

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE PROPOSAL OF
TORONTO GEAR WORKS LIMITED
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

PROPOSAL

TORONTO GEAR WORKS LIMITED of the City of Toronto, in the Province of Ontario, submits the following Proposal under the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

Definitions

1. In this Proposal:

- (a) **"Act"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
- (b) **"Administrative Fees and Expenses"** means:
 - (i) the proper fees and expenses of the Proposal Trustee, including their legal fees and disbursements; and
 - (ii) the legal fees and disbursements of the Debtor on and incidental to the making of this Proposal both before and after the Date of Filing and including the fees and expenses of and incidental to the negotiation, preparation, presentation, consideration and implementation of this Proposal, and all proceedings and matters relating to or arising out of this Proposal.
- (c) **"Approval Date"** means the date upon which the Order of the Court approving this Proposal becomes final and no longer subject to appeal.
- (d) **"Business Day"** means a day, other than a Saturday or Sunday or a day observed as a public holiday under the laws of the Province of Ontario or the federal laws of Canada applicable herein;
- (e) **"Claim"** means a claim provable under the Act. For greater certainty, the Claim of Her Majesty the Queen in Right of Canada with respect to the *Income Tax Act* (Canada) will include:
 - (i) liabilities under the *Income Tax Act* (Canada) that arise as a result of this Proposal and the implementation of its provisions; and

- (ii) the Debtor's liability under the *Income Tax Act* (Canada) for the period up to and including the filing date, for tax, interest and penalty;
- (f) **"Creditor"** means any Person having one or more Claim.
- (g) **"Court"** means the Ontario Superior Court of Justice in Bankruptcy and Insolvency.
- (h) **"Debtor"** means TORONTO GEAR WORKS LIMITED.
- (i) **"Employee Claims"** means claims of employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) of the *Act* if the Debtor became bankrupt on the Filing Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before Court approval of the Proposal;
- (j) **"Filing Date"** means the date upon which the Debtor filed its Notice of Intention to Make a Proposal under the *Act* with the office of the Official Receiver.
- (k) **"Inspectors"** means the individuals nominated and appointed to carry out the duties described in the Proposal pursuant to the *Act* and described in paragraph 29 hereof.
- (l) **"Levy"** means the levy payable to the Superintendent of Bankruptcy pursuant to Section 147 of the *Act*.
- (m) **"Non-Participating Creditors"** means the Claims which are otherwise the Claim of an Ordinary Unsecured Creditor but that will not participate in any dividend distribution under this Proposal.
- (n) **"Ordinary Unsecured Creditors"** means those Persons with unsecured Claims as at the Filing Date, including contingent or unliquidated Claims arising out of any transaction entered into prior to the Filing Date which are proven in accordance with the *Act*, except for those Claims:
 - (i) that have been finally and conclusively disallowed;
 - (ii) that may be contingent or unliquidated and found by the Court not to be a claim provable;
 - (iii) that are Claims by Secured Creditors or Preferred Creditors.
- (o) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;

- (p) **“Post Filing Goods and Services”** means the goods supplied, services rendered and other consideration given to the Debtor subsequent to the Filing Date.
- (q) **“Preferred Creditor”** means those creditors of the Debtor whose claims the *Act* directs be paid in priority to the claims of Ordinary Unsecured Creditors in a proposal made by a debtor, after payment of the proper fees and expenses of the Proposal Trustee and its counsel.
- (r) **“Proposal”** means the Proposal dated **February 24, 2015**.
- (s) **“Proposal Trustee”** means Link & Associates Inc. or its duly appointed successor or successors.
- (t) **“Secured Creditor”** means a Creditor holding a valid mortgage, hypothec, pledge, charge, lien, interest or privilege or security on or against the property of the Debtor or any part thereof as security for a Claim.
- (u) **“Trustee”** means Proposal Trustee.

Headings

- 2. The division of the Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein, are for convenience of reference only and are not to affect the construction or the interpretation of this Proposal.

General Intent

- 3. The purpose of this Proposal is to effect a compromise of the Claims of the Preferred and Ordinary Unsecured Creditors of the Debtor, with the expectation that Creditors will derive a greater benefit from a Proposal than a bankruptcy.

Secured Creditor Claims

- 4. This Proposal is not being made to the Secured Creditors and no claims of Secured Creditors will be affected by this Proposal. The Trustee is aware of the following Secured Creditors:
 - (i) B&B Manufacturing Inc. (“B&B”) – the Secured Claim of B&B has been extinguished effective February 23, 2015, pursuant to the terms of B&B’s purchase of certain assets of the Debtor.
 - (ii) Toyota Credit Canada Inc. (“TCCI”) – the Secured Claim of TCCI pursuant to two vehicles leases will be paid in accordance with arrangements made between the Debtor and TCCI.

Preferred Creditor Claims

5. Preferred Claims, if any, without interest, will be paid in priority to all Claims of Ordinary Creditors. The Trustee is not aware of any Preferred Claims.

Crown Claims

6. During the period between the Filing Date and the Approval Date, the Debtor shall pay and keep current Her Majesty in right of Canada and in right of Ontario all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the Income Tax Act (Canada) or otherwise as provided for in subsection 60(1.1) of the Act or any substantially similar provision of Ontario legislation.
7. All claims of Her Majesty in right of Canada or a province of a kind that are referenced in subsection 60(1.1) of the Act ("**Crown Claims**"), and that were outstanding at the Filing Date, shall be paid in full within six months after Court approval of the Proposal. The Trustee is not aware of any outstanding Crown Claims.

Landlord Claims

8. The Debtor terminated its lease on terms acceptable to the Landlord and is vacating its premises by February 28, 2015. The Trustee is not aware of any Landlord Claims.

Employee Claims

9. The Debtor shall pay to its employees and former employees any amount that would be payable under Section 136(1)(d) of the Act if the Debtor became bankrupt; such payment to be made immediately upon, and not later than 10 days following the Approval Date.
10. The Trustee is not aware of any unpaid wages or vacation pay which would constitute an Employee Claim as defined herein.

Claims of Ordinary Unsecured Creditors

11. Ordinary Unsecured Creditors consist primarily of claims from suppliers of goods and/or services, and claims of former employees for termination pay.
12. Ordinary Unsecured Creditors who have filed valid proofs of claim admitted by the Trustee or the Court, for Claims existing as of the Filing Date will receive a distribution from the Funds paid to the Proposal Trustee as set out below under the heading of "Proposal Terms – Creditor Dividend Payments".

Non-Participating Creditors

13. The Non-Participating Creditors will waive their right to file a proof of claim and participate in the dividend distribution under this Proposal, such waive being fully conditional upon both creditor and Court approval of this Proposal.

14. If this Proposal is not approved by the creditors, or the Court, or if it is approved and such approval is subsequently appealed successfully and the Debtor is placed into bankruptcy, the waivers provided by the Non-Participating Creditors shall be null and void, and the Non-Participating Creditors shall be entitled to file and prove their claims in the bankruptcy and participate as an Ordinary Unsecured Creditor.

Valuation of Claims

15. To the extent a Claim is a contingent claim, but is a provable claim and is capable of valuation by the Trustee, the Trustee shall value it.
16. A Claim which is contingent, provable and able to be valued, shall rank as a Claim of an Ordinary Unsecured Creditor for the amount of its value, as determined by the Trustee or the Court.

Proposal Funding

17. The Debtor has paid to the Proposal Trustee sufficient funds to make the payments contemplated by this Proposal, from the proceeds of sale of certain assets of the Debtor for which Court approval was obtained on February 13, 2015.
18. From the funds paid to the Proposal Trustee for the purposes of funding this Proposal (the "**Proposal Funds**") the Debtor hereby offers payment of the sum of **\$165,000** to its Preferred and Ordinary Unsecured creditors.
19. For greater certainty, the Non-Participating Creditors (as defined herein) shall not participate in any dividend arising from this Proposal.

Proposal Terms – Creditor Dividend Payments

20. From the \$165,000 to be paid to the Trustee pursuant to this Proposal, after payment of any priority Claims as set forth above, and less the payment of Administrative Fees and Expenses, the Trustee shall distribute dividends to the Ordinary Creditors as follows:
 - (i) each proven creditor shall receive up to the first \$3,807.63 of its claim (the "Base Amount");
 - (ii) each proven creditor owed in excess of the Base Amount will receive an additional amount (the "Additional Amount") equal to its pro rata share of the remaining Proposal Funds.
21. The Proposal Trustee shall pay a dividend no more than 30 days following the Approval Date.
22. Any and all payments made by the Proposal Trustee to the Creditors hereunder shall be paid net of levy payable under Section 147 of the Act.

Effect of Payment

23. Ordinary Unsecured Creditors and Preferred Creditors will accept the payments provided for in this Proposal in complete satisfaction of all their Claims, whether against the Debtor, its directors, officers or shareholders, and all liens, certificates of pending litigation, executions or any other similar charges or actions or proceedings in respect of such Claims will have not effect in law or in equity against the property, assets and undertaking of the Debtor.
24. Upon the making of all payments provided for in this part, any and all such liens, certificates of pending litigation, executions or other similar charges or actions will be forever discharged and released, dismissed or vacated without costs to the Debtor.

Proof of Claim

25. Creditors who do not file valid proofs of claim will not be entitled to receive payment under this Proposal and their Claims will be forever barred.

Administrative Fees and Expenses

26. The Administrative Fees and Expenses shall be paid in priority to all Claims and shall be a first charge thereon. Payment of all proper Administrative Fees and Expenses of the Trustee, on and incidental to the proceedings arising out of the Proposal, or in the bankruptcy, if any, will be made in priority to all claims.
27. The Trustee will be at liberty to withdraw and pay such Administrative Fees and Expenses at any time and from time-to-time subject to final approval by the Registrar in Bankruptcy upon completion of the Proposal. The Trustee's fees shall be billed based on the actual time incurred on the file and charged at its standard hourly rates, plus any applicable taxes. The Trustee's disbursements will be charged in addition to its fees based on the actual costs incurred and/or as allowed by tariff.
28. Notwithstanding the foregoing, the Debtor hereby agrees that it shall pay all Professional Fees and Costs of the Proposal Trustee and the legal costs of the Debtor and/or the Proposal Trustee on and incidental to the proceedings arising out of the Proposal, including preparation of the Proposal, such that the amount offered in this Proposal of \$165,000 is net of all Administrative Fees and Expenses, but is subject to Levy.

Inspectors

29. At the meeting of the Creditors to be held to consider the Proposal:
 - (a) the said Creditors may appoint one or more but not exceeding 5 persons to act as Inspectors whose powers will be limited to:
 - (i) the power to waive any defaults in the performance of any provisions of this Proposal;

- (ii) advising the Proposal Trustee from time to time with respect to any matter that the Proposal Trustee may refer to them;
 - (iii) advising the Proposal Trustee concerning any dispute which may arise as to the validity of Claims of Creditors under this Proposal including the settlement of same; and
 - (iv) authorizing an extension of the time for payments due from the Debtor to the Proposal Trustee or for distribution of dividends from the Proposal Trustee to the Ordinary Creditors.
- (b) Any decision, direction or act of the Inspectors may be referred to the Court by the Proposal Trustee and the Court may confirm, reverse or modify the decision, direction or act and make such order as it thinks just.
- (c) The authority and term of office of the Inspectors will terminate upon the Performance of the Proposal by the Debtor.

Goods or Services Given After Filing Date

30. Claims arising in respect of goods supplied, services rendered or other consideration given after the Filing Date will be paid by the Debtor in full in the ordinary course of business, and on regular trade terms, in priority to the claims of Ordinary Unsecured Creditors. The Proposal Trustee is not in any way responsible for ensuring that payment is made to any persons supplying post-filing goods and services. All Creditors hereby release and forever discharge the Proposal Trustee from any and all liability relating to the Debtor's non-payment of any liabilities arising from post-filing obligations set out herein.

Proposal Trustee

31. The Proposal Trustee is acting in its capacity as Trustee under the Proposal and is not acting in its personal capacity and will not be responsible or liable for any obligations of the Debtor. All monies payable under this Proposal shall be paid over to the Proposal Trustee who shall make the payment of all dividends in accordance with the terms of this Proposal. The Proposal Trustee shall at all time have the authority and powers of a Trustee under the Act, as they may be applicable, including the power to disallow claims.
32. Link & Associates Inc. is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of Link & Associates Inc. shall incur any obligations or liabilities in connection with this Proposal or in respect of the business or liabilities of the Debtor. Any payments made by the Proposal Trustee under the terms of this Proposal hereunder shall be made by the Proposal Trustee net of any levies payable or due under the Act. The assets of the Debtor shall not vest in the Trustee, but shall remain vested in the Debtor.

Release of Directors

33. Upon the Approval Date, each and every present and former director of the Debtor shall be released and discharged from any and all claims that arose before the Filing Date and that relate to the obligations of the Debtor where the director is by law liable in their capacity as director for payment of such obligations. This release shall have no force or effect if the Debtor fails to fully perform the Proposal as contemplated herein, and is subject to the exception set forth in Section 50(14) of the Act.

Non-Application of Sections 95-101 of the BIA

34. For the purposes of this Proposal, sections 95-101 (inclusive) of the *BIA* shall not apply.

Other

35. This Proposal will be fully performed for the purposes only of section 65.3 of the Act upon the payment to the Proposal Trustee of the Funds. The Proposal Trustee shall be entitled to, and may apply for, its discharge after having made the payments to the Creditors provided for herein.
36. After the Creditors' acceptance of the Proposal, the Debtor will proceed to have the Proposal approved by the Court and to have the Court make any ancillary orders that may be necessary or desirable. Creditors' acceptance of the Proposal shall constitute their consent to such ancillary Court Orders.

Binding Effect

37. The provisions of this Proposal will be binding on the Ordinary Creditors and the Debtor, and their respective heirs, executors, administrators, successors and assigns, upon the Approval Date.

Amendment of Proposal

38. This Proposal may be amended by the Debtor with the consent of the Trustee at any time prior to the conclusion of the meeting of Ordinary Creditors called to consider the Proposal, provided that any amendment made pursuant to this paragraph shall not reduce the rights and benefits given to the Ordinary Creditors under the Proposal before any such amendment, and provided further that any and all amendments shall be deemed to be effective as of the Filing Date of the Proposal.

Performance Certificate

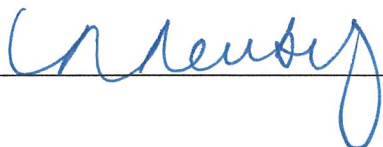
39. The Proposal Trustee will give the Debtor and the Official Receiver the certificate provided for in section 65.3 of the Act when all payments required under the Proposal have been made.

DATED at the City of Toronto, in the Province of Ontario, this 24th day of February, 2015.

Witness  _____

TORONTO GEAR WORKS LIMITED

Per:

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District of Ontario
Division No. 9 - Toronto
Court File No. 31-1954281
Estate File No. 31-1954281

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ONTARIO
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PROPOSAL

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TORONTO GEAR WORKS LIMITED
OF THE CITY OF TORONTO,
PROVINCE OF ONTARIO

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