

**SUPERIOR COURT
(Commercial division)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N°: 500-11-040900-116

DATE: June 28, 2013

PRESENT : THE HONOURABLE MARK SCHRAGER, J.S.C.

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

KITCO METALS INC.

Petitioner

and

RICHTER ADVISORY GROUP INC.

Monitor

and

8547335 CANADA INC.

and

XRF SCIENTIFIC LIMITED

and

BART KITNER

and

3069979 CANADA INC.

and

KITCO LOGISTICS INC.

Mis en cause

VESTING ORDER

CONSIDERING Petitioner's *Motion for the Issuance of an Order authorizing the sale of certain assets of the Petitioner* (the "**Motion**");

CONSIDERING the representations of the parties;

CONSIDERING the Monitor's Fifteenth Report;

GIVEN the provisions of the Companies' Creditors Arrangement Act (the "**CCAA**");

FOR THESE REASONS, THE COURT:

- [1] **AUTHORIZES AND APPROVES** the execution by Petitioner, 8547335 Canada Inc., 3609979 Canada Inc., Bart Kitner, XRF Scientific Limited and Kitco Logistics Inc. of the Asset Purchase Agreement filed under confidential seal as Exhibit R-1 to the Motion (the "**APA**") and the completion of all the transactions contemplated therein, including the execution of the Transaction Agreements as this term defined in the APA (the "**Proposed Transactions**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor;
- [2] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Proposed Transactions and that no shareholder or regulatory approval shall be required in connection therewith save and except for those contemplated in the APA;
- [3] **ORDERS AND DECLARES** that upon the filing of a Monitor's certificate, substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), with this Court's registry, all right, title and interest in and to the Business Assets as defined in the APA (the "**Business Assets**"), shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities, obligations, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens,


assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), pledges, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory or otherwise), restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Business Assets Encumbrances**"), including without limiting the generality of the foregoing: (i) any Business Assets Encumbrances created by the Order issued on July 7, 2011 by the undersigned and/or any other CCAA order; and, for greater certainty, **ORDERS** that all of the Business Assets Encumbrances affecting or relating to the Business Assets, be expunged and discharged as against the Business Assets, upon the filing of the Monitor's Certificate with this Court's registry;

- [4] **ORDERS** that upon the filing of the Monitor's Certificate with this Court's registry, the Petitioner shall be authorized to take all such steps as may be necessary to effect the discharge of all liens, charges and encumbrances registered against the Business Assets, including by way of further application to this Court;
- [5] **ORDERS** that the sum of \$1.7 million to be received from the sale of the Business Assets, shall be remitted to the attorney for the Monitor, Woods LLP, to be held in trust in an interest bearing account or instrument guaranteed by a chartered bank, until further order of the Court;
- [6] **ORDERS** that notwithstanding:
 - i) the proceedings under the CCAA;
 - ii) any petitions for a receiving order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act ("**BIA**") and any order issued pursuant to any such petition; or

iii) the provisions of any federal or provincial legislation;

the vesting of the Business Assets, contemplated in this Vesting Order, as well as the execution of the APA pursuant to this Vesting Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA;

- [7] **ORDERS AND DECLARES** that the Petitioner and 8547335 Canada Inc. shall be at liberty to apply for such further and other directions as may be necessary to carry out the terms of this Order; and
- [8] **ORDERS** the provisional execution of this Vesting Order notwithstanding any appeal and without the necessity of furnishing any security.
- [9] **WITHOUT COSTS.**

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THE HONOURABLE MARK SCHRAGER, J.S.C