the Records.
- (39) Product Warranties. Schedule 3.1(39) is a complete and accurate list of all express, written warranties given to purchasers of products supplied by the Corporations.
- (40) Intellectual Property. Schedule 3.1(40) is a complete and accurate list of all (a) domestic and foreign patents, trade-marks, trade names, copyrights, industrial designs, business names, certification marks, service marks, distinguishing guises, business styles and other industrial or intellectual property,

whether or not registered, that are owned by or licensed to either of the Corporations, and all applications in respect thereof; (b) all trade secrets, know-how, inventions, formulas, processes and technology pertaining to the Business; and (c) all computer systems and application software, including all related documentation and the latest revisions of all related object and source codes, owned or used by the Corporations, (collectively the “**Intellectual Property**”), including particulars of any registration, details of all applications for registration and, where unregistered, the date of first use. The Corporations are the sole owners of the Intellectual Property except in the case of Intellectual Property licensed to either of the Corporations. Complete and correct copies of all Contracts whereby any rights in respect of Intellectual Property have been granted or licensed to the Corporations have been provided to the Purchaser. Except as disclosed in Schedule 3.1(40), the Corporations have the exclusive right to use all of the Intellectual Property and has not granted any licence or other rights to any other person in respect of the Intellectual Property. The Intellectual Property is free and clear of any Encumbrances other than the Permitted Encumbrances. The Intellectual Property comprises all patents, trade-marks, trade names, copyrights, industrial designs, business names, certification numbers, inventions, know-how, service marks, formulae, processes, technology, trade-secrets, computer systems and application software and other industrial or intellectual property necessary to conduct the Business. Neither of the Corporations have used or enforced, or failed to use or enforce, any of the Intellectual Property in any manner which could limit its validity or result in its invalidity. Except as disclosed in Schedule 3.1(40), there has been no infringement or violation of the Corporations’ rights in and to the Intellectual Property or any trade secrets or confidential information, nor any claim of adverse ownership, invalidity or other opposition to or conflict with any of the Intellectual Property. The Corporations are not or have not engaged in any activity that violates or infringes any intellectual property rights of any other person.

(41) Privacy Matters. The Corporations have each conducted and are conducting the Business in compliance with all Laws applicable to privacy and the protection of personal information.

3.2 Representations and Warranties of the Purchaser

The Purchaser hereby makes the following representations and warranties to the Vendor and acknowledges that the Vendor is relying on such representations and warranties in entering into this Agreement and completing the Transactions:

(1) Incorporation and Existence. The Purchaser is a corporation incorporated and existing under the laws of the Province of British Columbia.

(2) Validity of Agreement

- (a) The Purchaser has all necessary corporate power to own the Purchased Shares. The Purchaser has all necessary corporate power to enter into and perform its obligations under this Agreement and any other agreements or instruments to be delivered or given by it pursuant to this Agreement.
- (b) The execution, delivery and performance by the Purchaser of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of the Purchaser.
- (c) This Agreement or any other agreements entered into pursuant to this Agreement to which the Purchaser is a party constitute legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be

granted only in the discretion of a court of competent jurisdiction.

(3) No Violation. The execution and delivery of this Agreement by the Purchaser, the consummation of the Transactions and the fulfilment by the Purchaser of the terms, conditions and provisions hereof will not (with or without the giving of notice or lapse of time, or both):

- (a) contravene or violate or result in a breach or a default under or give rise to a right of termination, amendment or cancellation or the acceleration of any obligations of the Purchaser, under:
 - (i) any applicable Law;
 - (ii) any judgment, order, writ, injunction or decree of any Regulatory Authority having jurisdiction over the Purchaser;
 - (iii) the articles, by-laws or any resolutions of the board of directors or shareholders of the Purchaser;
 - (iv) any Consent held by the Purchaser; or
 - (v) the provisions of any Contract to which the Purchaser is a party or by which it is, or any of its properties or assets are, bound.

(4) Competition Act. The Purchaser warrants that the *Competition Act* (Canada) is not applicable to this transaction.

(5) Investment Canada Act. The Purchaser is not a “non-Canadian” within the meaning of the *Investment Canada Act* (Canada).

(6) Brokers. The Purchaser has not engaged any broker or other agent in connection with the Transactions and, accordingly, there is no commission, fee or other remuneration payable to any broker or agent who purports or may purport to have acted for the Purchaser.

(7) Consents. There is no requirement for the Purchaser to make any filing with, give any notice to or obtain any Consent from any Regulatory Authority as a condition to the lawful consummation of the Transactions.

3.3 Survival of Covenants, Representations and Warranties of the Vendor

To the extent that they have not been fully performed at or prior to the Closing Time, and unless otherwise provided, the covenants, representations and warranties of the Vendor contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant to this Agreement shall survive the Closing and shall continue for the benefit of the Purchaser for a period of Twenty-Four (24) months notwithstanding such Closing, nor any investigation made by or on behalf of the Purchaser or any knowledge of the Purchaser, except that:

- (1) the representations and warranties set out in Sections 3.1(1) to and including 3.1(8), and in Section 3.1(11) and in Section 3.1(33) and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 5.1(1), shall survive the Closing and continue in full force and effect without limitation of time;

(2) the representations and warranties set out in Section 3.1(35) and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 5.1(1) shall survive the Closing and continue in full force and effect until, but not beyond, the expiration of the period, if any, during which an assessment or other form of recognized document assessing liability for Tax, interest or penalties under Laws applicable to Tax in respect of any taxation year to which such representations and warranties extend could be issued under such Laws to either of the Corporations, including any additional period resulting from either of the Corporations filing a waiver or other document extending such period prior to the Closing;

(3) a claim for breach of any such representation or warranty, to be effective, must be asserted in writing on or prior to the applicable expiration time set out in this Section 3.3, provided that a claim for any breach of any of the representations and warranties contained in this Agreement or in any agreement, instrument, certificate or other document executed or delivered pursuant to this Agreement involving fraud or fraudulent misrepresentations may be made at any time following the Closing Date, subject only to applicable limitation periods imposed by Law; and

(4) no claim for any breach of any of the covenants, representations and warranties contained in this Agreement or in any agreement, instrument, certificate or other document executed or delivered pursuant to this Agreement may be made after the applicable expiration time set out in this Section 3.3 notwithstanding that such breach was not objectively discoverable.

3.4 Survival of Covenants, Representations and Warranties of the Purchaser

To the extent that they have not been fully performed at or prior to the Closing Time, and unless otherwise provided, the covenants, representations and warranties of the Purchaser contained in this Agreement and in any agreement, instrument, certificate or other document delivered pursuant to this Agreement shall survive the Closing and shall continue for the benefit of the Vendor for a period of Twenty-Four (24) months notwithstanding such Closing, nor any investigation made by or on behalf of the Vendor or the or any knowledge of the Vendor , except that:

(1) the representations and warranties set out in Sections 3.2(1) and 3.2(2), and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 5.3(1), shall survive the Closing and shall continue in full force and effect without limitation of time;

(2) a claim for breach of any such representation or warranty, to be effective, must be asserted in writing on or prior to the applicable expiration time set out in this Section 3.4, provided that a claim for any breach of any of the representations and warranties contained in this Agreement or in any agreement, instrument, certificate or other document executed or delivered pursuant to this Agreement involving fraud or fraudulent misrepresentations may be made at any time following the Closing Date, subject only to applicable limitation periods imposed by Law; and

(3) no claim for any breach of any of the covenants, representations and warranties contained in this Agreement or in any agreement, instrument, certificate or other document executed or delivered pursuant to this Agreement may be made after the applicable expiration time set out in this Section 3.4 notwithstanding that such breach was not objectively discoverable.

ARTICLE 4 COVENANTS

4.1 Conduct During Interim Period

During the Interim Period, without in any way limiting any other obligations of the Vendor and the Corporations in this Agreement:

(1) Conduct Business in the Ordinary Course The Vendor shall cause the Corporations to conduct the Business and the operations and affairs of the Corporations only in the ordinary course of the Business consistent with past practice, and the Vendor shall ensure that the Corporations shall not, without the prior written consent of the Purchaser, enter into any transaction or refrain from doing any action that would constitute a breach of any representation, warranty, covenant or other obligation of the Vendor or the Corporations contained herein, and provided further that, without limiting the generality of the foregoing, the Vendor shall cause the Corporations to ensure that neither of the Corporations:

- (ii) amends its articles, by-laws, constating documents or other organizational documents;
- (iii) amalgamates, merges or consolidates with, or acquires all or substantially all the shares or assets of any person;
- (iv) transfers, leases, licenses, sells or otherwise disposes of any of its assets except for inventory, or permits any Encumbrance to attach to or affect any of its assets, other than in the ordinary course of the Business consistent with past practice; or
- (v) does any act or thing of the kind described in Sections 3.1(9), 3.1(27), or 3.1(33) or enters into any Contract of the kind described in Sections 3.1(7), 3.1(13), 3.1(30), 3.1(36)(h), 3.1(37)(a), or 3.1(37)(c).

(2) Continue Insurance The Vendor shall cause the Corporations to continue to maintain in full force and effect all policies of insurance or renewals now in effect, and shall take out, at the expense of the Purchaser, such additional insurance as may be reasonably requested by the Purchaser, and shall give all notices and present all claims under all policies of insurance in a timely fashion.

(3) Regulatory Consents The Vendor shall use its best efforts to make, give or obtain or cause the Corporations to make, give or obtain, as applicable, at or prior to the Closing Time, with, to or from all appropriate Regulatory Authorities, the filings, notifications and Consents described in Schedule 3.1(15).

(4) Contractual Consents The Vendor shall use its best efforts to make, give or obtain or cause the Corporations to make, give or obtain, as applicable, at or prior to the Closing Time the filings, notifications and Consents described in Schedule 3.1(15) in respect of Contracts, on such terms as are acceptable to the Purchaser, acting reasonably.

(5) Preserve Goodwill The Vendor shall use its best efforts to preserve intact, and cause the Corporations to preserve intact, the Business and the property, assets, operations and affairs of the Corporations and to carry on the Business and the affairs of the Corporations as currently conducted, and to promote and preserve for the Purchaser the goodwill of suppliers, customers and others having business relations with the Corporations.

(6) Discharge Liabilities The Vendor shall cause the Corporations to pay and discharge the liabilities of the Corporations in the ordinary course of the Business in accordance and consistent with the past practice of the Corporations, except those contested in good faith by the Corporations.

(7) Corporate Action The Corporations and the Vendor shall take and cause the Corporations to take all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution and delivery of this Agreement and the other agreements and documents contemplated by this Agreement and to complete the transfer of the Purchased Shares to the Purchaser free and clear of all Encumbrances except for the Permitted Encumbrances and to cause all necessary meetings of directors and shareholders of the Corporations, and the trustees of the Vendor, to be held for such purpose.

(8) Exclusive Dealing Neither the Vendor nor the Corporations shall take any action, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to any person, other than the Purchaser, concerning any purchase of any shares in the capital of the Corporations, the material assets of the Corporations, a controlling interest in the Vendor or the Corporations or any merger, sale of substantial assets or similar transaction involving the Corporations, or the Business, and the Vendor shall ensure that the Corporations does not take any such action.

4.2 Access to Information

The Vendor shall at all times during the Interim Period make available to the Purchaser and its representatives and advisers for examination all Records and corporate records of the Corporations in its possession or under its control, including environmental and health and safety reports. The Vendor shall at all times during the Interim Period give the Purchaser and its representatives and advisers access to the premises of the Corporations during normal business hours and upon reasonable notice, in order to make such investigations as the Purchaser shall deem necessary or advisable, including for purposes of conducting any environmental audits, environmental site assessments (including soil and groundwater testing) or other investigations, at the sole cost and expense of the Purchaser. In the event the Purchaser engages in any of the foregoing investigations or assessments in relation to the Leased Premises, the Purchaser shall restore the Leased Premises to its state prior to any such investigations and assessments, including but not limited to remedying any damage caused thereby, at the Purchaser's sole cost and expense. The Vendor shall give such persons all means necessary to effect such examinations and investigations and shall cause its agents, employees, officers and directors to use their best efforts to aid such persons in such examinations and investigations. The Vendor authorizes and consents to the release by any Regulatory Authority having jurisdiction of any information, and shall sign any documents or forms of consent incidental thereto. The exercise of any rights of access, inspection or examination by or on behalf of the Purchaser shall not affect or mitigate the Vendor's covenants, representations and warranties in this Agreement. The Vendor shall provide the Purchaser and its representatives and advisers at all times during the Interim Period with an opportunity to meet with the accountants and any employees, advisers or personnel of the Corporations.

4.3 Satisfaction of Closing Conditions

The Vendor and the Corporations jointly and severally agree to use their best efforts to ensure that the conditions set forth in Section 5.1, and the Purchaser agrees to use its best efforts to ensure that the conditions set forth in Section 5.3, are fulfilled at or prior to the Closing Time. Each of the Parties agrees to use its best efforts to ensure that the conditions set forth in Section 5.5 are fulfilled at or prior to the Closing Time.

4.4 Delivery of Records

At the Closing Time, the Vendor shall deliver to the Purchaser all the Records and corporate records of the Corporations. The Purchaser agrees that it will preserve such records so delivered to it for a period of six (6) years from the Closing Date, or for such longer period as is required by any applicable Law, and will permit the Vendor or its authorized representatives reasonable access thereto in connection with the affairs of the Vendor, but the Purchaser shall not be responsible or liable to the Vendor for or as a result of any accidental loss or destruction of or damage to any such records.

4.5 Senior Lender

The Vendor shall execute and deliver such documents and agreements requested by the senior lender providing financing to Purchaser, including, but not limited to, an inter-creditor agreement and postponement agreement or such other similar form of agreement setting forth the respective priorities of the Senior Security and the Vendor's Note.

4.6 Insurance after Closing

After Closing, the Purchaser shall continue to maintain product liability insurance with coverage comparable to the insurance coverage maintained by the Corporations prior to Closing.

4.7 Continuation and Amalgamation

The Vendor hereby consents to the continuation of the Corporations to the Province of British Columbia and the subsequent amalgamation of the Corporations with the Purchaser following the aforementioned continuance of the Corporations. The aforementioned shall not constitute an event of default under the Vendor's Security. The Vendor shall execute and deliver such documents and consents as may be required to give effect to the continuance of the Corporations to British Columbia, if any.

ARTICLE 5 CONDITIONS OF CLOSING

5.1 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transactions will be subject to the fulfilment of the following conditions at or prior to the Closing Time:

(1) Representations, Warranties and Covenants. The representations and warranties of the Vendor made in or pursuant to this Agreement shall be true and accurate at the Closing Time with the same force and effect as though such representations and warranties had been made as of the Closing Time. The Vendor shall have complied with all covenants and agreements in this Agreement to be performed or caused to be performed by them at or prior to the Closing Time. In addition, the Vendor shall have delivered to the Purchaser a certificate confirming the foregoing. The receipt of such certificate and the completion of the Transactions shall not be deemed to constitute a waiver of any of the representations, warranties or covenants of the Vendor contained in this Agreement. Such representations, warranties and covenants shall continue in full force and effect as provided in Section 3.3.

(2) No Material Adverse Change. Except as has been specifically permitted in this Agreement, since the date of this Agreement there shall not have been:

- (a) any material adverse change in any of the assets, business, financial condition, earnings, results of operations or prospects of the Corporations that has, or threatens to have, a material adverse effect on the assets, business, financial condition, earnings, results of operations or prospects of the Corporations on a consolidated basis or which might materially adversely affect the ability of the Corporations to carry on the Business after the Closing substantially as such Business is being conducted upon the date of this Agreement;
 - (b) any damage, destruction or loss, or other event, development or condition of any character (whether or not covered by insurance) which would have a material adverse effect on the assets, business, financial condition, earnings, results of operations or prospects of the Corporations on a consolidated basis; or
 - (c) any transactions of the Corporations outside the normal course of business prior to the Closing Date.
- (3) No Action to Restrain/No Adverse Law. No Law shall have been made, and no action or proceeding shall be pending or threatened, which is likely to result in an order, decision or ruling imposing any limitations or conditions which may have a material adverse effect on the Transactions, the right of the Purchaser to own the Purchased Shares, or the assets, business, financial condition, earnings, results of operations or prospects of the Corporations on a consolidated basis.
- (4) Consents. All filings, notifications and Consents with, to or from Regulatory Authorities and third parties required to permit the change of ownership of the Purchased Shares contemplated hereby without resulting in the violation of or a default under or any termination, amendment or acceleration of any obligation under any licence, permit, lease, or material Contract affecting the Business or otherwise adversely affecting the Business, the Corporations, shall have been made, given or obtained on terms acceptable to the Purchaser acting reasonably including, without limitation, any Consent required pursuant to the Lease.
- (5) Deliveries. The Vendor shall have delivered, or caused to be delivered, to the Purchaser the following in form and substance satisfactory to the Purchaser:
- (a) non-competition and non-solicitation agreement, duly executed by the Vendor, Gary Cluthe, Jesse Cluthe and the Corporations for the period of five (5) years following the Closing Date within four hundred (400) kilometers of the Business and substantially in the form of the agreement attached as Schedule 5.1(5)(a) (the “**Non-Competition Agreement**”).
 - (b) a consulting agreement duly executed by Duron Plastics Inc. to cause Gary Cluthe to consult for the Business on terms and conditions mutually satisfactory to the Purchaser and Gary Cluthe, substantially in the form of the consulting agreement attached hereto as Schedule 5.1(5)(b);
 - (c) a consulting agreement duly executed by Qor Concept Inc. on terms and conditions mutually satisfactory to the Purchaser and Jesse Cluthe, substantially in the form of the consulting agreement attached hereto as Schedule 5.1(5)(c);
 - (d) a full and final release from the Vendor and the resigning officers, directors and employees, including those contemplated in Section 5.1(5)(e) of all claims they may have against the Corporations and substantially in the form of the agreement attached as

Schedule 5.1(5)(c);

- (e) duly executed resignations effective as at the Closing Time of Gary Cluthe, Jesse Cluthe and all related parties to the foregoing, as directors, officers and/or employees of the Corporations, as applicable;
- (f) all Records and all corporate records of the Corporations and other documents referred to in this Agreement or any Schedule;
- (g) such documents and agreements requested by the Senior Lender, including, but not limited to, an inter-creditor agreement, subordination and postponement agreement or such other similar form of agreement setting forth the respective priorities of the Senior Security and the Vendor's Note; and
- (h) all documentation and other evidence reasonably requested by the Purchaser in order to establish the due authorization and consummation of the Transactions, including the taking of all corporate proceedings by the board of directors of each of the Corporations required to effectively carry out the obligations of the Vendor and the Corporations pursuant to this Agreement.

(6) Financing. The Purchaser arranging financing upon terms and conditions satisfactory to it in its sole and absolute discretion.

(7) Due Diligence. The successful completion of financial, operational and legal due diligence review and investigation of the assets, obligations, business and affairs of the Corporations by the Purchaser including but not limited to confirmation that the Corporations hold all necessary permits and consents to operate the Business (the "**Due Diligence Review**") in its sole and absolute discretion.

5.2 Waiver or Termination by the Purchaser

The conditions contained in Section 5.1 are inserted for the exclusive benefit of the Purchaser and may be waived in whole or in part by the Purchaser at any time without prejudice to any of its rights of termination in the event of non-performance of any other condition in whole or in part. If any of the conditions contained in Section 5.1 are not fulfilled or complied with by the time provided for, the Purchaser may, at or prior to the Closing Time, terminate this Agreement by notice in writing after such time required to the Vendor and the Corporations. In such event the Purchaser shall be released from all obligations in this Agreement (except as set out in Section 5.6) and, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Vendor, or the Corporations, then the Vendor and the Corporations shall also be released from all obligations in this Agreement (except as set out in Section 5.6).

5.3 Conditions for the Benefit of the Vendor

The obligations of the Vendor to complete the Transactions will be subject to the fulfilment of the following conditions at or prior to the Closing Time:

(1) Representations, Warranties and Covenants. The representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and accurate at the Closing Time with the same force and effect as though such representations and warranties had been made as of the Closing Time. The Purchaser shall have complied with all covenants and agreements in this Agreement to be performed or caused to be performed by it at or prior to the Closing Time. In addition, the Purchaser shall have delivered

to the Vendor and the Corporations a certificate confirming the foregoing. The receipt of such certificate and the completion of the Transactions shall not be deemed to constitute a waiver of any of the representations, warranties or covenants of the Purchaser contained in this Agreement. Such representations, warranties and covenants shall continue in full force and effect as provided in Section 3.4.

(2) Release. Delivery by the Corporations of a full and final release of all claims it may have against the Vendor and Gary Cluthe and Jesse Cluthe as a consequence of the foregoing being a shareholder, director and officer of the Corporations, or any of the aforementioned, and substantially in the terms of the release attached as Schedule 5.3(2).

(3) Receipt of Purchase Price. Payment by the Purchaser of the Purchase Price.

(4) Closing Documents. The delivery by the Purchaser of all documentation and other evidence reasonably requested by the Vendor in order to establish the due authorization and consummation of the Transactions and to effectively carry out the obligations of the Purchaser pursuant to this Agreement.

(5) Consulting Agreements. Delivery by the Corporations of the consulting agreements contemplated in Sections 5.1(5)(b) and Sections 5.1(5)(c).

(6) Right of First Refusal on Equipment. Delivery by the Corporations of a Right of First Refusal in favour of Duron Plastics Ltd. in respect to any equipment currently owned or leased by the Corporations or any equipment purchased by the Corporations for the Business and which the Corporations subsequently decide to sell.

5.4 Waiver or Termination by the Vendor

The conditions contained in Section 5.3 are inserted for the exclusive benefit of the Vendor and may be waived in whole or in part by the Vendor at any time without prejudice to any of their rights of termination in the event of non-performance of any other condition in whole or in part. If any of the conditions contained in Section 5.3 are not fulfilled or complied with by the time provided for, the Vendor may, on behalf of itself and the Corporations, at or prior to the Closing Time, terminate this Agreement by notice in writing after such time to the Purchaser. In such event the Vendor shall be released from all obligations in this Agreement (except as set out in Section 5.6) and, unless the condition or conditions which have not been fulfilled are reasonably capable of being fulfilled or caused to be fulfilled by the Purchaser or the Corporations, then the Purchaser shall also be released from all obligations in this Agreement (except as set out in Section 5.6).

5.5 Conditions Precedent

The purchase and sale of the Purchased Shares is subject to the following conditions to be fulfilled at or prior to the Closing Time, which conditions are true conditions precedent to the completion of the Transactions:

(1) No Legal Action. No action or proceeding shall be pending or threatened by any person to enjoin, restrict or prohibit any of the Transactions or the right of the Corporations to conduct the Business after Closing on substantially the same basis as heretofore conducted.

(2) Investment Canada Act. Investment Canada shall have provided a receipt to the Purchaser pursuant to the *Investment Canada Act* or the Purchaser shall have received evidence satisfactory to it indicating that the acquisition of the Purchased Shares by the Purchaser is not a reviewable investment under the

Investment Canada Act and such receipt or other evidence shall be in full force and effect at the Closing Time.

(3) Competition Act . The Vendor and the Purchaser each have filed all notices and information required under Part IX of the *Competition Act* (Canada), satisfied any request for additional information and the applicable waiting periods and any extensions shall have expired without the threat of restraint or challenge, or the Parties shall have received an Advance Ruling Certificate pursuant to the *Competition Act* (Canada) setting out that the Commissioner of Competition under such Act is satisfied he would not have sufficient grounds on which to apply for an order in respect of the Transactions.

If any conditions precedent shall not have been fulfilled at or prior to the Closing Time, this Agreement shall be terminated and the Parties shall be released from all obligations under this Agreement, except as set out in Section 5.6.

5.6 Survival following Termination

In the event of termination of this Agreement at or prior to the Closing Time pursuant to Sections 5.2, 5.4 or 5.5, the provisions of Articles 1, 7 and 8 and Sections 5.2, 5.4 or 5.5 shall survive such termination indefinitely. Upon such termination, the Purchaser shall promptly deliver to the Vendor all copies of all Records and corporate records of the Corporations and other written material obtained by the Purchaser and its representatives, including without limitation, its accounting and legal advisors, from the Vendor in connection with this Agreement.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Place of Closing

The Closing shall take place at the Closing Time at the offices of McTague Law Firm LLP, 455 Pelissier Street, Windsor, Ontario.

6.2 Deliveries at the Closing

At the Closing Time, upon fulfillment of all the conditions set out in Article 5 that have not been waived in writing by the Purchaser, the Vendor or the Corporations, as applicable, the Vendor shall deliver to the Purchaser certificates evidencing all the Purchased Shares, duly endorsed in blank for transfer, the Vendor and the Corporations shall deliver such documents as are required or contemplated to be delivered by the Vendor, the Corporations or Vendor's counsel pursuant to this Agreement, the relevant portions of the Purchase Price shall be paid or delivered in the manner provided in Section 2.3, and the Purchaser shall deliver such documents as are required or contemplated to be delivered by the Purchaser or Purchaser's counsel pursuant to this Agreement.

ARTICLE 7 INDEMNIFICATION

7.1 Indemnification by the Vendor

Subject to Section 3.3, the Vendor shall indemnify and save the Purchaser harmless for and from:

- (1) all debts and liabilities of the Corporations, including liabilities for any Taxes, existing at the Closing Time and not disclosed on or included in the Financial Statements or Interim Financial Statements, except liabilities accruing or incurred subsequent to the Statements Date in the ordinary course of the Business, consistent with past practice and except liabilities disclosed in this Agreement or any Schedule;
- (2) all contingent liabilities which the Corporations becomes obligated to pay and which exist at the Closing Time whether or not disclosed or reflected in the Financial Statements or Interim Financial Statements, and whether or not the Vendor, or the Corporations or any of them have notice thereof or of the facts or circumstances which give rise thereto;
- (3) any assessment for Taxes for any period up to the Closing Date for which no adequate reserve has been provided and disclosed in the Financial Statements or Interim Financial Statements;
- (4) any loss, damages or deficiencies suffered by the Purchaser or by the Corporations as a result of any breach of representation, warranty or covenant on the part of the Vendor or the Corporations contained in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement;
- (5) any warranty, damage or similar claim made against the Corporations for or arising from defects in any goods, materials, service or workmanship, in each case provided by the Corporations on or prior to the Closing Date for which the Corporations are or are alleged to be liable; and
- (6) all claims, demands, costs and expenses, including legal fees, in respect of the foregoing.

7.2 Indemnification by the Purchaser

Subject to Section 3.4, the Purchaser shall indemnify and save the Vendor harmless for and from:

- (1) all debts and liabilities of the Corporations, including liabilities for any Taxes, attributable to, or accruing during any period from and after Closing Time;
- (2) any loss, damages or deficiencies suffered by the Vendor as a result of any breach of representation, warranty or covenant on the part of the Purchaser contained in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement; and
- (3) all claims, demands, costs and expenses, including legal fees, in respect of the foregoing.

7.3 Notice of Claim

A Party entitled to and seeking indemnification pursuant to the terms of this Agreement (the “**Indemnified Party**”) shall promptly give written notice to the Party or Parties, as applicable, responsible for indemnifying the Indemnified Party (the “**Indemnifying Party**”) of any claim for indemnification pursuant to Sections 7.1 or 7.2 (a “**Claim**”, which term shall include more than one Claim). Such notice shall specify whether the Claim arises as a result of a claim by a person against the Indemnified Party (a “**Third Party Claim**”) or whether the Claim does not so arise (a “**Direct Claim**”), and shall also specify with reasonable particularity (to the extent that the information is available):

- (1) the factual basis for the Claim; and
- (2) the amount of the Claim, or, if any amount is not then determinable, an approximate and reasonable estimate of the likely amount of the Claim.

(1) Direct Claims. With respect to Direct Claims, following receipt of notice from the Indemnified Party of a Claim, the Indemnifying Party shall have 30 days to make such investigation of the Claim as the Indemnifying Party considers necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim. If the Indemnified Party and the Indemnifying Party agree at or prior to the expiration of such 30 day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed upon amount of the Claim.

If the Indemnified Party and the Indemnifying Party do not agree within such period (or any mutually agreed upon extension), the Indemnified Party and the Indemnifying Party agree that the dispute shall be submitted to arbitration pursuant to the *Arbitration Act, 1991* (Ontario). Such dispute shall not be made the subject matter of an action in a court by either the Indemnified Party or the Indemnifying Party unless the dispute has first been submitted to arbitration and finally determined in accordance with the provisions of Schedule 7.4(1). Any such action commenced thereafter shall only be for judgment in accordance with the decision of the arbitrators and the costs incidental to the action. In any such action the decision of the arbitrators shall be conclusively deemed to determine the rights and liabilities as between the Parties to the arbitration in respect of the matter in dispute.

(2) Third Party Claims. With respect to any Third Party Claim, the Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the negotiation, settlement or defence of such Third Party Claim and, in such event, the Indemnifying Party shall reimburse the Indemnified Party for all the Indemnified Party's out-of-pocket expenses incurred as a result of such participation or assumption. If the Indemnifying Party elects to assume such control, the Indemnified Party shall cooperate with the Indemnifying Party, shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim at its own expense and shall have the right to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Indemnifying Party and the Indemnified Party shall be retained by the Indemnifying Party. If the Indemnifying Party, having elected to assume such control, thereafter fails to defend any such Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim.

The obligations of the Indemnifying Party to indemnify the Indemnified Party in respect of Claims shall also be subject to the following:

(1) Any Claim arising as a result of a breach of a representation or warranty shall be made not later than the date on which, pursuant to Sections 3.3 and 3.4, such representation and warranty terminated;

(2) The Purchaser, as an Indemnified Party, shall not be entitled to require payment of any amount by the Vendor, as an Indemnifying Party, on a Claim related to indemnities contained in Section 7.1 hereof until the aggregate of all such Claim amounts for which the Purchaser, as Indemnified Party would otherwise be entitled to require payment exceed Twenty Thousand (\$20,000.00) Dollars, and the Purchaser, as Indemnified Party, shall be entitled to indemnity to the extent that such Claim amounts exceed Ten Thousand (\$10,000.00) Dollars;

(3) If any Third Party Claim is of a nature such that the Indemnified Party is required by applicable law to make a payment to any person (a "**Third Party**") with respect to such Third Party Claim before the

completion of settlement negotiations or related legal proceedings, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for any such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party;

(4) Except in the circumstance contemplated by Section 7.5(5), and whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnified Party shall not negotiate, settle, compromise or pay any Third Party Claim except with the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld);

(5) The Indemnified Party shall not permit any right of appeal in respect of any Third Party Claim to terminate without giving the Indemnifying Party notice and an opportunity to contest such Third Party Claim;

(6) The Indemnified Party and the Indemnifying Party shall cooperate fully with each other with respect to Third Party Claims and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available); and

(7) Notwithstanding Section 7.4(2), the Indemnifying Party shall not settle any Third Party Claim or conduct any related legal or administrative proceeding in a manner which would, in the opinion of the Indemnified Party, acting reasonably, have a material adverse impact on the Indemnified Party.

(8) The provisions of this Article 7 shall constitute the sole remedy available to a Party against another Party with respect to any and all breaches of any agreement, covenant, representation or warranty made by such other Party in this Agreement.

(9) In the event that any Claim is subject to coverage under any insurance policy maintained by either of the Corporations, the Indemnified Party shall be obligated to first seek coverage through such policy prior to seeking indemnification under this Article 7.

(10) The amount of any Claim due under this Agreement shall be reduced by:

- (a) the amount of any insurance or other reimbursement received by the Indemnified Party in relation to the breach or other event giving rise to the Claim; and
- (b) the amount expected to be recovered under any counterclaims against third parties in relation to the breach or other event giving rise to the Claim.

7.6 Set-off

The Purchaser shall set-off any amounts owing from the Vendor to the Purchaser pursuant to the provisions of this Article 7, as determined by a final or binding arbitration decision or order of the court for liquidated damages, or as determined by written agreement of the Purchaser and the Vendor that such a liability exists, against any payments or amounts otherwise due and payable by the Purchaser to the Vendor pursuant to the terms of this Agreement, including, but not limited to, such amounts or other obligations owing by the Purchaser to the Vendor pursuant to the Vendor's Note. All indemnification payments under this Article 7 shall be deemed adjustment to the Purchase Price.

ARTICLE 8 GENERAL

8.1 Confidentiality

The Purchaser covenants and agrees that, except as otherwise authorized by the Vendor, neither the Purchaser nor its representatives, agents or employees will disclose to third parties, directly or indirectly, any confidential information or confidential data relating to the Vendor, the Corporations or the Business discovered or received by the Purchaser or its representatives, agents or employees as a result of the Vendor and the Corporations making available to the Purchaser and its representatives, agents or employees the information requested by them in connection with the Transactions.

8.2 Notices

(1) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by facsimile or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(a) if to the Vendor:

1792 Glasgow Street
Kitchener, ON N2N 0A7
Attn: Gary Cluthe

(b) if to the Purchaser:

4350 Industrial Drive
Windsor, ON N9C 3R8
Attention: Cameron Lee
Fax No.:
Email:

(c) if to the Corporations:

(a) if to Moldco Inc.:

965 Wilson Avenue
Kitchener, Ontario N2C 1J1
Attention: Gary Cluthe
Fax No:
Email:

(b) if to 2426496 Ontario Inc.:

965 Wilson Avenue
Kitchener, Ontario N2C 1J1
Attention: Gary Cluthe
Fax No:
Email:

(2) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third (3rd) Business Day following the date of mailing; provided, however, that if at the time of mailing or within three (3) Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as described.

(3) Any Party may at any time change its address for service from time to time by giving notice to the other Parties in accordance with this Section 8.2.

8.3 Public Announcements and Disclosure

The Parties shall consult with each other before issuing any press release or making any other public announcement with respect to this Agreement or the Transactions and, except as required by any applicable Law or stock exchange having jurisdiction, no Party shall issue any such press release or make any such public announcement without the prior written consent of the others, which consent shall not be unreasonably withheld or delayed. Prior to any such press release or public announcement, none of the Parties shall disclose this Agreement or any aspect of the Transactions except to its board of directors, its senior management, its legal, accounting, financial or other professional advisors, any financial institution contacted by it with respect to any financing required in connection with the Transactions and counsel to such institution, or as may be required by any applicable Law or stock exchange having jurisdiction.

8.4 Assignment by Purchaser

The Purchaser may assign its rights under this Agreement in whole or in part to any other person; provided, however, that any such assignment shall not relieve the Purchaser from any of its obligations hereunder. Neither the Vendor nor the Corporations may assign its rights under this Agreement.

8.5 Best Efforts

The Parties acknowledge and agree that, for all purposes of this Agreement, an obligation on the part of any Party to use its “best efforts” to obtain any waiver, Consent or other document shall not require such Party to make any payment to any person for the purpose of procuring the same, other than payments for amounts due and payable to such person, payments for incidental expenses incurred by such person and payments required by any applicable law or regulation.

8.6 Expenses

Unless otherwise provided, each of the Vendor, the Corporations and the Purchaser shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation and settlement of this Agreement and the completion of the Transactions. In the event of termination of this Agreement, the obligation of each Party to pay its own expenses will be subject to any rights of such Party arising from a breach of this Agreement by another Party.

8.7 Further Assurances

Each of the Parties shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties may reasonably require from time to time after Closing at the expense of the requesting Party for the purpose of giving effect to this Agreement

and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

8.8 Entire Agreement

This Agreement, including all Schedules, constitutes the entire agreement between the Parties with respect to the subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, including the memorandum of understanding between the Parties dated the 24th day of January, 2020. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter except provided in this Agreement. No reliance is placed by any Party on any warranty, representation, opinion, advice or assertion of fact made by any Party or its directors, officers, employees or agents, to any other Party or its directors, officers, employees or agents, except to the extent that it has been reduced to writing and included in this Agreement.

8.9 Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective, heirs, personal representative, executors, successors and permitted assigns, as applicable.

8.10 Waiver, Amendment

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

8.11 Rights Cumulative

The rights and remedies of the Parties are cumulative and not alternative.

8.12 Counterparts

This Agreement may be executed in any number of counterparts, and/or by facsimile or e-mail transmission of Adobe Acrobat files, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. Any Party executing this Agreement by fax or PDF file shall, immediately following a request by any other Party, provide an originally executed counterpart of this Agreement provided, however, that any failure to so provide shall not constitute a breach of this Agreement except to the extent that such electronic execution is not otherwise permitted under the *Electronic Commerce Act, 2000* (Ontario).

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date first written above.

1241704 B.C. LTD.

Per: _____
Name: Cameron Lee
Title: Chief Executive Officer
I have authority to bind the Corporation.

2013 GARY PAUL CLUTHE FAMILY TRUST

Per: _____
Gary Cluthe, Trustee

Per: _____
Lorna Cluthe, Trustee

Per: _____
Jesse Cluthe, Trustee

MOLDCO INC.

Per: _____
Name: Gary Cluthe
Title: President
I have authority to bind the Corporation.

2426496 ONTARIO INC.

Per: _____
Name: Gary Cluthe
Title: President
I have authority to bind the Corporation.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date first written above.

1241704 B.C. LTD.

Per: 

Name: Cameron Lee

Title: Chief Executive Officer

I have authority to bind the Corporation.

2013 GARY PAUL CLUTHE FAMILY TRUST

Per: _____

Gary Cluthe, Trustee

Per: _____

Lorna Cluthe, Trustee

Per: _____

Jesse Cluthe, Trustee

MOLDCO INC.

Per: _____

Name: Gary Cluthe

Title: President

I have authority to bind the Corporation.

2426496 ONTARIO INC.

Per: _____

Name: Gary Cluthe

Title: President

I have authority to bind the Corporation.

APPENDIX "H"

RECEIPT OF PURCHASE PRICE

TO: **1241704 B.C. LTD.** (the "Purchaser")

AND TO: **McTAGUE LAW FIRM LLP**

RE: Share Purchase Agreement between 2013 Gary Paul Cluthe Family Trust (the "**Vendor**"), the Purchaser, Moldco Inc. (the "**Moldco**") and 2426496 Ontario Inc. ("**2426496**") dated as of the 29th day of February, 2020, (the "**Purchase Agreement**") with respect to the purchase and sale of the Purchased Shares, as defined in the Purchase Agreement

Receipt by the Vendor is hereby acknowledged of the payment contemplated by the Purchase Agreement in the amount of Two Million Six Hundred Twenty Thousand (\$2,620,000.00) in immediately available funds payable to the order of Lowes, Salmon, Gadbois & Clarke, in trust, from the Purchaser.

Receipt by the Vendor is hereby acknowledged of the Promissory Note contemplated by the Purchase Agreement in the sum of Four Hundred Eighty Thousand (\$480,000.00) from the Purchaser in favour of the Vendor.

Dated this 29th day of February, 2020.

2013 GARY PAUL CLUTHE FAMILY TRUST

Per: _____

Gary Cluthe, Trustee

Per: _____

Lorna Cluthe, Trustee

Per: _____

Jesse Cluthe, Trustee

APPENDIX "I"

PROMISSORY NOTE

DUE: February 28, 2023
DATED: February 29, 2020

AMOUNT: \$480,000.00

WHEREAS the undersigned has contracted with the Trust (as hereinafter defined) and for the purchase by the undersigned of all issued and outstanding shares in the capital stock of 2426496 Ontario Inc. and Moldco Inc. (collectively, the "**Corporations**"), in accordance with and subject to the terms and conditions of the share purchase agreement between the undersigned, the Trust and the Corporations dated February 29th, 2020 (the "**Purchase Agreement**").

AND WHEREAS the Trust has agreed to accept a Promissory Note in satisfaction of \$480,000.00, comprising a portion of the Purchase Price, as defined in the Purchase Agreement, to be made by the undersigned to the Trust under the Purchase Agreement.

AND WHEREAS any Capitalized terms not expressly defined herein shall have such meanings attributed to them in the Purchase Agreement.

FOR VALUE RECEIVED, the undersigned promises to pay to the order of 2013 Gary Paul Cluthe Family Trust (the "Trust") at the City of Kitchener the sum of FOUR HUNDRED AND EIGHTY THOUSAND DOLLARS (\$480,000.00), with interest thereon at the rate of FIVE per centum per annum, calculated annually and payable in equal annual instalments of ONE HUNDRED AND SIXTY THOUSAND DOLLARS (\$160,000.00) plus accrued interest on February 28, 2021, February 28, 2022 and February 28, 2023, the balance of the principal, if any, to be paid on the last-mentioned date.

IF THE UNDERSIGNED fails to pay an instalment on its due date, and fails to make payment after fifteen (15) days' notice in writing given to the undersigned by the Trust, then the balance of principal and accrued interest on this note shall, at the option of the Trust, become due and payable.

THIS PROMISSORY NOTE is subject to the terms and conditions of an assignment, postponement and subordination agreement between the Trust and Bank of Montreal, dated of even date herewith (the "**Postponement and Subordination Agreement**"). The Trust agrees that the aforementioned annual payments may be deferred subject to, and in accordance with, the Postponement and Subordination Agreement. To the extent that any payments were not made when due or deferred pursuant to the provisions of the Postponement and Subordination Agreement, the undersigned agrees to make such payments, together with interest accrued thereon immediately upon any overdue payments and any deferred payments becoming permissible under the Postponement and Subordination Agreement.

NOTWITHSTANDING anything contained in this Promissory Note to the contrary, this Promissory Note shall become due and payable should the undersigned default under the terms of the loan arrangements, term sheet or other documents of security in favour of Bank of Montreal such that Bank of Montreal takes any action to enforce its security under the credit facilities provided to the undersigned by Bank of Montreal.

THE PRINCIPAL AMOUNT of this Promissory Note or any part hereof may be paid at any time or from time to time, without notice, bonus or penalty. All payments shall be applied first on account of interest, then on account of principal outstanding.

THIS PROMISSORY NOTE is being delivered as part of the Purchase Price being paid pursuant to the Purchase Agreement and the obligations of the undersigned hereunder are subject to adjustment and set-off, in accordance with Section 2.5(d) and Section 7.6 of the Purchase Agreement. In accordance with Section 2.5(d) of the Purchase Agreement, in the event of a negative Adjustment to the Purchase Price, the amount equal to the amount of the negative Adjustment shall be set-off against the payments due under this Promissory Note. For clarity, the negative Adjustment will be set-off against the first payment due under this Promissory Note and all subsequent payment(s) hereunder until the negative Adjustment is satisfied in full. This Section shall be binding upon the Trust hereof, including the permitted assigns of the Trust. In no event will any assignment, transfer, alienation or pledge of this Promissory Note adversely affect the rights specified under this Section and to the extent that any such assignment, transfer, alienation or pledge would adversely affect such rights, such assignment, transfer, alienation or pledge

shall be null and void. BY ACCEPTANCE OF THIS PROMISSORY NOTE, THE TRUST ACKNOWLEDGES AND AGREES THAT THE PAYMENT OBLIGATIONS OF THE UNDERSIGNED UNDER THIS PROMISSORY NOTE ARE SUBJECT TO SET-OFF RIGHTS IN ACCORDANCE WITH SECTION 2.5(D) AND SECTION 7.6 OF THE PURCHASE AGREEMENT.

THE UNDERSIGNED WAIVES demand, protest and notice of maturity, non payment of protest, and other requirements necessary to hold the undersigned liable as endorser of the Promissory Note. The undersigned further agrees to pay all costs of collection, including legal fees on a solicitor and client basis, in case the principal of the Promissory Note and or payment on the principal thereon is not made at the maturity thereof or when otherwise due.

THE RIGHTS AND remedies of the Trust under this Promissory Note or which it may have at law or in equity against the undersigned or any other persons or legal entities, shall be distinct, separate and cumulative, and shall not be deemed inconsistent with one another, and none of the said rights whether or not exercised by the Trust shall be deemed to be to the exclusion of any others, and any one or more of said rights or remedies may be exercised at the same time. The obligation of this Promissory Note shall continue until the entire debt evidenced thereby is paid, notwithstanding any court action or action taken by the Trust which may be brought to recover any amount due and payable under this Promissory Note. No delay or failure by the Trust in the enforcement of any covenant, promise or agreement of the undersigned hereunder, or to exercise any right of the Trust therein or herein contained shall constitute or be deemed to constitute a waiver of such right, but rather, such waiver shall only occur when set forth in writing signed by the Trust. No single or partial exercise of any of its powers hereunder shall preclude other and further exercise thereof, or the exercise of any other power.

THIS PROMISSORY NOTE shall be governed by the laws of the Province of Ontario, which laws shall be applicable to the interpretation, construction and enforcement hereof.

THIS PROMISSORY NOTE may not be changed, modified, discharged or cancelled verbally or in any other manner, other than by agreement in writing signed by the undersigned and the Trust or their respective heirs, administrators, successors and assigns and the provisions hereof shall be binding and enure to the benefit of the heirs, executors, administrators, successors and assignees of the Trust and the undersigned.

Further, the undersigned agrees that:

1. This Promissory Note is made for business purposes and is a "business agreement" as defined by the *Limitations Act, 2002*; and

2. No limitation periods found in the said *Limitations Act, 2002*, other than the ultimate limitation period found in section 15 of that Act, shall apply to this Promissory Note and to the obligations imposed by this Promissory Note.

ANY NOTICE received or permitted to be given by any party hereto shall be given in accordance with the terms of the Purchase Agreement.

1241704 B.C. LTD.

Per: 
Cameron Lee, Chief Executive Officer
I have authority to bind the Corporation.

APPENDIX "J"

GENERAL SECURITY AGREEMENT

1. Parties to this Security Agreement

Legal Name of Borrower (the "Debtor"): Moldco Inc.
Address of Debtor: 965 Wilson Avenue, Kitchener, Ontario, N2C1J1.

Name of Lender (the "Secured Party"): 2013 Gary Paul Cluthe Family Trust.
Address of Secured Party: 1792 Glasgow Street, Kitchener, Ontario, N2N 0A7

Location of Collateral (if different from Debtor's address):

2. Creation of Security Interest

(1) For value received and as a general and continuing collateral security for the payment of Indebtedness (as defined below or as set out in Schedule "A"), including any ultimate unpaid balance thereof, owed to the Secured Party and to secure the performance of the obligations under this security agreement or any Related Documents, the Debtor hereby grants to the Secured Party a security interest in all the Debtor's personal property as defined in the Personal Property Security Act, R.S.O. 1990, c. P.10 (the "PPSA"), and in the undertaking of the Debtor, which shall constitute Collateral, whether now owned or hereafter acquired directly or indirectly by the Debtor, whether now existing or hereafter arising.

(2) Without limiting the foregoing, but for greater certainty, Collateral includes all of the following:

- (i) all the Debtor's personal property in intangibles, accounts, chattel paper, securities, instruments, documents of title, money and proceeds thereof, and all physical and electronic records and documents evidencing such items
- (ii) all goods (including all parts, accessories, attachments, additions and accessions thereto) now owned or hereafter owned or acquired by Debtor including, without limitation, all equipment, machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind and wherever situate,
- (iii) all inventory of whatever kind and wherever situate now owned or hereafter owned or acquired directly or indirectly by the Debtor, including but not limited to goods supplied or financed by the Secured Party now or in the future;
- (iv) the goods of Debtor described in Schedule "B" hereto and in any additional Schedules from time to time added hereto, (hereinafter called "Goods") and in all proceeds thereof, accretions thereto and substitutions therefore and in all of the following now owned or hereafter owned or acquired by or on behalf of Debtor:
- (v) all deeds, documents, writings, papers and books relating to or being records of Goods or their proceeds or by which Goods or their proceeds are or may hereafter be secured, evidenced, acknowledged or made payable including Documents of Title, Chattels Paper, Securities and Instruments;
- (vi) all contractual rights and insurance claims relating to Goods; and
- (vii) all debts, demands and choses in action which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Debtor, and all claims of any kind which the Debtor now has or may hereafter have.

(3) Any reference to "Collateral" shall, unless the context requires otherwise, be deemed a reference to "Collateral or any part thereof".

(4) This security interest shall not apply to, and Collateral shall not include, the last day of the term of any lease or agreement therefor but upon the enforcement of the security interest the Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

3. Definitions

(1) All phrases which are defined in the PPSA and not otherwise defined in this security agreement shall have the meaning ascribed by the PPSA, provided always that the term "goods" shall never include "consumer goods" of the Debtor as that term is defined in the PPSA.

(2) "Indebtedness" shall mean all liabilities of every kind and description of the Debtor to the Secured Party, whether now or hereafter owed or any future advance, whether direct, indirect, contingent, and whether the Debtor be bound alone or with others and whether as principal or surety.

(3) "Related Documents" shall mean the promissory notes, loan agreements, account agreements, guaranties, trust deeds, mortgages, other security agreements or any other documents executed in connection with this security agreement or Indebtedness or related to its operation or administration, whether already existing or executed now or later.

4. Rights and Obligations of Debtor

4.1 **Title.** The Debtor warrants and covenants that it holds title or has rights in the Collateral sufficient for a security interest to attach to the Collateral and that there are no existing encumbrances on this Collateral, except as disclosed in the Personal Property Security Register and the Bank of Montreal, or such other lender for the Debtor to secure their day to day banking activities..

4.2 **Possession and use of Collateral.** Subject to paragraph 6.2, until default or unless otherwise agreed with the Secured Party, the Debtor may deal with Collateral in the ordinary course of the Debtor's business in any manner consistent with the provisions of this security agreement. Except for inventory sold or accounts collected in the ordinary course of the Debtor's business the Debtor shall not sell or otherwise transfer the Collateral. All proceeds of the Collateral, whether or not arising in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Secured Party and will be immediately paid to the Secured Party pursuant to the fiduciary obligation as trustee. The Debtor shall not encumber or permit the Collateral to be encumbered without the prior written consent of the Secured Party, other than by this security agreement.

4.3 **Removal of Collateral.** The Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) is located at the address shown above. Except in the ordinary course of the Debtor's business, the Debtor shall not remove the Collateral from its location without the prior written consent of the Secured Party, which shall not be unreasonably withheld.

4.4 **Securities as Collateral.** Where Collateral includes securities, the Secured Party may require the Debtor to transfer such securities into the Secured Party's name so that the Secured Party may appear of record as the sole owner of the securities. Until default, the Debtor may retain by way of proxy the voting and dividend rights attached to any such securities and the Secured Party will facilitate exercise of those dividend and voting rights.

4.5 **Preservation of rights and Collateral.** The Debtor shall defend its own and the Secured Party's rights in the Collateral against the claims and demands of all persons. The Debtor shall maintain the Collateral in a condition and state of repair that preserves the value of the Collateral, reasonable wear

and tear excluded. The Debtor will not commit or permit damage to or destruction of the Collateral and will effect repair if it occurs. The Debtor shall procure and maintain policies of fire and other casualty insurance covering the Collateral on the basis and in at least the amount described above on terms satisfactory to the Secured Party and with loss payable to the Secured Party and Debtor jointly.

4.6 Material changes in information. The Debtor shall notify the Secured Party promptly of:

- (a) any material change in the information contained in this agreement (including the schedules hereto) relating to the Debtor, the Debtor's business or Collateral, including any address change or establishment of an additional place of business;
- (b) the details of any change in name of the Debtor;
- (c) the details of any significant acquisition of Collateral;
- (d) the details of any claims or litigation affecting the Debtor or Collateral;
- (e) any loss of or damage to Collateral;
- (f) any default by any account debtor in its obligations with respect to Collateral.

4.7 Debtor's conduct. The Debtor will conduct its business and affairs in a proper and efficient manner, in accordance with applicable law and keep records in accordance with generally accepted accounting procedures. The Debtor shall pay all charges, such as taxes, assessments, claims, liens and encumbrances relating to the Collateral or the Debtor's business and affairs when the same become due. The Debtor will deliver to the Secured Party promptly such information concerning Collateral, the Debtor and the Debtor's business and affairs as the Secured Party may reasonably request.

4.8 Protest. The Debtor waives protest of any instrument constituting Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to the notice requirements of the PPSA, notice of any other action taken by the Secured Party.

4.9 Joint and several liability. If more than one Debtor executes this security agreement the obligations of such Debtors hereunder shall be joint and several.

5. Events of Default

The Debtor shall be in default under this security agreement or Related Documents upon occurrence of any of the following:

- (a) Non-payment when due, whether by acceleration or otherwise, of Indebtedness.
- (b) Failure to comply within seven days after written notice from the Secured Party demanding compliance with any provision contained in this security agreement or Related Documents and if compliance is not practically possible, failure to take steps that will produce compliance as soon as is reasonably practical.
- (c) Any warranty, representation or statement made or furnished to the Secured Party by or on behalf of the Debtor proves in any material respect to have been false when made or furnished.
- (d) Bankruptcy or insolvency of the Debtor; the filing against the Debtor of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the Debtor; the appointment of a receiver, trustee, monitor, or liquidator for the Debtor or for any assets of the Debtor; or the institution by or against the Debtor of any type of insolvency proceeding or creditor rearrangement.
- (e) Death or declaration of incompetency of the Debtor (if the Debtor is an individual) or cessation of the Debtor's viability as a going business concern (if the Debtor is not an individual), which includes the cessation or threat by the Debtor to cease to carry on in the normal course of the Debtor's business or any material part thereof.
- (f) On the occurrence of such other events where the Secured Party considers in good faith and on commercially reasonable grounds that the Collateral is in jeopardy or that the Secured Party's position is insecure.

6. Secured Party Rights and Obligations

6.1 General rights. In addition to the rights granted herein, the Secured Party may enforce any other rights and remedies it may have at law or in equity, and specifically shall have all rights and remedies of a Secured Party under the PPSA. All rights and remedies of the Secured Party are cumulative and one or more of these rights may be exercised independently or in combination from time to time, including marshalling.

6.2 Collection of debts forming part of Collateral. The Secured Party may direct account debtors of the Debtor to make all payments owing to the Debtor on Collateral subject to the security interest directly to the Secured Party, by notifying such account debtors of the Secured Party's interest, either before or after default.

6.3 Inspection of Collateral and right of access. The Secured Party shall have the right at any time to confirm the existence and state of the Collateral in any manner the Secured Party may consider appropriate and the Debtor agrees to furnish all assistance as the Secured Party may reasonably request in connection therewith. The Debtor grants to the Secured Party or its agents access to all places where Collateral may be located and to all premises occupied by the Debtor for the purposes of inspection or obtaining possession.

6.4 Receivers and others. The Secured Party may appoint by instrument or by application to a court of competent jurisdiction a receiver or other person to act on its behalf before or after default or in any insolvency or like proceeding (receiver includes a receiver-manager). The appointee has all the powers of the Secured Party under this security agreement. In addition, on instructions from the Secured Party, the receiver shall be entitled to carry on the business of the Debtor with all the powers that the Debtor would have to operate its business for such time as the receiver determines it advisable and in the best interest of the Secured Party. The Secured Party is not liable for any act or omission by a receiver appointed or selected by a court.

6.5 Acceleration. The Secured Party may declare all or any part of Indebtedness which is not by its terms payable on demand to be immediately due and payable on the occurrence of any default.

6.6 Possession and disposition of Collateral. The Secured Party may take possession or constructive possession of, collect, demand, sue on, enforce, recover and receive Collateral and give binding receipts and discharges therefor. The Secured Party in possession may use Collateral as it sees fit, subject to the duty of reasonable care contained in the PPSA providing that any income from Collateral is applied to the Debtor's account. Upon default, the Secured Party may also sell, lease or otherwise dispose of Collateral in any commercially reasonable manner.

6.7 Costs. The Debtor agrees to pay all charges, including solicitors', auditors', receivers' or like persons' costs and remuneration or other expenses reasonably incurred by the Secured Party or other party appointed by the Secured Party in operating the Debtor's accounts and in preparing or enforcing this security agreement. Such sums shall constitute a future advance increasing the Indebtedness hereunder.

6.8 Deficiencies. The failure of the Secured Party to receive full payment or satisfaction of Indebtedness through its rights and remedies herein provided shall not in any way release the Debtor from the obligation to satisfy any deficiency, including any costs of realization.

6.9 Waivers.

(1) No variation, amendment (except for any schedules which may be added hereto pursuant to the provisions of this agreement) or waiver of any provision of this security agreement shall be effective unless made by written agreement executed by the parties to this security agreement.

(2) No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver of that right or remedy and no single or partial exercise of any right or remedy shall preclude any other exercise of cumulative rights and remedies.

(3) The Secured Party may remedy any default or perform any duty of the Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Debtor.

6.10 Notice of Intention to Realise. Prior to realisation, there is an obligation on the Secured Party to deliver a notice of intention to realise to the Debtor under s. 244 of the Bankruptcy and Insolvency Act. Any events which trigger default, including those within paragraph 5(d), shall be deferred as required by that legislation. Valid service of this notice will occur upon sending of the notice to the address herein or as changed by the Debtor through paragraph 4.6.

7. Subordination

No action by the Secured Party shall constitute a subordination of its security interest to any other interest in the Collateral unless such subordination is effected by an agreement in writing, titled "Subordination Agreement", signed by the Secured Party.

8. Successor Interests

This security agreement shall enure to the benefit of and be binding on the parties hereto and their respective heirs, executors, administrators, successors and assigns.

9. Applicable Law

This security agreement and Related Documents shall be governed by the laws of the Province of Ontario.

10. Termination

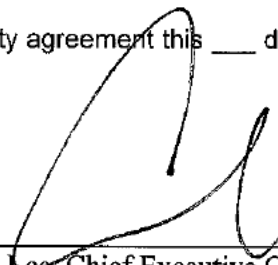
This security agreement shall remain in full force and effect until the Indebtedness has been paid and written notice of discharge by the Secured Party is received by the Debtor.

11. Acknowledgments of Debtor

The Debtor hereby acknowledges receipt of a copy of this security agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the Debtor has executed this security agreement this ____ day of _____, 2020.



Cameron Lee, Chief Executive Officer
I have authority to bind the Corporation.

APPENDIX "K"

Enquiry Result

File Currency: 02JUL 2024

All Pages

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Note: All pages have been returned.

Type of Search	Business Debtor								
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Business Debtor	Business Debtor Name					Ontario Corporation Number			
	MOLDCO INC.								
	Address				City	Province	Postal Code		
	965 WILSON AVENUE				KITCHENER	ON	N2C 1J1		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	BANK OF MONTREAL								
	Address				City	Province	Postal Code		
	200 OUELLETTE AVENUE				WINDSOR	ON	N9A 1A5		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
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Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
	196								

Registering Agent	Registering Agent			
	MCTAGUE LAW FIRM LLP			
	Address	City	Province	Postal Code
	455 PELISSIER STREET	WINDSOR	ON	N9A 6Z9

END OF FAMILY

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Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	MOLDCO INC.					002377884			
	Address				City	Province	Postal Code		
	965 WILSON AVENUE				KITCHENER,	ON	N2C 1J1		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	2013 GARY PAUL CLUTHE FAMILY TRUST								
	Address				City	Province	Postal Code		
	1792 GLASGOW STREET,				KITCHENER	ON	N2N 0A7		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
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Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	LOWES, SALMON, GADBOIS & CLARKE								
	Address				City	Province	Postal Code		
	500 DUTTON DRIVE				WATERLOO	ON	N2L 4C6		

CONTINUED

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Reference Debtor/ Transferor	First Given Name				Initial	Surname				
	Business Debtor Name									
	MOLDCO INC.									
Other Change	Other Change									
Reason / Description	Reason / Description									
	CORPORATION CHANGED ITS NAME JAN 29, 2021									
Debtor/ Transferee	Date of Birth	First Given Name			Initial		Surname			
	Business Debtor Name							Ontario Corporation Number		
	MOLDCO PLASTICS INC.							002377884		
	Address				City		Province	Postal Code		
	41 ARDELT PL.				KITCHENER		ON	N2C 2C8		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or		No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.			
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	LOWES, SALMON, GADBOIS & CLARKE									

	Address	City	Province	Postal Code
	500 DUTTON DRIVE	WATERLOO	ON	N2L 4C6

CONTINUED

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	MOLDCO INC.									
Other Change	Other Change									
Reason / Description	Reason / Description									
	BUSINESS CHANGED ITS NAME									
Debtor/ Transferee	Date of Birth	First Given Name			Initial		Surname			
	Business Debtor Name							Ontario Corporation Number		
	MOLDCO PLASTICS INC.							002377884		
	Address				City		Province	Postal Code		
	41 ARDELT PL.				KITCHENER		ON	N2C 2C8		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	2013 GARY CLUTHE FAMILY TRUST									
	Address				City		Province	Postal Code		
	1792 GLASGOW STREET				KITCHENER		ON	N2H 0A7		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
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Motor Vehicle Description	Year	Make			Model		V.I.N.			
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	LOWES, SALMON, GADBOIS & CLARKE									

	Address	City	Province	Postal Code
	500 DUTTON DRIVE	WATERLOO	ON	N2L 4C6

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APPENDIX "L"

Enquiry Result

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Business Debtor	Business Debtor Name					Ontario Corporation Number			
	MOLDCO INC.					002377884			
	Address				City	Province	Postal Code		
	965 WILSON AVENUE				KITCHENER,	ON	N2C 1J1		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	2013 GARY PAUL CLUTHE FAMILY TRUST								
	Address				City	Province	Postal Code		
	1792 GLASGOW STREET,				KITCHENER	ON	N2N 0A7		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
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Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	204								

Registering Agent	Registering Agent			
	LOWES, SALMON, GADBOIS & CLARKE			
	Address	City	Province	Postal Code
	500 DUTTON DRIVE	WATERLOO	ON	N2L 4C6

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Reference Debtor/ Transferor	First Given Name				Initial	Surname				
	Business Debtor Name									
	MOLDCO INC.									
Other Change	Other Change									
Reason / Description	Reason / Description									
	CORPORATION CHANGED ITS NAME JAN 29, 2021									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name								Ontario Corporation Number	
	MOLDCO PLASTICS INC.								002377884	
	Address				City		Province	Postal Code		
	41 ARDELT PL.				KITCHENER		ON	N2C 2C8		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	LOWES, SALMON, GADBOIS & CLARKE									

	Address	City	Province	Postal Code
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	MOLDCO INC.									
Other Change	Other Change									
Reason / Description	Reason / Description									
	BUSINESS CHANGED ITS NAME									
Debtor/ Transferee	Date of Birth	First Given Name			Initial		Surname			
	Business Debtor Name						Ontario Corporation Number			
	MOLDCO PLASTICS INC.						002377884			
	Address				City		Province	Postal Code		
	41 ARDELT PL.				KITCHENER		ON	N2C 2C8		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	2013 GARY CLUTHE FAMILY TRUST									
	Address				City		Province	Postal Code		
	1792 GLASGOW STREET				KITCHENER		ON	N2H 0A7		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
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Motor Vehicle Description	Year	Make			Model		V.I.N.			
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	LOWES, SALMON, GADBOIS & CLARKE									

	Address	City	Province	Postal Code
	500 DUTTON DRIVE	WATERLOO	ON	N2L 4C6

END OF FAMILY

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Business Debtor	Business Debtor Name					Ontario Corporation Number			
	MOLDCO PLASTICS INC.								
	Address				City	Province	Postal Code		
	550 BURRARD ST., BENTALL 5, SUITE 2300				VANCOUVER	BC	V6C 2B5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	THE TORONTO DOMINION BANK								
	Address				City	Province	Postal Code		
	156 OUELLETTE AVE.				WINDSOR	ON	N9A 1A4		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	KIRWIN PARTNERS LLP (JPM-73400)								
	Address				City	Province	Postal Code		
	423 PELISSIER STREET				WINDSOR	ON	N9A 4L2		

LAST PAGE

Note: All pages have been returned.

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APPENDIX "M"

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

B E T W E E N :

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC., AND MOLDCO
HOLDINGS INC.**

Respondents

**AFFIDAVIT OF MATHIEU LAFORTUNE
(Sworn April 16, 2024)**

I, Mathieu Lafortune, of the City of Toronto, in the Province of Ontario do make oath and say as follows:

1. I am a director in the Financial Restructuring Group of The Toronto Dominion Bank (“**TD Bank**”), and as such have knowledge of the matters to which I hereinafter depose. To the extent that I do not have direct first-hand knowledge of particular facts or events, I have obtained that information from others and/or from my review of the documentation attached as exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to are true and correct.
2. I swear this affidavit in response to the Affidavit of Gary Cluthe sworn March 18, 2024.

The Parties and Appointment of Receiver:

3. On May 26, 2023, on application by TD Bank pursuant to s. 243 of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*, Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings (collectively, the “**Property**”) of Injection Technologies Inc. (“**Injection Technologies**”), Moldco Plastics Inc. (“**Plastics**”), and Moldco Holdings Inc. (“**Holdings**” and collectively, the “**Debtors**”).

4. Plastics is a British Columbia corporation, originally incorporated in Ontario on June 20, 2013 as “Moldco Inc.” and continued in British Columbia as of January 29, 2021 under its current name.

5. Holdings is a British Columbia corporation, originally incorporated in Ontario on July 15, 2014 as “2426496 Ontario Inc.” and continued in British Columbia as of January 29, 2021 under its current name.

6. Each of the Debtors was indebted to TD Bank in connection with certain credit facilities made available by TD Bank to the Debtors pursuant to and under the terms of loan agreements dated April 29, 2021 and April 5, 2022 (as amended, replaced, restated or supplemented from time to time, collectively, the “**Credit Agreements**”).

7. As of May 1, 2023, a total of \$13,018,712.95 CDN plus \$1,901,244.82 USD (exclusive of legal and financial advisor fees, disbursements and accruing interest) was owing by the Debtors to TD Bank under the Credit Agreements as of May 1, 2023.

8. Harrison Pensa LLP, in its capacity as independent legal counsel to the Receiver, conducted a review of the security pledged by the Debtors in favour of TD Bank (the “**TD Security**”) and confirmed, subject to normal assumptions and qualifications, that the TD Security created, under Ontario law, a valid security interest in favour of TD Bank in the property described in the TD Security and the security interests created by the TD Security in the personal property described in the TD Security to which the *Personal Property Security Act* (Ontario) (the “**ON PPSA**”) applied were perfected by registration under the provisions of the ON PPSA.

No Indebtedness Owing to Cluthe Family Trust:

9. Pursuant to a share purchase agreement dated February 29, 2020 (the “**Share Purchase Agreement**”), 1241704 BC Ltd. (“**124 BC**”) purchased the shares of Moldco Inc. and 2426496 Ontario Inc. (“**242 Ontario**”) from the 2013 Gary Paul Cluthe Family Trust (the “**Cluthe Family Trust**”) for cash consideration plus a vendor take-back promissory note (the “**Vendor’s Note**”). A copy of the Share Purchase Agreement is attached as **Exhibit "A"**.

10. As I stated at paragraphs 4 and 5 *above*, Moldco Inc. subsequently changed its name to “Moldco Plastics Inc.” and 242 Ontario changed its name to “Moldco Holdings Inc.”

11. 124 BC was the only party defined to be the “Purchaser” pursuant to the Share Purchase Agreement defined therein as the “purchaser”, and neither Moldco Inc. nor 242 Ontario provided any covenant to pay to the Cluthe Family Trust the “Purchase Price” (as that term is defined in the Share Purchase Agreement). The Share Purchase Agreement, at section 2.3, specifically provides that the “*Purchase Price shall be paid and satisfied by the Purchaser*”. Neither did Moldco Inc. or 242 Ontario receive any benefit under the Share Purchase Agreement as the Purchased Assets were solely received by 124 BC.

12. Neither Moldco Inc. nor 242 Ontario agreed to provide any security under the Share Purchase Agreement for the payment and performance of the Vendor's Note. Section 2.6 of the Share Purchase Agreement refers only to the Purchaser as providing such note and security and provides as follows:

2.6 Security for Vendor's Note

As security for payment and performance of the Vendor's Note, any Adjustment in the Vendor's favour, and the Purchaser's and the Corporations' obligations set forth in Section 2.5(d) hereof, the Purchaser shall on Closing provide the following security (the "Vendor's Security"):

- (a) a general security agreement;
- (b) such further and other documentation as may be necessary to set forth the respective priorities of the security held by Bank of Montreal (the "Senior Lender") and the Vendor's Security.

[emphasis added]

13. The Vendor's Note, which was delivered as part of the "Purchase Price" pursuant to the Share Purchase Agreement, was granted to the Cluthe Family Trust solely by 124 BC. A copy of the Vendor's Note is attached as **Exhibit "B"**. The first recital of the Vendor's Note confirms that it was 124 BC who contracted with the Cluthe Family Trust:

WHEREAS the undersigned has contracted with the Trust (as hereinafter defined) and for the purchase by the undersigned of all issued and outstanding shares in the capital stock of 2426496 Ontario Inc. and Moldco Inc. (collectively, the "**Corporations**"), in accordance with and subject to the terms and conditions of the share purchase agreement between the undersigned, the Trust and the Corporations dated February 29th, 2020 (the "**Purchase Agreement**"). [emphasis added]

14. The indebtedness owing to the Cluthe Family Trust pursuant to the Vendor's Note was not guaranteed by either Moldco Inc. or 242 Ontario either within the terms of the Share Purchase Agreement or otherwise.

15. The general security agreement (the “**Moldco GSA**”) purportedly granted to the Cluthe Family Trust by Moldco Inc. in 2020 does not set out the basis of any indebtedness purportedly owing by Moldco Inc. to the Cluthe Family Trust. A copy of the Moldco GSA is attached as **Exhibit "C"**. As reflected in the Share Purchase Agreement, Moldco Inc. was not liable for payment of the Purchase Price to the Cluthe Family Trust, nor did Moldco Inc. guarantee 124 BC’s payment of the Purchase Price. Absent an indebtedness, which has not been evidenced by the Cluthe Family Trust, the Moldco GSA would secure nothing.

Name Change of Moldco Inc.

16. The corporate name change from Moldco Inc. to Plastics was documented and communicated to stakeholders, including the Cluthe Family Trust, from the start of these receivership proceedings.

17. In my Affidavit sworn May 15, 2023 in support of TD Bank’s application for an Order appointing the Receiver over the Property of the Debtors, I stated at paragraph 5:

Plastics is a British Columbia corporation, originally incorporated in Ontario on June 20, 2013 as Moldco Inc. and continued in British Columbia as of January 29, 2021, with its stated registered office address at Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, British Columbia, V6C 2B5. Attached to this affidavit and marked as Exhibit "B" is a true copy of the Corporate Profile Report for Plastics.

[emphasis added]

18. A copy of my May 15th Affidavit (without exhibits thereto) is attached as **Exhibit "D"**.

19. TD Bank’s Application Record dated May 17, 2023, which enclosed my May 15th Affidavit, was served upon, among others, the Cluthe Family Trust by overnight courier to 1792 Glasgow Street, Kitchener, Ontario, N2N 0A7, which was the last known address for service, and

upon Daniel J. Clarke of Lowes, Salmon, Gadbois & Clarke, counsel to the Cluthe Family Trust, by email at dclarke@watlaw.ca. A copy of the Affidavit of Service of Matilda Lici sworn May 17, 2023 is attached as **Exhibit "E"**.

20. Plastic's name change was also described in the Pre-Filing Report of the Proposed Receiver dated May 19, 2023 (the "**Pre-Filing Report**") and the First Report of the Receiver dated August 15, 2023 (the "**First Report**"), both of which were served upon the Cluthe Family Trust and its counsel, among others. At paragraph 15 of the Pre-Filing Report and paragraph 19 of the First Report, the Receiver reported:

Subsequently, Moldco Inc. changed its name to "Moldco Plastics Inc." and 242 Ontario changed its name to "Moldco Holdings Inc."

21. Copies of the Pre-Filing Report and the First Report, without appendices, are attached as **Exhibit "F"**.

22. In its First Report, at paragraph 18, the Receiver also reported that it had been in communication with counsel to the Cluthe Family Trust:

The Receiver's counsel is in correspondence with counsel to the Cluthe Family Trust and is reviewing the Cluthe Family Trusts claim.

23. Further, in its First Report issued August 15, 2023, which was served upon the Cluthe Family Trust, the Receiver specifically notes at paragraph 50 that "The Receiver continues to review the claim of the Cluthe Family Trust noting that at the date of this first report the Cluthe Family Trust does not hold a PPSA registration against ITI, MPI nor Moldco Holdings.

24. It should be noted that the continuation of the then-Moldco Inc. to British Columbia had been acknowledged by the Cluthe Family Trust in the Share Purchase Agreement at section 2.6:

The Vendor further covenants and consents to the continuation of the Corporations to the Province of British Columbia [...]

25. Accordingly, Mr. Cluthe's claim that the Cluthe Family Trust only had notice of Plastic's name change in December 2023 strains credulity, especially given the express notification by the Receiver in its reports that Cluthe had no registration and that TD Bank was the sole registered secured creditor.

Registration of Security Interest and Inter-Creditor Priority:

26. The Cluthe Family Trust registered a security interest under the ON PPSA against Moldco Inc. on March 11, 2020.

27. I am advised by my counsel that pursuant to s. 48(3) of the ON PPSA, where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

28. The Cluthe Family Trust registered a security interest under the ON PPSA against Plastics on January 10, 2024—over seven months from the commencement of these receivership proceedings in May 2023, and over ten months since the commencement of dialogue between counsel for the Cluthe Family Trust and counsel for TD Bank in February 2023.

29. TD Bank registered a security interest under the ON PPSA against Plastics on June 4, 2021. The Receiver's independent counsel has reviewed the TD Security and advised the Receiver that the security interests created by the TD Security have been properly perfected.

30. TD Bank disputes the priority claim asserted by the Cluthe Family Trust over the security interest registered by TD Bank.

31. All of which is sworn by me in good faith, and for no improper purpose whatsoever.

SWORN remotely by Mathieu Lafortune, stated as)
 being in the City of Toronto, in the Province of)
 Ontario, before me on April 16, 2024 in)
 accordance with O. Reg. 431/20, Administering)
 Oath or Declaration Remotely.)

DocuSigned by:

Matilda Lici

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Commissioner (or as may be)

Matilda Lici

DocuSigned by:

Mathieu Lafortune

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Mathieu Lafortune

THE TORONTO-DOMINION BANK
Applicant

- and -

INJECTION TECHNOLOGIES INC. et al.
Respondents

Court File No. CV-23-00699663-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF MATHIEU LAFORTUNE
(Sworn April 16, 2024)

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Robb English (LSO # 19862F)

Tel: (416) 865-4748
Email: renglish@airdberlis.com

Matilda Lici (LSO #79621D)

Tel: (416) 865-3428
Email: mlici@airdberlis.com

Lawyers for The Toronto-Dominion Bank

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APPENDIX "N"

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

B E T W E E N :

THE TORONTO-DOMINION BANK

Applicant

- and -

**INJECTION TECHNOLOGIES INC., MOLDCO PLASTICS INC., AND MOLDCO
HOLDINGS INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

AFFIDAVIT OF MATHIEU LAFORTUNE
(Sworn May 15, 2023)

I, Mathieu Lafortune, of the City of Toronto, in the Province of Ontario do make oath and say as follows:

1. I am a director in the Financial Restructuring Group of The Toronto Dominion Bank (“**TD Bank**”), and as such have knowledge of the matters to which I hereinafter depose. To the extent that I do not have direct first-hand knowledge of particular facts or events, I have obtained that information from others and/or from my review of the documentation attached as exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to are true and correct.

2. I swear this affidavit in support of TD Bank's application to, inter alia:

- (a) appoint Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all the assets, properties and undertakings (collectively, the "**Property**") of Injection Technologies Inc. ("**Injection Technologies**"), Moldco Plastics Inc. ("**Plastics**"), and Moldco Holdings Inc. ("**Holdings**" and collectively, the "**Debtors**");
- (b) provide authorization and direction to the Receiver to offer the assets of the Debtors for sale and to deal with the assets of the Debtors substantially in accordance with the process as described in the pre-filing report to be filed by Deloitte; and
- (c) grant leave to the Receiver to move to assign the Debtors into bankruptcy, and authorize Deloitte to act as Trustee in Bankruptcy of the Debtors.

The Parties:

3. Injection Technologies is a British Columbia corporation formed by the amalgamation of Injection Technologies Acquisition Company Inc. and Injection Technologies Inc. (an Ontario corporation) on July 31, 2015, with its stated registered office address at Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, British Columbia, V6C 2B5. It is extra-provincially registered in Ontario. Attached to this affidavit and marked as **Exhibit "A"** is a true copy of the Corporate Profile Report for Injection Technologies.

4. Injection Technologies carries on business as an integrated mold testing, evaluation and certification company for commercial testing and tryout of new and refurbished injection molds and thermoplastics. It operates out of a 48,000 square foot plant at the address municipally known

as 4350 Industrial Drive, Windsor, Ontario, N9C 3R8, and an offsite warehouse at the address municipally known as 2051 Ambassador Drive, Windsor, Ontario, N9C 3R5, both of which are leased premises. It also carries on business producing plastic molded injection parts both in Windsor and at the Kitchener location referred to below.

5. Plastics is a British Columbia corporation, originally incorporated in Ontario on June 20, 2013 as Moldco Inc. and continued in British Columbia as of January 29, 2021, with its stated registered office address at Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, British Columbia, V6C 2B5. Attached to this affidavit and marked as **Exhibit "B"** is a true copy of the Corporate Profile Report for Plastics.

6. Plastics carries on business as a producer of plastic and molded injection parts. It operates out of a 67,000 square foot plant at the address municipally known as 41 Ardelt Place, Kitchener, Ontario, N2C 2C8, which is leased in the name of Injection Technologies, and an offsite warehouse at the address municipally known as 965 Wilson Ave, Kitchener, Ontario, N2C 1J1.

7. Holdings is a British Columbia corporation, originally incorporated in Ontario on July 15, 2014 as 2426496 Ontario Inc. and continued in British Columbia as of January 29, 2021, with its stated registered office address at Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, British Columbia, V6C 2B5. It is extra-provincially registered in Ontario. Attached to this affidavit and marked as **Exhibit "C"** is a true copy of the Corporate Profile Report for Holdings.

8. Holdings is a holding company set up to hold certain of the equipment used by Plastics but, otherwise, has no operations or employees. Both Plastics and Holdings were acquired by the ownership group of Injection Technologies via a 2020 purchase and sale transaction.

9. While Injection Technologies, Plastics and Holdings are distinct legal entities, they currently operate as a single entity in several ways. For example, Injection Technologies is the named tenant on the lease for the Kitchener facility. As well, while purchase orders may be issued to one entity, production occurs at either or both the Windsor and the Kitchener facilities. Collectively they have about 160 employees of which approximately 20 are salaried and 140 are hourly wage earners. There is no union.

10. The controlling shareholders of Debtors are George Mattson and Jeffrey Moslow (the “**Shareholders**”), both of whom are based in the United States, in Florida and New York respectively.

The Credit Agreement and Security:

11. Each of the Debtors is indebted to TD Bank in connection with certain credit facilities made available by TD Bank to the Debtors pursuant to and under the terms of loan agreements dated April 29, 2021 and April 5, 2022 (as amended, replaced, restated or supplemented from time to time, collectively, the “**Credit Agreements**”). Copies of the Credit Agreements are attached hereto and marked as **Exhibit "D"**.

12. As security for the Debtors’ obligations to TD Bank, including, without limitation, under the Credit Agreements, the Debtors provided, without limitation:

- (a) in the case of Injection Technologies, a general security agreement dated June 10, 2021, which grants to TD Bank, among other things, a security interest in any and all of the property, assets and undertakings of Injection Technologies, registrations in respect of which were duly made pursuant to the *Personal Property Security Act*

(Ontario) (the “**ON PPSA**”) and the *Personal Property Security Act* (British Columbia) (the “**BC PPSA**”);

- (b) in the case of Plastics, a general security agreement dated June 10, 2021, which grants to TD Bank, among other things, a security interest in any and all of the property, assets and undertakings of Plastics, registrations in respect of which were duly made pursuant to the ON PPSA and BC PPSA;
- (c) in the case of Holdings, a general security agreement dated June 10, 2021, which grants to TD Bank, among other things, a security interest in any and all of the property, assets and undertakings of Holdings, registrations in respect of which were duly made pursuant to the ON PPSA and BC PPSA, and
- (d) collectively, the foregoing are referred to as “**Security**” and copies of the Security are attached hereto and marked as **Exhibit "E"**.

13. TD Bank is a secured creditor with registration under the PPSA, as well as in British Columbia, over all of the property and assets of each of Injection Technologies, Plastics and Holdings, and is the provider of the operating loan facility required to conduct the business operations of Injection Technologies and Plastics.

14. In the case of Injection Technologies, in addition to TD Bank’s registrations, Wells Fargo Equipment Finance Company, Bank of Montreal, De Lage Landen Financial Services Canada Inc., Meridian OneCap Credit Corp., BMW Canada Inc., and CWB National Leasing Inc. have made one or more registrations.

15. Attached hereto and marked as **Exhibit "F"** are copies of the certified ON PPSA searches and BC PPSA searches for each of the Debtors, current as of February 2, 2023.

16. Each of the GSAs granted by the Debtors grants to TD a right to appoint a receiver over the Debtors' property upon the occurrence of an Event of Default, which is defined in each of the GSAs as including when the Debtor "*fails to pay when due, whether by acceleration or otherwise, any of the Obligations*". Pursuant to s. 12 of the GSAs:

12 (a) Upon the occurrence of an event of default that has not been cured or waived, the Bank, in addition to any right or remedy otherwise provided herein or by law or in equity, will have the rights and remedies set out below, which may be enforced successively or concurrently:

(xii) to appoint or reappoint by instrument in writing any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers or a receiver and manager of the Collateral and remove or replace any person or persons so appointed or apply to any court for the appointment of a receiver or receiver and manager (each hereinafter called a "Receiver")

12 (c) The Grantor agrees to pay all costs, charges and expenses incurred by the Bank or any Receiver appointed by the Bank, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration) [...]

17. The Debtors' obligations to TD Bank, including, without limitation, their respective obligations under the Credit Agreements, are cross-guaranteed by each of them pursuant to and under the terms of three guarantees dated June 10, 2021 (the "**Guarantees**"). Copies of the Guarantees are attached hereto and marked as **Exhibit "G"**.

18. The Shareholders have not provided personal guarantees in respect of the Debtors' obligations to TD Bank.

Debtors' Financial Position:

19. On or about February 13, 2023, TD Bank retained Deloitte to perform a review of the Debtors' financials and operations, and the Debtors signed for acceptance of the engagement on February 21, 2023. With cooperation from the Debtors, Deloitte has since familiarized itself with the Debtors' business and financial position.

20. I am advised by Deloitte that on or about July 2022, the Debtors became aware of a potential significant overstatement in inventory, and in early 2023, the Debtors determined that the inventory write-down totalled approximately \$6.2 million. To date, the Debtors have not provided an adequate accounting and explanation of why this happened, nor has Deloitte been able to determine the reason for this from their review.

21. I am advised by Deloitte that the Debtors have amassed significant tax arrears, including HST arrears of \$695,000 as at January 31, 2023, and source deductions arrears currently estimated to be in excess of \$1.3 million. The source deduction arrears are under review as the Debtors believed that payments on account totalling \$859,000 were mis-applied such that actual source arrears were in the amount of \$488,000 as at January 31, 2023, which was among the numerous accounting issues observed by Deloitte.

22. The Debtors filed Borrowing Limit Certificates for December 31, 2022 and January 31, 2023, reporting margin deficits of \$5.1 million and \$6.7 million, respectively, as a result of the inventory write-down, tax arrears and negative earnings before interest and taxes for fiscal year ends 2021 and 2022. The balance of the Debtors' line of credit now exceeds the maximum borrowing allowable by application of the borrowing base requirements of the Credit Agreements by approximately \$9 million. Despite being well in excess of the maximum allowable credit for

over a year the Debtors have been unable to bring borrowings in line, nor even reduce the borrowing base shortfall. As a consequence, TD Bank has no obligation to continue to advance credit to fund operations but has continued to do so on an without prejudice basis.

23. The Debtors have experienced significant operational and financial challenges, resulting in a liquidity crunch. The Shareholders have indicated to TD Bank that they are not prepared to make any equity injections of funds ranking behind TD Bank's Security. The Debtors have indicated that they will run out of cash within a couple of weeks unless TD Bank advances further monies.

24. TD Bank has obtained an appraisal by Corporate Assets of the realizable value of the Debtors' inventory and equipment, which, along with the borrowing base information and the information gathered by Deloitte as consultant, indicates that TD Bank will experience a significant shortfall in recovery of its loans.

25. Plastics' operations in Kitchener are not currently profitable. A receivership will allow for both locations to be marketed as stand alone entities, whereas with their current comingled operations they could not.

Defaults and Demands for Payment:

26. The Credit Agreements contain standard Events of Default, including if there is a breach or non-performance or non-observance of any term or condition of the Credit Agreements or the Security.

27. Certain of the Credit Facilities are repayable on demand, and one or more Events of Default (as defined in the Credit Agreements and/or the Security, as applicable) has occurred, including failure to pay principal, interest and fees on the date when they become due.

28. TD Bank issued default letters dated January 26, 2023 and March 6, 2023, which set out the Debtors' non-compliance with margin requirements, ratio and reporting covenants, and a material adverse change in connection with a \$6.2 million inventory write-down. In addition TD Bank issued a further default letter dated April 21, 2023 in respect of a borrowing base shortfall of \$8.1 million in respect of the February 2023 reporting as well as for substantial financial covenant defaults respecting tangible net worth and debt service ratio covenants. Copies of the default letters are attached hereto and collectively marked as **Exhibit "H"**.

29. The Debtors failed to cure the defaults, which persist.

30. Accordingly, TD Bank, through its lawyers, Aird & Berlis LLP, made formal written demand on each of the Debtors for payment of the Debtors' indebtedness to TD Bank by letters dated May 2, 2023 (the "**Demands**"), accompanied by notices of intention to enforce security (the "**BIA Notices**"), which were delivered to the Debtors pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Copies of the Demands and the BIA Notices are attached hereto and marked as **Exhibit "I"**.

31. As set out in the Demands and the BIA Notices, a total of \$13,018,712.95 CDN plus \$1,901,244.82 USD (exclusive of legal and financial advisor fees, disbursements and accruing interest) was owing by the Debtors to TD Bank under the Credit Agreements as of May 1, 2023 (the "**Indebtedness**"). The Indebtedness continues to accrue interest and may fluctuate upward should TD Bank make discretionary advances to keep the business running.

32. Since the issuance of the Demands, the Credit Parties have failed and are unable to (a) repay the Indebtedness in full or (b) enter into any arrangements acceptable to TD Bank for the full repayment of the Indebtedness.

33. TD Bank has had discussions with the shareholders as to whether they would be prepared to provide liquidity to the business but they advised that they would not provide any such liquidity unless they were given a prior ranking security for any advances, which TD Bank was not prepared to permit.

34. The Credit Parties are in default of the terms of and their obligations under the Credit Agreement and the Security, and are unwilling or unable to repay the Indebtedness. The Credit Parties were cooperative with Deloitte as consultant, but have no realistic possibility of making repayment or of re-financing, and cash flow projections showed there was no prospect of achieving any reduction in their over-advanced status in the upcoming year. As a consequence TD Bank advised the Shareholders in advance of its decision to make demand and to seek a receiver. TD Bank does not expect the Debtors to oppose the requested order.

35. The Debtors have no liquidity given that they exceed their allowable credit and given that TD Bank has no further obligation to advance funds to meet their critical payments, and is only doing so to facilitate the sales process being requested from this Court.

36. Notwithstanding the issuance of the Demands, TD Bank has reserved the right to continue to make advances to the Debtors, at its sole discretion, to ensure the continuation of the Debtors' business operations.

Rationale for the Relief Sought in Appointment Order:

37. The provisions of the Security allow for the appointment of a Receiver over the Property of the Debtors upon default.

38. The appointment of a receiver is necessary and appropriate for the following reasons:

- (a) TD Bank's security position has deteriorated and will continue to deteriorate absent the appointment of a Receiver;
- (b) the Debtors do not have sufficient cash on hand to continue operations, and the Shareholders are not prepared to provide monies ranking behind TD Bank's Security to fund operations;
- (c) for the protection of the estate of the Debtors and to realize on the collateral subject to TD Bank's security for the benefit of TD Bank and any other stakeholders.

39. Deloitte is qualified to act as receiver, is familiar with the Debtors' business, and has consented to act as receiver if so appointed by the Court.

40. Under the terms of each of the Guarantees, TD Bank is not obligated to exhaust its recourses against the other Guarantors, or in respect of any security TD Bank holds, before being entitled to payment from a Guarantor.

41. TD Bank anticipates a significant shortfall in recovery under the Credit Agreements. The Order sought by TD Bank provides for the retention of independent counsel by the Receiver to address any issue or matter where there may be an actual or perceived conflict with TD Bank. In all other situations, and in view of the significant expected shortfall to be incurred by TD Bank, the draft Order provides authorization for the Receiver to use TD Bank's counsel, Aird & Berlis LLP.

42. The Order sought also provides for the granting of leave to the Receiver to assign each and all of the Debtors into bankruptcy, and authorizing Deloitte to act as trustee in bankruptcy of each of the Debtors. This relief is appropriate in the circumstances for the following reasons: a) the

financial information of the Debtors is inadequate and inaccurate; b) the Debtors have many unpaid, unsecured creditors who will want to be able to advance their claims in an orderly fashion and who will be interested in the reasons for their loss; c) the Debtors engaged in a number of large transactions over the past 5 years including the acquisition by the current shareholders, the de facto amalgamation of their business operations, the irregularities in their accounting records and payment history with CRA, and the unexplained disappearance of approximately \$6 million of inventory value. A bankruptcy is necessary to permit Deloitte, in its capacity as trustee in bankruptcy of the Debtors, to provide a claims process for creditors, to provide the investigatory powers of a trustee with respect to the noted financial irregularities, and to crystalize effective dates and rights of inquiry and review in the event that any reviewable transactions occurred

43. All of which is sworn by me in good faith, and for no improper purpose whatsoever..

SWORN remotely by Mathieu Lafortune, stated as)
 being in the City of Toronto, in the Province of)
 Ontario, before me on May 15, 2023 in accordance)
 with O. Reg. 431/20, Administering Oath or)
 Declaration Remotely.)

DocuSigned by:
 Matilda Lici
 7CE576F4AA3D4CA...

 Commissioner (or as may be)

Matilda Lici

DocuSigned by:
 Mathieu Lafortune
 92A5EBD596674A0...

 Mathieu Lafortune

THE TORONTO-DOMINION BANK

Applicant

-and-

INJECTION TECHNOLOGIES INC., et al.

Respondents

Court File No. CV-23-00699663-00CL

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

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

THIRD REPORT OF THE RECEIVER

HARRISON PENZA LLP

Barristers and Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #69806O)

Tel: (519) 679 9660
Fax: (519) 667 3362
Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Receiver,
Deloitte Restructuring Inc.

THE TORONTO-DOMINION BANK

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MOTION RECORD

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