

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

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**MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF  
CERTAIN ASSETS OF THE PETITIONER  
(Platinum/Industrial Division)**

**(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)**

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**TO THE HONOURABLE MARK SCHRAGER, J.S.C., SITTING IN COMMERCIAL DIVISION,  
IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER RESPECTFULLY SUBMITS  
AS FOLLOWS:**

**A. PREAMBLE**

1. On July 7, 2011, this honourable Court issued an order (as amended, the “**Initial Order**”) pursuant to the Companies’ Creditors Arrangement Act (the “**CCAA**”) in respect of the Petitioner, Kitco Metals Inc. (“**Kitco**”);
2. Pursuant to the terms of the Initial Order, Richter Advisory Group Inc. (formerly RSM Richter Inc.), was named monitor of Kitco;
3. Any undefined capitalized expression used herein shall have the meanings set forth in the Initial Order and in the APA (as defined hereinafter);

**B. ORDERS SOUGHT**

4. Kitco hereby seeks the issuance of the following orders in connection with the sale of its Industrial Division (as defined hereinafter) to 8547335 Canada Inc.:
  - a. An order authorizing and approving the execution by Kitco, 8547335 Canada Inc., 3609979 Canada Inc., Bart Kitner, XRF Scientific Limited and Kitco Logistics of the agreement entitled “*Asset Purchase Agreement*” (the “**APA**”), as well as certain other related Transaction Agreements referred to therein, a copy of which is communicated herewith *en liasse* under confidential seal as **Exhibit R-1**;
  - b. The issuance of a vesting order in connection with the transactions contemplated in the APA; and

the whole as set forth in the draft order (the “**Approval and Vesting Order**”) communicated herewith as **Exhibit R-2**;

5. The APA contemplates the sale of all the Vendors’ rights, title and interest in and to Kitco’s industrial/platinum ware division (as more fully set out in the APA), a small, non-core segment of Kitco’s business that consists of the distribution of platinum lab ware to various users, including cement and aluminum plants, soil analysis laboratories and others (the “**Industrial Division**”);
6. The APA further contemplates the execution of the following ancillary Transaction Agreements:
  - a. A sub-lease agreement between Kitco and 8547335 Canada Inc. (“**8547335**”) pursuant to which Kitco will grant to 8547335 the right to occupy a small and unused portion of its rented premises, to be used by 8547335 as office accommodation;
  - b. A metal supply agreement pursuant to which Kitco will supply inventory to 8547335 at cost for a period of two (2) years;
  - c. A service agreement between Kitco Logistics Inc. and 8547335 pursuant to which Kitco Logistics Inc. will provide metal processing services and inventory holding facilities to 8547335 at Kitco Logistics Inc.’s warehouse located in Rouses Point, New York, United States of America.

**C. BACKGROUND**

7. As more fully described in the Monitor's Fifteenth Report, XRF Scientific Limited ("**XRF**") approached Kitco in March 2012, expressing interest in the potential acquisition of Kitco's Industrial Division;
8. At the hearing of Kitco's *Motion for a Fourth extension of the Initial Order* held on October 15, 2012, counsel for Kitco informed this honourable Court that Kitco sought to explore this unsolicited offer further and that it may seek the assistance of the Monitor to establish and conduct an appropriate sale process;
9. In November 2012, Kitco did proceed to request the assistance of the Monitor and, together, they established a structured solicitation and sale process with the objective of maximizing realization;
10. While this process is more fully detailed in the Monitor's Fifteenth (15th) Report, it may be summarized as follows:
  - a. Kitco and the Monitor worked together to identify as many potential acquirers as possible;
  - b. In December 2012, an information circular was sent to over twenty potential acquirers located in North America, Europe, Asia and Australia providing a high-level overview of the investment opportunity and granting until January 18, 2013 to present offers;
  - c. Interested parties were invited to execute a confidentiality agreement in order to gain access to a data room set up by the Monitor;
  - d. In total, four confidentiality agreements were signed;
  - e. Ultimately, XRF was the only party to make an offer, which it did on January 17, 2013. Serious discussions ensued between the parties;
11. Those discussions ended in March 2013 after the parties failed to reach an agreement; however, XRF contacted Kitco in April 2013 with a view to restarting discussions, which ultimately led to the transaction for which approval is sought herein. 8547335 is a wholly owned subsidiary of XRF designated by the latter to proceed with the transaction;
12. While the terms and conditions of the APA are summarized in the Monitor's Fifteenth Report, the assets to be sold essentially consist of the following components of the Industrial Division:
  - a. Goodwill;
  - b. Physical Assets;
  - c. Business Records;
  - d. Domain Name Licenses;
  - e. Intellectual Property;

13. Moreover, 8547335 will offer continued employment to the Kitco employees currently responsible for the Industrial Division;
14. It is currently expected that the transactions contemplated in the APA will close on or about July 21, 2013, subject to the satisfaction of the conditions set forth in the APA;

**D. GROUND FOR THIS MOTION**

15. Kitco submits that the sale of the Industrial Division as contemplated in the APA is in the best interest of all stakeholders in that, *inter alia*:
  - a. The Industrial Division is a small, non-core segment of Kitco's business and the sale will allow Kitco to focus on its core activities of refining, precious metals and media. Only about 1% of Kitco's annual sales are generated through the Industrial Division;
  - b. It could permit the growth of the Industrial Division beyond its current levels, which may represent a future source of revenue for Kitco as a supplier to this division;
  - c. XRF will become a client in Kitco's precious metals business and may become a customer for the media business;
  - d. The sale of the Industrial Division will have a positive impact on Kitco's projected financial results during the extension period requested pursuant to Kitco's Fifth (5<sup>th</sup>) Motion for an extension of the Initial Order filed concurrently with the present Motion, the whole as more fully appears from the Monitor's Fifteen Report and the revised cash flow attached thereto;
16. When excluding the cost of restructuring and the non-reimbursement of sales taxes by l'Agence du revenu du Québec ("**ARQ**"), Kitco would be a profitable company;
17. Kitco submits that it is appropriate for the APA (Exhibit R-1) to remain under seal even after the closing of the transaction given that the terms of the APA are such that Kitco and the Purchaser will remain involved in ongoing business;
18. Kitco respectfully submits that the present motion is well founded in fact and in law and should thus be granted in accordance with its conclusions;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** this *Motion for the Issuance of an Order Authorizing the Sale of Certain Assets* (the "**Motion**");

**DECLARE** that the notices given of the presentation of the Motion are adequate and sufficient;

**ISSUE** an order substantially in the form of the draft order communicated as Exhibit R-2 in support of the Motion;

**THE WHOLE** without costs, save and except in case of contested.

MONTREAL, June 20, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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And

**3069979 CANADA INC.**

and

**KITCO LOGISTICS INC.**

Mis en cause

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**AFFIDAVIT OF DENIS MAJEAU**

I, the undersigned, Denis Majeau, Chief Financial Officer, domiciled and residing at 1245 Les Abymes, Boucherville J4B 8C6, province of Quebec, solemnly declare as follows:

1. I am the Chief Financial Officer of Petitioner, Kitco Metals Inc.;
2. All the facts alleged in the present Motion for the Issuance of an Order Authorizing the Sale of Certain Assets are true.

AND I HAVE SIGNED:



DENIS MAJEAU

SWORN TO before me in Montreal  
this June 20, 2013



Commissioner for Oaths for the province  
of Quebec



CANADA

PROVINCE OF QUÉBEC  
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N°: 500-11-040900-116

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And

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and

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Mis en cause

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**NOTICE OF PRESENTATION**

TO: Me Gary Rivard  
-and-  
ME MARIE-JOSÉE HOGUE  
HEENAN BLAIKIE S.E.N.C.R.L., S.R.L.  
1250 René-Lévesque West, Suite 2500  
Montréal, Quebec H3B 4Y1

*Under reserve and without admission*

Me Isabelle Desharnais  
BORDEN LADNER GERVAIS  
1000, de la Gauchetière Ouest  
Bureau 900  
Montréal, Québec H3B 5H4

*Attorneys for G4S*



Me Sylvain Vauclair  
WOODS S.E.N.C.R.L.  
2000 avenue McGill College  
Bureau 1700  
Montréal QC H3A 3H3

*Attorneys for RSM Richter Inc.*

Me Bertrand Giroux  
BCF AVOCATS  
1100, boul. René-Lévesque Ouest  
25e étage  
Montréal (Québec) H3B 5C9

*Attorneys for 8547335 Canada Inc. and  
XRF Scientific Limited*

Me Joseph Reynaud  
-and-  
Me Jean Fontaine  
STIKEMAN ELLIOTT  
1155 René-Lévesque Blvd West, 40th Floor  
Montreal, Quebec H3B 3V2

*Attorneys for Heraeus*

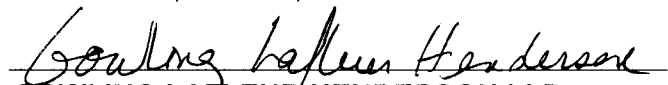
L'AGENCE DU REVENU DU QUÉBEC  
3 complexe Desjardins  
22<sup>e</sup> étage  
Montréal, Québec H5B 1A7

### **NOTICE OF PRESENTATION**

**TAKE NOTICE** that the present *Motion for the issuance of an order authorizing the sale of certain assets of the petitioner (industrial division)* will be presented for adjudication before one of the honourable Judges of the Superior Court of Quebec, sitting in practice division, on **June 25, 2013** in room 16.12 of the Courthouse located at 1 Notre-Dame St. East, Montreal, at 9:15 am or so soon as counsel may be heard

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, June 20, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

No. 500-11-040900-116

SUPERIOR COURT  
(COMMERCIAL DIVISION)  
DISTRICT OF MONTRÉAL

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**8547335 CANADA INC. et al.**

Mis en cause

MOTION FOR THE ISSUANCE OF AN ORDER  
AUTHORIZING THE SALE OF CERTAIN ASSETS  
OF THE PETITIONER  
(Platinum/Industrial Division)  
(Section 11 of the Companies' Creditors  
Arrangement Act, R.S.C. 1985, c. C-36)

ORIGINAL

Me Patrice Benoit BL0052  
**Gowling Lafleur Henderson LLP**  
1 Place Ville Marie, 37<sup>th</sup> Floor  
Montréal, Québec  
Canada H3B 3P4  
Tel.: 514-392-9550 / Fax: 514-876-9550  
File No.: **L121970003**  
INIT.: PB/cl c/o 3511

**SUPERIOR COURT  
(Commercial division)**

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

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

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1985, c. C-36, AS AMENDED

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**3069979 CANADA INC.**

and

**KITCO LOGISTICS INC.**

Mis en cause

<p><b>(DRAFT) VESTING ORDER</b></p>
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**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 proceeds from the sale of the Business Assets, shall be remitted to Petitioner;
- [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 or any other applicable federal or provincial legislation, nor shall it give rise to an oppression or any other remedy; and

- [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

# SCHEDULE A

CANADA

PROVINCE OF QUEBEC  
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and

**KITCO LOGISTICS INC.**

Mis en cause

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<b>CERTIFICATE OF THE MONITOR</b>
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## RECITALS:

**WHEREAS** on July 7, 2011, the Superior Court of Quebec (the "**Court**") issued an order (the "**Initial Order**") pursuant to the Companies' Creditors Arrangement Act (the "**CCAA**") in respect of Kitco Metals Inc. (the "**Petitioner**"). Any undefined capitalized expression used herein has the meaning set forth in the Initial Order and in the Vesting Order (as defined below);

**WHEREAS** pursuant to the terms of the Initial Order, Richter Advisory Group Inc. (the "**Monitor**") was appointed monitor of the business and financial affairs of the Petitioner; and

**WHEREAS** on ● , 2013, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving 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 is 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.

**THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:**

- (a) the APA has been executed and delivered;
- (b) the portion of the Purchase Price (as defined in the APA) payable at closing and all applicable taxes have been paid;
- (c) all conditions to closing under the APA have been satisfied or waived by the parties thereto;
- (d) all obligations of the parties that are required to be satisfied at or prior to closing under the APA have been satisfied or waived pursuant to the terms of the APA.

This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_  
[DATE].

RICHTER ADVISORY GROUP INC., in its capacity as  
the Monitor in the matter of the plan of arrangement  
of KITCO METALS INC. (500-11-040900-116)

Name: \_\_\_\_\_

Title: \_\_\_\_\_