

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

FRIDAY, THE 9<sup>TH</sup>

JUSTICE MORAWETZ )

DAY OF MARCH, 2012 )



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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**Applicants**

**ORDER**

**(Re Authorization and Direction to Enter into the Stalking Horse Agreement,  
Approval of the Bidding Procedures and DIP Amendment, and Postponement of the  
Annual Meeting of Shareholders)**

**THIS MOTION**, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**"), for an order (a) authorizing and directing the Timminco Entities to enter into an Agreement of Purchase and Sale (the "**Stalking Horse Agreement**") with QSI Partners Ltd. (the "**Stalking Horse Bidder**"), as purchaser, and Globe Specialty Metals Inc., a corporation incorporated under the laws of Delaware, as guarantor, (b) approving certain protections granted to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement, (c) approving the Bidding Procedures (as defined below), (d) approving the DIP Amendment (as defined below), and (e) providing that Timminco shall not be required to hold any meeting of its shareholders during the Stay Period (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Peter A.M. Kalins sworn March 2, 2012 and the Exhibits attached thereto (the "March 2 Affidavit"), the Fourth Report of FTI Consulting Canada Inc. in its capacity as the Court-appointed Monitor of the Timminco Entities (the "Monitor"), and on being advised that those parties disclosed on the Service List attached to the Notice of Motion as Schedule "A", including, Investissement Québec ("IQ") and Bank of America, N.A., and (b) the members of the pension plan committees for BSI's pension plans, La Section Locale 184 De Syndicat Canadien des Communciations, de l'Energie et du Papier ("CEP"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), the Financial Services Commission of Ontario ("FSCO"), and the Régie Des Rentes Du Québec, were served with the Notice of Motion and Motion Record, and on hearing the submissions of counsel for the Timminco Entities, the Monitor, IQ, the Stalking Horse Bidder, ~~How~~ Corning Canada, CEP, USW, AMG Advanced Metallurgical Group N.V., FSCO, and Mercer (Canada) Limited, in its capacity as the administrator of the Retirement Pension Plan for the Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Maria Konyukhova sworn March 5, 2012, filed,

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**SERVICE**

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

**STALKING HORSE AGREEMENT**

2. THIS COURT ORDERS that all capitalized terms used but not defined in this Order shall have the meaning assigned to them under the Stalking Horse Agreement.

3. **THIS COURT ORDERS** that the Timminco Entities are hereby authorized to execute the Stalking Horse Agreement *nunc pro tunc*, provided that nothing herein approves the sale of the Purchased Assets on the terms set out in the Stalking Horse Agreement, and that the validity of any sale of the Purchased Assets will be determined on a subsequent motion to be held in accordance with the Bidding Procedures.

4. **THIS COURT ORDERS** that the Bidding Procedures substantially in the form attached as Schedule "A" hereto are hereby approved.

5. **THIS COURT ORDERS** that the Timminco Entities and the Monitor are hereby authorized and directed to carry out the Bidding Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Bidding Procedures.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Timminco Entities may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Purchased Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Purchased Assets (the "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 Timminco Entities, or in the alternative destroy all such information. The purchaser of the Purchased Assets shall be entitled to continue to use the personal information provided to it, and related to the Purchased Assets, in a manner which is in all material respects identical to the prior use of such information by the Timminco Entities, and shall return all other personal information to the Timminco Entities, or ensure that all other personal information is destroyed.

7. **THIS COURT ORDERS** that the payment and priority of the Expense Reimbursement in the amount of C\$500,000 to the Stalking Horse Bidder in accordance

with sections 6.10(a) and 7.2 of the Stalking Horse Agreement is hereby approved and, in the event that the Successful Bidder is not the Stalking Horse Bidder and the transactions contemplated by the Successful Bid are completed, the Timminco Entities are hereby authorized and directed to pay the Expense Reimbursement to the Stalking Horse Bidder out of the sale proceeds derived from and upon completion of the Successful Bid.

#### **APPROVAL OF THE DIP AMENDMENT**

8. **THIS COURT ORDERS** that the amendment to the DIP Agreement dated January 18, 2012 between QSI Partners Ltd. and the Timminco Entities (the "DIP Agreement") entered into by the Timminco Entities and QSI Partners Ltd. on March 1, 2012 (the "DIP Amendment") is hereby approved.

9. **THIS COURT ORDERS** that paragraph 7 of the Order of Justice Morawetz dated February 8, 2012 is hereby amended as follows:

7. **THIS COURT ORDERS** that subject to paragraph 6 hereof and subject to Section 5 of the DIP Agreement, as amended by the Amending Agreement between the DIP Lender and Timminco Entities dated March 1, 2012, the Monitor shall return to the DIP Lender the balance of the Maximum Amount held by the Monitor in the Monitor Account, together with any interest earned thereon and less any Bank Fees incurred, as of the date of transfer, by initiating a wire transfer to an account designated in writing by the DIP Lender and delivered to the Monitor in accordance with the notice provisions provided for in the DIP Agreement forthwith upon the Maturity Date (as defined in the DIP Agreement).

#### **POSTPONEMENT OF SHAREHOLDERS' MEETING**

10. **THIS COURT ORDERS** that during the Stay Period (as defined in the Initial Order of Justice Morawetz dated January 3, 2012), Timminco shall not be required to hold any meeting of its shareholders save and except as may be ordered by further Order of this Court.

**APPROVAL OF MONITOR REPORTS**

11. **THIS COURT ORDERS** that the Third Report of the Monitor dated January 24, 2012 and the activities of the Monitor described therein are hereby approved.

**GENERAL**

12. **THIS COURT ORDERS** that the Timminco Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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LE / DANS LE REGISTRE NO.:



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## Schedule "A"

### Bidding Procedures

On January 3, 2012, Timminco Limited ("Timminco") and Bécancour Silicon Inc. ("BSI", and together with Timminco, the "Debtors") commenced proceedings (the "CCAA Proceedings") under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") before the Ontario Superior Court of Justice (Commercial List) (the "Court") pursuant to an order granted by the Court on January 3, 2012 (as amended, the "Initial Order").

On March 2, 2012, the Debtors served a motion returnable on March 9, 2012 (the "Bidding Procedures Motion") with the Court seeking, among other things, approval of (a) the Debtors' entry into a certain agreement of purchase and sale for certain assets of the Debtors (the "Stalking Horse Assets") between the Debtors, QSI Partners Ltd. (the "Stalking Horse Bidder") and Globe Specialty Metals, Inc. dated March 1, 2012 (the "Stalking Horse Agreement") so as to set a minimum floor price in respect of the Debtors' sales process; (b) certain protections granted to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement; and (c) certain bidding procedures for the solicitation of offers or proposals (each a "Bid") for the acquisition of the Debtors' property, assets and undertakings, including a 51% interest in a joint venture with Dow Corning Canada, Inc. operated through Quebec Silicon Limited Partnership (collectively, the "Assets"), or some portion thereof.

On March 9, 2012, the Court entered an order (the "Bidding Procedures Order") granting the relief requested in the Bidding Procedures Motion including approval of these Bidding Procedures. Accordingly, the following procedures (the "Bidding Procedures") shall govern the proposed sale of all or substantially all of the Stalking Horse Assets pursuant to one or more Bids. These Bidding Procedures shall govern the Debtors' sales process relating to the solicitation by the Debtors of one or more Bids for the Assets, including the Stalking Horse Assets, that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

#### 1. Assets for Sale

The Debtors are soliciting superior offers for all or a portion of the Stalking Horse Assets.

#### 2. Bidding Deadlines

All Phase I Bids (as defined below) must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by each of the Notice Parties (as defined below) no later than 10:00 a.m. (Eastern time) on March 26, 2012 (the "Phase I Bid Deadline"). All Phase II Bids (as defined below) must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received no later than 10:00 a.m. (Eastern time) on April 16, 2012 (the "Phase II Bid Deadline"). Written copies of the

Bids shall be delivered by the applicable deadline to: (a) the Debtors, 150 King Street West, 2401, Toronto, Ontario, M5H 1J9, Attn: Peter Kalins, President, General Counsel and Corporate Secretary, PKalins@timminco.com; (b) counsel to the Debtors, Stikeman Elliott LLP, 199 Bay Street, 5300 Commerce Course West, Toronto, Ontario, M5L 1B9, Attn: Daphne MacKenzie, dmackenzie@stikeman.com; (c) the Court-appointed monitor of the Debtors, FTI Consulting Canada Inc. (the "Monitor"), TD Waterhouse Tower, 79 Wellington Street, Suite 2100, Toronto, Ontario M5K 1G8 Attn.: Nigel Meakin, nigel.meakin@fticonsulting.com; and (d) counsel to the Monitor, Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 2800, Toronto, Ontario M5L 1A9, Attn.: Linc Rogers, linc.rogers@blakes.com (collectively, the "Notice Parties"). A Bid received after the Phase I Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to all Notice Parties at the same time. Interested bidders requesting information about the qualification process, including a copy of the Stalking Horse Agreement, and information in connection with their due diligence, should contact the Monitor, FTI Consulting Canada Inc., Attention: Nigel Meakin, Senior Managing Director, TD Waterhouse Tower, 79 Wellington Street, Suite 2100, Toronto, Ontario, M5K 1G8, (416) 649-8065.

### 3. Participant Requirements

To participate in the process detailed by these Bidding Procedures and to otherwise be considered for any purpose hereunder, an interested party must submit an initial Bid (a "Phase I Bid") and each bidder submitting a Phase I Bid (a "Phase I Bidder") must be determined by the Debtors, with the assistance of their advisors and in consultation with the Monitor, to have satisfactorily provided the Debtors and the Monitor with each of the following on or before the Phase I Bid Deadline (collectively, the "Participant Requirements"):

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding Expression of Interest. An executed non-binding indication of interest satisfactory to the Debtors that must reasonably identify the contemplated transaction, including the assets proposed to be acquired, the proposed purchase price, and any contingencies, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the Phase I Bidder's chief executive officer or other appropriate senior executive's approval of the Phase I Bid; provided, however, that, if the Phase I Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "Acquisition Entity"), then the Phase I Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Phase I Bid by the equity holder(s) of such Phase I Bidder and any guarantor of the Bid (the "Principals");

- (d) Confidentiality Agreement. If not already executed, an executed confidentiality and standstill agreement (the "Confidentiality Agreement") in form and substance acceptable to the Debtors and their counsel, and in any event a confidentiality and standstill agreement on substantially the same terms as the confidentiality and standstill agreement executed by the Stalking Horse Bidder; and
- (e) Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
  - (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);
  - (ii) contact names and numbers for verification of financing sources;
  - (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
  - (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Debtors shall determine, in their reasonable discretion, in consultation with their advisors, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

#### 4. Designation as Qualified Bidder

A "Qualified Phase I Bidder" is a Phase I Bidder that delivers the documents described in paragraphs (a) through (e) in Section 3 above, and that the Debtors, with the assistance of their advisors and in consultation with the Monitor, determine is reasonably likely to submit a binding bona fide offer that would result in greater value being received for the Stalking Horse Assets for the benefit of the Debtors' creditors than under the Stalking Horse Agreement and would be able to consummate a sale if selected as a Successful Bidder (as defined below).

A party who does not wish to purchase all or substantially all of the Stalking Horse Assets (a "Portion Bidder") may submit a Bid (a "Portion Bid") in respect of a smaller subset of such assets and shall constitute a Qualified Phase I Bidder if such Portion Bid satisfies the requirements in paragraphs (a) through (e) in Section 3 above.



Upon receipt from a Phase I Bidder of the information required under paragraphs (a) through (e) in Section 3 above the Debtors shall notify the Phase I Bidder with respect to whether it is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder (as defined below) for all purposes of these Bidding Procedures.

#### **5. Access to Due Diligence Materials**

Only parties that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information. If the Debtors determine that a Phase I Bidder who has satisfied the Participant Requirements does not constitute a Qualified Phase I Bidder, then such Phase I Bidder's right to receive due-diligence access or additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Qualified Phase I Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Phase II Bid Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets.

#### **6. Due Diligence From Bidders**

Each Qualified Phase I Bidder and each Qualified Phase II Bidder (each, a "Bidder") shall comply with all reasonable requests for additional information by the Debtors or the Monitor regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information will be a basis for the Debtors to determine that the Bidder is not a Qualified Phase I Bidder or Qualified Phase II Bidder, as applicable.

#### **7. Bidding Procedures**

The Debtors, with the assistance of their advisors and in consultation with the Monitor, shall: (a) determine whether a Phase I Bidder is a Qualified Phase I Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Phase I Bidders and Qualified Phase II Bidders, as applicable; and (d) negotiate offers made in accordance with these Bidding Procedures to purchase Assets. Subject to these Bidding Procedures and the Bidding Procedures Order, the Debtors, after consultation with the Monitor, shall have the right to adopt such other rules for these Bidding Procedures (including rules that may depart from those set forth herein), that in their reasonable business judgement will better promote the goals of these Bidding Procedures; provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior consent of the Stalking Horse Bidder or an order of the Court.

## 8. Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid (as defined below). To participate in the Auction (as defined below) a Qualified Phase I Bidder (including a Portion Bidder) must submit a Bid (a "Phase II Bid") that is determined by the Debtors, with the assistance of their advisors and in consultation with the Monitor, to satisfy each of the following conditions (a "Qualified Phase II Bid", and any party making such a Qualified Phase II Bid, a "Qualified Phase II Bidder"):

- (a) Written Submission of Modified APA and Commitment to Close. Qualified Phase I Bidders (other than the Stalking Horse Bidder) must submit a Phase II Bid by the Phase II Bid Deadline in the form of an executed mark-up of the Stalking Horse Agreement (each a "Modified APA") reflecting such Qualified Phase I Bidder's proposed changes to the Stalking Horse Agreement (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) Irrevocable. A Phase II Bid must be irrevocable until (i) June 20, 2012; or (ii) in the event the Phase II Bid is determined to be the Back-up Bid, July 20, 2012;
- (c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Phase II Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- (d) Financing Sources. A Phase II Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtors with appropriate contact information for such financing sources;
- (e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder, other than the Stalking Horse Bidder, to any break-up fee, expense reimbursement or similar type of payment;
- (f) Good-Faith Deposit. Each Phase II Bid must be accompanied by a cash deposit (the "Good Faith Deposit") equal to fifteen (15) percent of the total purchase price contemplated under the Modified APA that shall be paid to the Monitor, to be held by the Monitor in trust in accordance with these Bidding Procedures; and
- (g) Minimum Overbid. The aggregate consideration in a Phase II Bid must have a cash purchase price of at least the amount of the cash purchase price payable to the Debtors under the Stalking Horse Agreement of \$20,000,000, plus the Expense Reimbursement of \$500,000, plus \$250,000 for a total minimum consideration of \$20,750,000 (the "Minimum Overbid"); provided that any Portion Bidder shall not be subject to the Minimum Overbid;

provided further that any "Aggregated Bid" (as defined below) shall be subject to the Minimum Overbid.

## 9. Auction

Only if a Qualified Phase II Bid (other than the Stalking Horse Bid) is received by the Phase II Bid Deadline shall the Debtors conduct an auction (the "Auction") to determine the highest and/or best Bid with respect to the Stalking Horse Assets. As soon as practicable prior to the start of the Auction, the Debtors shall distribute a copy of the Opening Bid (as defined below) to all Qualified Phase II Bidders. The Auction shall commence on April 24, 2012, at 10:00 a.m. (Eastern Time) at the offices of Stikeman Elliott LLP, 199 Bay Street, 5300 Commerce Course West, Toronto, Ontario, M5L 1B9.

If no such Qualified Phase II Bid is received by the Phase II Bid Deadline, then the Auction shall not take place, the Stalking Horse Bidder shall be declared the Successful Bidder (as defined below), the Debtors shall seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing (as defined below) and the Monitor shall post notice of such facts on its website established in connection with the CCAA Proceedings.

If a Qualified Phase II Bid is received in accordance with these Bidding Procedures, the Auction shall be conducted according to the following procedures:

- (a) Participation At The Auction. Only a Qualified Phase II Bidder that has submitted a Qualified Phase II Bid is eligible to participate at the Auction; provided that the Debtors may allow any or all Portion Bidders that are Qualified Phase II Bidders to participate in the Auction. For greater certainty, the Stalking Horse Bidder is a Qualified Phase II Bidder and eligible to participate at this Auction. Only the authorized representatives (including counsel and other advisors) of each of the Qualified Phase II Bidders, the Debtors and the Monitor shall be permitted to attend at the Auction. Subject to Section 9(c)(v), during the Auction, the bidding shall begin with the highest Qualified Phase II Bid (the "Opening Bid") and each subsequent round of bidding shall continue in minimum increments of at least the Minimum Overbid Increment (as defined below). For greater certainty, a combination of Portion Bids that do not overlap for the Stalking Horse Assets sought to be purchased, and which, when totaled, exceed the Minimum Overbid (an "Aggregated Bid") may be determined to be the Opening Bid.
- (b) Debtors Shall Conduct The Auction. The Debtors and their professionals, in consultation with the Monitor, shall direct and preside over the Auction. At the start of the Auction, the Debtors shall provide the terms of the Opening Bid to all participating Qualified Phase II Bidders at the Auction and a blackline of such Opening Bid to the Stalking Horse Agreement. The determination of which Qualified Phase II Bid constitutes the Opening Bid shall take into account any factors the Debtors, with the assistance of their advisors and in consultation with the Monitor, reasonably deem relevant to the value of the Qualified Phase II Bid to the Debtors, including, among other

things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities, if any; (iii) the ability of the Qualified Phase II Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the Stalking Horse Agreement, if any, contemplated by the contemplated transaction documents (the "**Contemplated Transaction Documents**"), (viii) the net after-tax consideration to be received by the Debtors; and (ix) such other considerations as the Debtors deem relevant in their reasonable business judgement (collectively, the "**Bid Assessment Criteria**"). All Bids made after the Opening Bid shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Phase II Bidders that are participating in the Auction. The Debtors shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid and the Back-up Bid (as defined below).

- (c) Terms of Overbids. An "**Overbid**" is any Bid made at the Auction subsequent to the Debtors' announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Phase II Bidder must comply with the following conditions:

- (i) **Minimum Overbid Increment**

Any Overbid shall be made in increments of at least \$250,000 or such lower amount (such lower amount not to be less than \$100,000) as the Debtors may determine in order to facilitate the Auction (the "**Minimum Overbid Increment**"). When considering whether the Minimum Overbid Increment has been satisfied, the Debtors shall compare the Bids (including Aggregated Bids) only as they relate to the Stalking Horse Assets. The amount of the cash purchase price consideration of any Overbid shall not be less than the cash purchase price consideration of the Opening Bid; provided, that, without duplication, application of any amounts advanced to the Debtors under the DIP Facility between the Debtors and the Stalking Horse Bidder shall be considered as cash purchase price consideration in connection with any Overbid by the Stalking Horse Bidder.

- (ii) **Remaining terms are the same as for Qualified Phase II Bids**

Except as modified herein, an Overbid must comply with the conditions for a Qualified Phase II Bid set forth above, provided, however, that the Phase II Bid Deadline shall not apply.

Any Overbid made by a Qualified Phase II Bidder must provide that it remains irrevocable and binding on the Qualified Phase II Bidder

until (A) in the event such Qualified Phase II Bid is declared the Successful Bid, June 20, 2012; and (B) in the event such Qualified Phase II Bid is declared the Back-up Bid, July 20, 2012.

The Debtors shall credit the amount of the Expense Reimbursement to each and every Overbid submitted by the Stalking Horse Bidder at the Auction, meaning that if the Stalking Horse Bidder's subsequent Overbid is the then highest and/or best Overbid at the Auction, any subsequent Overbid must exceed the Stalking Horse Bidder's Overbid by the amount of the Expense Reimbursement and Minimum Overbid Increment.

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Phase II Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Phase II Bidder's ability to close the transaction proposed by such Overbid.

(iii) Announcing Overbids

At the end of each round of bidding, the Debtors shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid, and the resulting benefit to the Debtors' based on, among other things, the Bid Assessment Criteria. For greater certainty, an Aggregated Bid may be determined to be the highest and/or best Overbid.

(iv) Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgement, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Debtors and individual Qualified Phase II Bidders; (B) allow individual Qualified Phase II Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (D) give Qualified Phase II Bidders the opportunity to provide the Debtors and the Monitor with such additional evidence as they may require, in their reasonable business judgement, that the Qualified Phase II Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

(v) Portion Bids

Notwithstanding the forgoing, each Portion Bidder entitled to participate in the Auction shall be entitled to submit an Overbid (in a minimum increment to be determined by the Debtors) with respect to the Assets it is bidding on without being required to submit an Overbid with respect to all Assets subject to the Stalking Horse Agreement or the applicable Opening Bid; provided that any Aggregated Bid that is an Overbid shall be subject to these Auction procedures as any other Overbid, including that such Aggregated Bid that is an Overbid shall be subject to the Minimum Overbid Increment described in section 9(c)(i). As part of any Overbid, the Stalking Horse Bidder shall be entitled to make a Portion Bid.

For greater certainty, to the extent any Portion Bid or an Aggregated Bid is the Successful Bid (including through the deeming of the Backup Bid as the Successful Bid), including any Portion Bid or Aggregated Bid where the Stalking Horse Bidder is also a Portion Bidder, the Stalking Horse Bidder shall not be obliged to complete the transactions under the Stalking Horse Agreement or purchase any subset of assets or assume any subset of liabilities which are not covered by such Portion Bid or Aggregated Bid.

(vi) Failure to Bid

If at the end of any round of bidding a Qualified Phase II Bidder (other than a Portion Bidder, or the Qualified Phase II Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Phase II Bidder shall not be entitled to continue to participate in the next round of the Auction.

- (d) Additional Procedures. The Debtors may, with the assistance of their advisors and in consultation with the Monitor, adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of these Bidding Procedures or the Bidding Procedures Order; provided that the adoption of any rule that materially deviates from the Auction procedures set forth herein shall require the prior written consent of the Stalking Horse Bidder or an Order of the Court; and provided further that no such rules may change the requirement that all Overbids shall be made and received in one room, within a defined period, on an open basis, and all other Qualified Phase II Bidders (that have not failed to make an Overbid in a prior round of bidding) shall be entitled to be present for all bidding with the understanding that the true identity of each Qualified Phase II Bidder - i.e., Principals submitting the Bid - shall be fully disclosed to all other Qualified Phase II Bidders and that all material terms of the then highest and/or best Overbid at the end of each

round of bidding will be fully disclosed to all other Qualified Phase II Bidders.

- (e) Closing the Auction. Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall, with the assistance of their advisors and in consultation with the Monitor, (i) immediately review the final Overbid of each Qualified Phase II Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest and/or best Overbid or Opening Bid (the "Successful Bid" and the entity or entities submitting such Successful Bid, the "Successful Bidder"), and the next highest and/or best Overbid, Opening Bid, or Stalking Horse Agreement after the Successful Bid (the "Back-up Bid" and the entity or entities submitting such Back-up Bid, the "Back-Up Bidder"), and advise the Qualified Phase II Bidders of such determination. One or more Portion Bid(s) can form part of a Successful Bid and Back-up Bid so long as such Portion Bid(s) do not overlap in respect of the Assets sought to be purchased and in such case, such Portion Bidder(s) shall be included in the definition of Successful Bidder or Back-up Bidder, as applicable.
- (f) Consent to Jurisdiction as Condition to Bid. All Qualified Phase II Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.
- (g) Expense Reimbursement. In the event that the Stalking Horse Bidder is not the Successful Bidder (or in the event the Stalking Horse Bidder is the Back-up Bidder but does not become the Successful Bidder in accordance with section 13 hereof), the Stalking Horse Agreement shall be terminated pursuant to the Stalking Horse Agreement, and the Expense Reimbursement (in the amount of \$500,000) shall be immediately paid to the Stalking Horse Bidder from the proceeds received upon closing of the Successful Bid or the Back-up Bid. The obligation to pay the Expense Reimbursement under the Stalking Horse Agreement shall be absolute and unconditional and shall not be subject to any defense, claim, counterclaim, offset, recoupment or reduction of any kind whatsoever. Section 7.2 of the Stalking Horse Agreement and the rights and obligations created thereunder shall survive termination of the Stalking Horse Agreement.

#### 10. Acceptance of Successful Bid

The Debtors shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Debtors will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Debtors will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

### **11. "As Is, Where Is"**

The sale of Assets pursuant to these Bidding Procedures shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the Stalking Horse Agreement or the purchase agreement of another Successful Bidder. The Stalking Horse Bidder and each Qualified Phase II Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets shall be set forth in the Stalking Horse Agreement, or (b) as to another Successful Bidder, the terms of the sale of the Assets shall be set forth in the applicable purchase agreement

### **12. Free Of Any And All Encumbrances**

Except as otherwise provided in the Stalking Horse Agreement or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, and other than any permitted encumbrances under the Stalking Horse Agreement or another Successful Bidder's purchase agreement, the "Encumbrances") in accordance with a vesting order of the Court, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

### **13. Sale Hearing**

A hearing to approve the sale of Assets to the Successful Bidder shall be conducted by the Court within 28 days of the conclusion of the Auction at 330 University Avenue, Toronto, Ontario (the "Sale Hearing"). Following the approval of the sale to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate the sale in accordance with the terms and conditions of the purchase agreement of the Successful Bidder, the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Debtors on a conditional basis at the Sale Hearing, at the Debtors' discretion.



#### **14. Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Phase II Bidders shall be held in an interest-bearing account. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-Up Bidder shall be returned to such Qualified Phase II Bidders two (2) business days after the selection of the Successful Bidder and Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-Up Bidder shall be held in an interest-bearing account until two (2) business days after the closing of the transactions contemplated by the Successful Bid, and thereafter returned to the Back-Up Bidder. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase price of the transactions contemplated by the purchase agreement of the Back-Up Bidder at closing.

#### **15. Modifications and Reservations**

These Bidding Procedures may be modified or amended only upon the express written consent of the Debtors, after consultation with the Monitor, and, if such modification or amendment materially deviates from these Bidding Procedures, with the written consent of the Stalking Horse Bidder, or by order of the Court.

The Debtors may, after consultation with the Monitor, reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the CCAA, these Bidding Procedures, or the terms and conditions of sale, or (c) contrary to the best interests of the Debtors, their estates and creditors thereof.

#### **16. Investment Bid**

Notwithstanding any other provision of these Bidding Procedures, if a Qualified Phase II Bidder submits an investment bid involving a restructuring, recapitalization or other form of reorganization of the business and affairs of the Debtors, or either one of them, as a going concern or a plan of compromise and arrangement concerning the Debtors, or either one of them, which the Debtors, after consultation with the Monitor, consider would result in a greater value being received for the benefit of the Debtors' creditors than the Qualified Phase II Bids, then the Debtors may consider such investment bid a Qualified Phase II Bid and allow such Qualified Phase II Bidder to participate in the Auction, notwithstanding that such investment bid does not otherwise comply with the terms of Section 8 of these Bidding Procedures. In such case, the Debtors, with the assistance of their advisors and in consultation with the Monitor, may adopt appropriate rules to facilitate such Qualified Phase II Bidder's participation in the Auction.

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

Court File No. CV-12-9539-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

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

Proceeding commenced at Toronto

**ORDER**

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