

Court File No. 31-2636073  
Estate File No. 31-2636073

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,**  
**R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A**  
**PROPOSAL OF FERREX ENGINEERING LTD., OF THE CITY OF**  
**AJAX, IN THE PROVINCE OF ONTARIO**

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**MOTION RECORD**

**RETURNABLE MONDAY, MAY 4, 2020**

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**WALKER, HEAD**  
1315 Pickering Parkway  
Suite 800  
Pickering, Ontario  
L1V 7G5

**KYLE C. ARMAGON 49497F**  
Tel: 905-839-4484  
Fax: 905-420-1073

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF FERREX ENGINEERING LTD., OF THE CITY OF  
AJAX, IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION**

**FERREX ENGINEERING LTD.** (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Monday, May 4, 2020 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario, for an Order, *inter alia*, pursuant to Section 50.4(9) and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order substantially in the form attached at Tab 2 of the Motion Record, among other things:
  - (a) validating and abridging the time and manner of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) extending the time within which to file a proposal with the Official Receiver by the Company under section 62(1) of the BIA to June 18, 2020;
  - (c) approving the sale process (the “**Sale Process**”) as set out in the First Report of MNP Ltd. (“**MNP**”), in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”) (the “**First Report**”);
  - (d) authorizing the Proposal Trustee to conduct the Sale Process;
  - (e) granting a priority charge (the “**Administration Charge**”) in the amount of \$100,000 in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company, over all of the Company’s assets, properties and undertakings (the “**Property**”);
  - (f) approving the First Report and the activities of the Proposal Trustee set out therein; and
2. such other and further relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- 3. the Company is a corporation incorporated pursuant to the *Business Corporations Act* (Ontario) and its registered office address is located at the leased premises municipally known as 230 Westney Road South, Suite 300, Ajax, Ontario;
- 4. the Company is a multi-disciplinary professional services company that delivers an array of technical and strategic services, including engineering, automation systems and process control, information technology, project management and commissioning to the manufacturing industry;
- 5. the Company’s sole secured creditor is 1199541 Ontario Inc. (“**1199541**”) which is owed approximately CDN\$1,757,000. 1199541 holds a general security interest in all of the Company’s presently and after acquired property and it registered its security interest under the *Personal Property Security Act* (Ontario) on December 8, 2011;

6. in May 2016, the Company sold certain industrial equipment to SGM Magnetics Corporation (“**SGM**”). SGM purchased the equipment on behalf of its subsidiary, Micro Fines Recycling Oswego, LLC (“**Micro Fines**”);
7. in December 2017, Micro Fines commenced litigation against the Company before the U.S. District Court for the Northern District of New York (the “**U.S. Court**”) (the “**Micro Fines Litigation**”), seeking, *inter alia*, rescission of the contract in respect of the sale of the industrial equipment to SGM and asserted claims for breach of warranty;
8. in light of the cost associated with defending the Micro Fines Litigation and the Company’s distressed financial situation at that time, the Company did not file a defence in the Micro Fines Litigation and on February 24, 2020, the U.S. Court entered judgement against the Company in the amount of US\$538,874.39 (the “**Micro Fines Judgment**”);
9. on March 10, 2020, Micro Fines filed a motion before the U.S. Court seeking, *inter alia*, an order directing the Company to bring into the State of New York certain funds held in the Company’s Canadian bank accounts with the Royal Bank of Canada (“**RBC**”) so that Micro Fines and/or the U.S. Court may attach the funds for purposes of satisfying the Micro Fines Judgment (the “**Micro Fines Execution Motion**”);
10. if Micro Fines was successful on the Micro Fines Execution Motion, the Company would be forced to cease operations as it would not have the necessary liquidity to continue meeting its obligations to creditors;
11. further in that regard, the funds held in the Company’s RBC account are subject to 1199541’s prior-ranking security interest;
12. as a result, the Company filed a Notice of Intention to Make a Proposal (the “**NOI**”) on April 2 2020, pursuant to section 50.4(1) of the BIA, and MNP was named as Proposal Trustee (the “**NOI Proceedings**”);
13. the Company also commenced proceedings under Chapter 15 of the United States Code, 11 U.S.C. § 101 et seq., for recognition of the NOI Proceedings and was granted an Order

on April 22, 2020 temporarily staying all proceedings against the Company, including all efforts, such as the Micro Fines Execution Motion, to execute on the Company's assets (the "**Chapter 15 Proceedings**");

14. the principal purpose of the NOI Proceedings and the Chapter 15 Proceedings is to create a stabilized environment to allow the Company to continue operating as a going concern business while it works with the Proposal Trustee to restructure its affairs including by way of a going concern transaction in respect of the Company's assets and, in conjunction with the Proposal Trustee, run the Sale Process to solicit bids for the Company's assets;

#### **Approval of the Sale Process**

15. the Sale Process, which will be run by the Proposal Trustee, will look to maximize value for the Company's assets on an *en bloc* basis by soliciting offers from potential bidders;
16. the deadline for the submission of bids to the Proposal Trustee under the Sale Process shall be June 8, 2020 (the "**Bid Deadline**");
17. pursuant to the Sale Process, if more than one qualified bid is submitted by the Bid Deadline, the Company, in consultation with the Proposal Trustee, may accept one (or more if for distinct transactions) of the bids and take such necessary steps to finalize and complete a transaction or it may continue negotiations with one or more of the offerors;
18. the granting of the Administration Charge is reasonable as the Company will require the participation of its legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel to assist in the NOI proceedings and it proposes that the Administration Charge be granted by the Court in their favour;
19. at all material times since the filing of the NOI, the Company has acted, and continues to act, in good faith and with due diligence;
20. the current deadline by which the Company must file a proposal with the Official Receiver under the BIA is May 4, 2020 (the deadline is technically May 2, 2020, however that date falls on a Saturday);

21. the Company is seeking an extension of the deadline for it to file a proposal with the Official Receiver until June 18, 2020 to allow the Sale Process to be conducted and to close a transaction with the successful bidder;
22. the Company would likely be able to make a viable proposal if the extension is granted;
23. none of the Company's creditors will be materially prejudiced if the extension is granted;
24. such further and other grounds as set out in the First Report; and
25. Rules 1.04, 1.05, 2.01, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

**AND FURTHER TAKE NOTICE** that the following materials will be filed in support of the Company's motion, namely:

- (a) the affidavit of Thomas H. Clarkson sworn April 28, 2020;
- (b) the First Report; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

April 28, 2020

**WALKER HEAD**  
800-1315 Pickering Parkway  
Pickering, ON L1V 7G5

**KYLE C. ARMAGON 49497F**  
Tel: 905-839-4484  
Fax: 905-420-1073

**Lawyers for Ferrex Engineering Ltd.**



# TAB 2

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,**  
**R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A**  
**PROPOSAL OF FERREX ENGINEERING LTD., OF THE CITY OF**  
**AJAX, IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF THOMAS H. CLARKSON**  
**(SWORN APRIL 28, 2020)**

I, THOMAS H. CLARKSON, of the Town of Ajax in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a director and the President of Ferrex Engineering Ltd. (the “**Company**”) and have held those roles with the Company since 1983. I am also a 50% shareholder in the Company. As such, I have knowledge of the matters deposed to in this affidavit. Where the information set out in this affidavit is based upon information which I have received from others, I have stated the source of that information and believe it to be true.
2. This affidavit is sworn in support of the Company’s motion for, among other things, an extension of the time within which the Company is to file a proposal with the Official Receiver under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), approval of a sale process in respect of the Company’s assets (the “**Sale Process**”) to be conducted by MNP Ltd. (“**MNP**”), in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”) and approval of the Administration Charge (as defined below).

### **Background**

3. The Company is a corporation incorporated pursuant to the laws of Ontario with a registered office address located at the leased premises municipally known as 230 Westney Road South, Suite 300, Ajax, Ontario. Attached hereto as Exhibit "A" is a copy of the Company's corporation profile report.
4. The Company is a multi-disciplinary professional services company that delivers an array of technical and strategic services, including engineering, automation systems and process control, information technology, project management and commissioning to the manufacturing industry.
5. As at the date of this affidavit, the Company has a total of six (6) employees. Benefits are provided to the employees from Sun Life and no company supported pension plan.
6. The Company's sole secured creditor is 1199541 Ontario Inc. ("**1199541**") which is owed approximately CDN\$1,757,000. The Company's indebtedness to 1199541 is secured pursuant to a general security agreement dated November 1, 2011 (the "**1199541 GSA**"). I am the sole shareholder of 1199541. Attached hereto as Exhibit "**B**" is a copy of the 1199541 GSA.

### **Events Leading to the Filing of the NOI**

7. In May 2016, the Company sold certain industrial equipment to SGM Magnetics Corporation ("**SGM**"). SGM purchased the equipment on behalf of its subsidiary, Micro Fines Recycling Oswego, LLC ("**Micro Fines**").
8. In December 2017, Micro Fines commenced litigation against the Company before the U.S. District Court for the Northern District of New York (the "**U.S. Court**") (the "**Micro Fines Litigation**"), seeking, among other things, rescission of the contract in respect of the sale of the industrial equipment to SGM. Micro Fines also asserted claims against the Company for breach of warranty.
9. After considering the costs associated with defending the Micro Fines Litigation and the Company's distressed financial situation at that time, the Company did not file a defence

in the Micro Fines Litigation. In June 2018, Micro Fines requested that the clerk of the U.S. Court enter default against the Company for failing to appear in the Micro Fines Litigation. The clerk of the U.S. Court granted Micro Fines' request and an Entry of Default was made against the Company.

10. In August 2019, Micro Fines filed a motion for entry of default judgment against the Company and on February 24, 2020, the U.S. Court entered judgement against the Company in the amount of US\$538,874.39 (the "**Micro Fines Judgment**"). Attached hereto as Exhibit "C" is a copy of the Micro Fines Judgment.
11. On March 10, 2020, Micro Fines filed a motion before the U.S. Court seeking, among other things, an order directing that funds on deposit in the Company's Canadian bank account held at the Royal Bank of Canada ("**RBC**") be brought into the State of New York so that Micro Fines and/or the U.S. Court may attach the funds for purposes of satisfying the Micro Fines Judgment (the "**Micro Fines Execution Motion**").
12. The Micro Fines Execution Motion was returnable on April 17, 2020. If Micro Fines was successful on the Micro Fines Execution Motion, the Company would be forced to cease operations as it would not have the necessary liquidity to continue meeting its obligations to creditors.
13. The funds held in the Company's RBC account are also subject to 1199541's security interest as they constitute part of the collateral referenced in the 1199541 GSA.
14. In light of the Micro Fines Judgment and the impending Micro Fines Execution Motion, the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") on April 2 2020, pursuant to section 50.4(1) of the BIA, and MNP was named as Proposal Trustee (the "**NOI Proceedings**"). Attached hereto as Exhibit "D" is a copy of the Certificate of Filing in respect of the NOI issued by the Office of the Superintendent in Bankruptcy.
15. The Company also commenced proceedings before the U.S. Court under Chapter 15 of the United States Code (the "**Chapter 15 Proceedings**") for recognition of the NOI Proceedings and was granted an Order on April 22, 2020 temporarily staying all proceedings against the Company, including all efforts, such as the Micro Fines

Execution Motion, to execute on the Company's assets (the "**Chapter 15 Temporary Order**"). Attached hereto as Exhibit "**E**" is a copy of the Chapter 15 Temporary Order.

**The NOI Proceedings and Sale Process**

16. The purpose of the NOI Proceedings and the Chapter 15 Proceedings is to provide a stable environment within which to allow the Company, under the supervision of the Proposal Trustee, to market its assets for sale as part of the Sale Process and to enter into a transaction with the successful bidder.
17. As described in the First Report of the Proposal Trustee filed in the NOI Proceedings, the Sale Process contemplates that the Proposal Trustee shall be responsible for the marketing and sale of the Company's assets. The Company's assets will be marketed on an "as is, where is" basis. Furthermore, the assets will be offered on an *en bloc* basis only, such that any partial bids submitted to the Proposal Trustee will not be considered "qualified bids".
18. In marketing the Company's assets, the Proposal Trustee will establish a data room that prospective purchasers can access once they have executed a confidentiality agreement.
19. The terms of the Sale Process provide that to be considered a "qualified bidder", a bidder must, among other things, submit a deposit along with their bid which shall be in substantially the same form as the template asset purchase agreement that will be posted in the data room.
20. All qualified bids must be submitted to the Proposal Trustee by no later than 5:00PM EST on June 8, 2020 (the "**Bid Deadline**").
21. If one or more qualified bids are received by the Proposal Trustee by the Bid Deadline, the Company, in consultation with the Proposal Trustee, may accept one (or more if for distinct transactions) of the bids and take such necessary steps to finalize and complete a transaction or it may continue negotiations with one or more of the offerors.
22. Upon selection of a successful bid, the Company will seek the Court's approval of the bid.

### **Administration Charge**

23. The draft order sought by the Company contemplates a charge, up to the maximum amount of CDN\$100,000, being granted in favour of the Proposal Trustee, the Proposal Trustee's legal counsel and legal counsel to the Company (the "**Administration Charge**") to secure payment of their reasonable fees and disbursements incurred, both before and after the granting of the order, in respect of the NOI Proceedings.
24. I believe that the Administration Charge is necessary as the advice and assistance of the aforementioned professionals has been critical thus far in the Company's NOI Proceedings and will continue to be so, in particular as it relates to the conduct of the Sale Process.

### **Extension of Time to File a Proposal**

25. The current deadline by which the Company must file a proposal with the Official Receiver under the BIA is May 4, 2020 (technically the deadline is May 2, 2020, however, that date falls on a Saturday).
26. As set out above, the Bid Deadline under the Sale Process is June 8, 2020. As such, the Company is seeking an extension of the deadline for it to file a proposal with the Official Receiver until June 18, 2020 to allow the Sale Process to be conducted and to close a transaction with the successful bidder.
27. The Company is hopeful that the Sale Process will maximize value for the Company's assets and yield a transaction that the Company can close prior to the proposed extended deadline for the filing of a proposal with the Official Receiver. Further in that regard, the Company is working diligently and in good faith in an effort to put forward a viable proposal to its creditors and the extension of the BIA deadline is absolutely necessary in that regard.
28. I am not aware of any creditors that would be materially prejudiced if the extension is granted.

**Conclusion**

29. I swear this affidavit in support of the Company's motion for the relief set out in the Company's Notice of Motion dated April 28, 2020 and for no other or improper purpose.

Sworn before me at the Town of Ajax, in  
the Province of Ontario, this 28<sup>th</sup> day of )  
April 2020. )

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
**THOMAS H. CLARKSON**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FERREX ENGINEERING LTD., OF THE  
CITY OF AJAX, IN THE PROVINCE OF ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)  
  
PROCEEDINGS COMMENCED AT TORONTO**

**AFFIDAVIT OF THOMAS H. CLARKSON**  
(sworn April 28, 2020)

**WALKER HEAD**  
800-1315 Pickering Parkway  
Pickering, ON L1V 7G5

**KYLE C. ARMAGON 49497F**  
Tel: 905-839-4484  
Fax: 905-420-1073

Lawyers for Ferrex Engineering Ltd.



This is EXHIBIT "A"

referred to

in the Affidavit of

THOMAS H. CLARKSON

sworn before me, this 28<sup>th</sup> day

of April 2020



A commissioner, etc.  
Kyle C. Armagon

Request ID: 024385147  
Transaction ID: 75083432  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 09:56:28  
Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
545918	FERREX ENGINEERING LTD.	1983/05/05
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
230 WESTNEY ROAD SOUTH		NOT APPLICABLE
		<b>Amalgamation Ind.</b>
		NOT APPLICABLE
		<b>New Amal. Number</b>
		NOT APPLICABLE
		<b>Notice Date</b>
		NOT APPLICABLE
		<b>Letter Date</b>
		NOT APPLICABLE
<b>Mailing Address</b>		<b>Revival Date</b>
THOMAS H. CLARKSON, PRESIDENT 230 WESTNEY ROAD SOUTH		NOT APPLICABLE
		<b>Continuation Date</b>
		NOT APPLICABLE
		<b>Transferred Out Date</b>
		NOT APPLICABLE
		<b>Cancel/Inactive Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
	<b>Number of Directors</b>	<b>Date Commenced</b>
	<b>Minimum</b>	<b>in Ontario</b>
	<b>Maximum</b>	<b>Date Ceased</b>
	00001	<b>in Ontario</b>
	00010	NOT APPLICABLE
<b>Activity Classification</b>		NOT APPLICABLE
NOT AVAILABLE		

Request ID: 024385147  
Transaction ID: 75083432  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
Time Report Produced: 09:56:28  
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## CORPORATION PROFILE REPORT

**Ontario Corp Number**

545918

**Corporation Name**

FERREX ENGINEERING LTD.

**Corporate Name History**

FERREX ENGINEERING LTD.

**Effective Date**

1983/05/05

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:**

**Name (Individual / Corporation)**

THOMAS  
HERBERT  
CLARKSON

**Address**

230 WESTNEY ROAD SOUTH

Suite # 300  
AJAX  
ONTARIO  
CANADA L1S 7J5

**Date Began**

1983/05/05

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 024385147  
Transaction ID: 75083432  
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Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/03/30  
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## CORPORATION PROFILE REPORT

**Ontario Corp Number**

545918

**Corporation Name**

FERREX ENGINEERING LTD.

**Administrator:  
Name (Individual / Corporation)**

THOMAS  
HERBERT  
CLARKSON

**Address**

230 WESTNEY ROAD SOUTH  
  
Suite # 300  
AJAX  
ONTARIO  
CANADA L1S 7J5

**Date Began**

1983/05/05

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Administrator:  
Name (Individual / Corporation)**

THOMAS  
HERBERT  
CLARKSON

**Address**

230 WESTNEY ROAD SOUTH  
  
Suite # 300  
AJAX  
ONTARIO  
CANADA L1S 7J5

**Date Began**

2000/03/15

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

Request ID: 024385147  
Transaction ID: 75083432  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

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## CORPORATION PROFILE REPORT

**Ontario Corp Number**

545918

**Corporation Name**

FERREX ENGINEERING LTD.

**Administrator:  
Name (Individual / Corporation)**

THOMAS  
HERBERT  
CLARKSON

**Address**

230 WESTNEY ROAD SOUTH  
  
Suite # 300  
AJAX  
ONTARIO  
CANADA L1S 7J5

**Date Began**

2000/03/15

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

TREASURER

**Resident Canadian**

Y

**Administrator:  
Name (Individual / Corporation)**

GERALDINE  
CLARKSON

**Address**

230 WESTNEY ROAD SOUTH  
  
Suite # 300  
AJAX  
ONTARIO  
CANADA L1S 7J5

**Date Began**

2000/03/15

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

Request ID: 024385147  
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Province of Ontario  
Ministry of Government Services

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## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

545918

FERREX ENGINEERING LTD.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2019	1C	2019/08/18 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

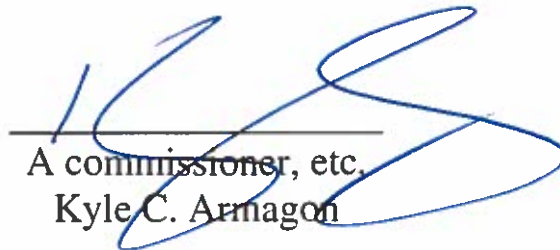
This is EXHIBIT "B"  
referred to

in the Affidavit of

THOMAS H. CLARKSON

sworn before me, this 28<sup>th</sup> day

of April 2020



A commissioner, etc.  
Kyle C. Armagon

## GENERAL SECURITY AGREEMENT

### A. OBLIGATIONS SECURED

1. The undersigned (hereinafter called the "Debtor") hereby enters into this General Security Agreement with **1199541 ONTARIO INC.** (hereinafter called the "Secured Party") for valuable consideration and as security for the payment of all present and future indebtedness of the Debtor to the Secured Party and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, joint or several, of the Debtor to the Secured Party whether as principal or surety (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). Insofar as it affects personal property located in Ontario, this General Security Agreement is governed by the Ontario Personal Property Security Act (the "Act").

### B. GRANT OF MORTGAGES, CHARGES AND SECURITY INTERESTS

2. The Debtor hereby:

(a) mortgages and charges to and in favour of the Secured Party as and by way of a fixed and specific mortgage and charge, and grants to the Secured Party a security interest in, all its present and future equipment, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired and any equipment specifically listed or otherwise described in any schedule hereto;

(b) mortgages and charges to the Secured Party and grants to the Secured Party a security interest in all its present and future inventory, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;

(c) mortgages and charges to the Secured Party and grants to the Secured Party a security interest in all its present and future patents, industrial designs, trade-marks, trade secrets and know-how, including, without limiting the generality of the foregoing, all environmental technology and biotechnology, confidential information, trade-names, goodwill, copyrights, personality rights, plant breeders' rights, integrated circuit topographies, software and all other forms of intellectual and industrial property, and any registrations and applications for registration of any of the foregoing;



(d) assigns, transfers and sets over to the Secured Party, and grants to the Secured Party a security interest in, all its present and future intangibles, including, without limiting the generality of the foregoing, all its present and future book debts, accounts and other amounts receivable, contract rights and choses in action of every kind or nature including insurance rights arising from or out of the assets referred to in subclauses (a), (b) and (c) hereof, chattel paper, instruments of title, investments, money and securities;

(e) charges in favour of the Secured Party as and by way of a floating charge, and grants to the Secured Party a security interest in, its business and undertaking and all its property and assets, real and personal, moveable or immovable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage, charge or security interest by subclauses (a), (b), (c) and (d) hereof and the exceptions hereinafter contained); and

(f) assigns, mortgages and charges in favour of the Secured Party and grants to the Secured Party a security interest in the proceeds arising from any of the assets referred to in this clause 2.

For the purposes of this General Security Agreement, the equipment, inventory, intellectual property, intangibles, undertaking, proceeds and all other property and assets of the Debtor referred to in this clause 2 are hereinafter collectively called the "Collateral".

C. LOCATION OF COLLATERAL

3. The Debtor hereby represents and warrants to the Secured Party that the Collateral is presently at the following location in Ontario:

**230 Westney Road South, Suite 300  
Ajax, Ontario L1S 7J5**

4. The Collateral now situate in the Province of Ontario is on the date hereof primarily situate or located at the location(s) set out in clause 3 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places in Ontario while in transit to and from such locations and premises and the Collateral may from time to time be situate or located at any other place in Ontario when on lease or consignment to any lessee or consignee from the Debtor.

D. LIMITED EXCEPTIONS TO GRANT OF CHARGE

5. The last day of any term reserved by any lease, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the mortgages, charges and security interests hereby or by any other instrument created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct. There shall also be excluded from the security interests granted in this General Security Agreement any property of the Debtor that constitutes consumer goods.

E. AGREEMENTS OF THE DEBTOR

6. The Debtor and the Secured Party agree that they have not agreed to postpone the time for attachment of the security interests granted hereby with respect to the Debtor's presently existing Collateral and that such security interests shall attach to the Collateral acquired after the date hereof as soon as the Debtor has rights in such Collateral.

7. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied or paid in full:

(a) it will not, without the prior written consent of the Secured Party:

- (i) change the location of its chief executive office or place of business without providing the Secured Party with fifteen (15) days' prior written notice;
- (ii) remove the Collateral from the location(s) listed in clause 3 hereof unless such removal is a sale of the Collateral as permitted by the Secured Party or keep the Collateral at a location other than the location(s) listed in clause 3 hereof; and

(b) it will:

- (i) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the security interests granted in this General Security Agreement become enforceable or any of the Collateral is sold other than as permitted by the Secured Party;
- (ii) keep the then existing Collateral in good condition and repair according to the nature and description thereof, and the Secured Party

may, whenever it deems necessary, either in person or by agent, enter upon the Debtor's property and inspect the Collateral and the reasonable cost of such inspection shall be payable on demand and added to the Obligations and the Secured Party may make repairs as it deems necessary, and the cost thereof shall be payable on demand and added to the Obligations;

(iii) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party; and

(iv) permit the Secured Party at any time and from time to time, upon the security granted pursuant to this General Security Agreement having become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subclause (f) of clause 2 hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations.

8. The Debtor hereby agrees that it will at all times, both before and after default, do or cause to be done such additional things and execute and deliver or cause to be executed and delivered all such further acts and documents as the Secured Party may reasonably require for the better mortgaging, charging, transferring, assigning, confirming and granting of security interests in the present or future Collateral to the Secured Party.

#### F. DEFAULT

9. An event of default (hereinafter called an "Event of Default") shall be deemed to have occurred if any of the following events occur:

(a) the Debtor defaults in payment of the Obligations when they become due and payable under any provision hereof, provided the Debtor shall have five (5) days following written notice of such default to make good such default before the Debtor shall be deemed to be in default hereunder (provided that no period of grace shall apply if the failure to pay is the third failure within any one (1) year period);

(b) if the Debtor shall neglect to carry out or fail to observe any representation, warranty or covenant herein, or in any certificate or other document delivered pursuant hereto, provided the Debtor shall have ten (10) days following written notice of such default to make good such default before the Debtor shall be deemed to be in default hereunder;

- (c) if the Debtor ceases or threatens to cease carrying on its business or if a petition shall be filed, an order shall be made or an effective resolution be passed for the winding-up or liquidation of the Debtor;
- (d) if the Debtor defaults in the performance of any provision of, or an event of default occurs under, any agreement or instrument to which the Debtor is a party or by which it or any of its assets is bound, provided such default impacts negatively or detrimentally upon the Collateral;
- (e) if the Debtor shall become insolvent or make a bulk sale of its assets or if the Debtor makes a general assignment for the benefit of creditors, or any proceeding or filing is instituted or made by the Debtor seeking relief, or to adjudicate it a bankrupt or insolvent, or seeking the liquidation or winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its assets or takes any action to authorize or in furtherance of any of the foregoing; or
- (f) if any representation, warranty or covenant contained herein was false or misleading in any material respect at the time such representation, warranty or covenant was made.

Upon the occurrence of an Event of Default, the Secured Party may, in addition to any other rights or remedies provided for herein or at law or in equity, declare the Obligations to be immediately due and payable and the same shall forthwith become immediately due and payable, whereupon the same shall become so payable without presentation, demand, protest or further notice of any kind, all of which are hereby waived by the Debtor.

10. The Secured Party may in writing (and not otherwise) waive any breach by the Debtor of any of the provisions contained in this General Security Agreement or any default by the Debtor in the observance or performance of any provision of this General Security Agreement; provided always that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default, whether of the same or a different nature, or the rights resulting therefrom.

G. REMEDIES OF THE SECURED PARTY

11. Whenever the security granted pursuant to this General Security Agreement shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize such security and to enforce its rights by:

- (a) entry;
- (b) the appointment by instrument in writing of a receiver or receivers of the Collateral or any part thereof (which receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Secured Party or not and the Secured Party may remove any receiver or receivers so appointed and appoint another or others in his or their stead);
- (c) proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or
- (d) any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity.

In addition, the Secured Party may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up, or other judicial proceedings relating to the Debtor.

Any receiver or receivers so appointed shall have power to:

- (i) take possession of and to use the Collateral or any part thereof;
- (ii) carry on the business of the Debtor (including, but not limited to, the taking or defending of any actions or legal proceedings, and the doing or refraining from doing all other things as to the receiver may seem necessary or desirable in connection with the business, operations and affairs of the Debtor);
- (iii) borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor;
- (iv) further charge the Collateral in priority to the security interests of this General Security Agreement as security for money so borrowed; and

- (v) sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as the receiver shall determine.

The Secured Party shall not be responsible for any actions or errors of omission by the receiver or receivers in exercising any such powers.

In addition, the Secured Party may enter upon, use, occupy and possess the Collateral or any part thereof, free from all encumbrances, liens and charges without hindrance, interruption or denial of the same by the Debtor or by any other person or persons save only a landlord pursuant to its rights of reversion under any lease of real property on expiry of its term, and may lease or sell the whole or any part or parts of the Collateral. Any sale hereunder may be made by public auction, by public tender or by private contract, with or without notice and with or without advertising and without any other formality (except as required by law), all of which are hereby waived by the Debtor. Such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Secured Party in its sole discretion may seem advantageous. Such sale may take place whether or not the Secured Party has taken possession of the Collateral.

The Debtor agrees to pay to the Secured Party forthwith on demand all expenses incurred by the Secured Party in the preparation, perfection, administration and enforcement of this General Security Agreement (including without limitation expenses incurred in considering and protecting or improving the Secured Party's position, or attempting to do so, whether before or after default), all amounts borrowed by the receiver from the Secured Party as hereinbefore provided and all costs, charges, expenses and fees (including, without limiting the generality of the foregoing, the fees and expenses of any receiver and legal fees on a solicitor and client basis) of or incurred by the Secured Party and by any receiver or receivers or agent or agents appointed by the Secured Party in connection with the recovery or enforcing of payment of any moneys owing hereunder, whether by realization, by taking possession or otherwise. All such sums, together with interest thereon at the rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the security interests granted herein.

No remedy for the realization of the security interests granted herein or for the enforcement of the rights of the Secured Party shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this General Security Agreement includes a receiver and manager.

12. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this General Security Agreement) may be applied to such part or parts of

the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.

#### H. RIGHTS OF THE SECURED PARTY

13. The Secured Party may pay and satisfy the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any of the Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations and shall be secured by the security interests granted herein. In the event of the Secured Party satisfying any such lien, charge or encumbrance, it shall be entitled to all the equities and securities of the person or persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.

14. The Debtor grants to the Secured Party the right to set off against any and all accounts, credits or balances maintained by it with the Secured Party, the aggregate amount of any of the Obligations.

15. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other persons and securities as the Secured Party may see fit.

16. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor.

17. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof provided that no such assignment, transfer or delivery shall release the Debtor from any of the Obligations; and thereafter the Secured Party shall be fully discharged from all responsibility with respect to the Obligations and security, documents and instruments so assigned, transferred or delivered. Such transferee shall be vested with all powers and rights of the Secured Party under such security, documents or instruments but the Secured Party shall retain all rights and powers with respect to any such security, documents or instruments not so assigned, transferred or delivered. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

I. MISCELLANEOUS

18. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

19. Upon payment by the Debtor, its successors or permitted assigns, and the fulfilment of all the Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at **3592 Trimbles Lane, Greenwood, Ontario L0H 1H0**, and at the Debtor's expense, discharge this General Security Agreement.

20. This General Security Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario. For the purpose of legal proceedings, this General Security Agreement shall be deemed to have been made in the said Province and to be performed therein and the courts of that Province shall have jurisdiction over all disputes which may arise under this General Security Agreement. The Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

21. The headings in this General Security Agreement are included for convenience of reference only, and shall not constitute a part of this General Security Agreement for any other purpose.

22. This General Security Agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and shall be general and continuing security notwithstanding that the Obligations shall be at any time or from time to time fully satisfied or paid.

23. This General Security Agreement and all its provisions shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.

24. All notices, requests, demands or other communications (collectively "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid to such other party as follows:

(a) to the Debtor at: **230 Westney Road South, Suite 300  
Ajax, Ontario L1S 7J5**



(b) to the Secured Party at: **3592 Trimbles Lane**  
**Greenwood , Ontario L0H 1H0**

or at such other address as may be given by such person to the other parties hereto in writing from time to time.

All such Notices shall be deemed to have been received when delivered or transmitted, or, if mailed, 48 hours after 12:01 a.m. on the day following the day of the mailing thereof.

25. In construing this General Security Agreement, terms herein shall have the same meaning as defined in the Act, unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

IN WITNESS WHEREOF this General Security Agreement is dated the 1st day of November, 2011.

**FERREX ENGINEERING LTD.**

Per: \_\_\_\_\_

Name: Thomas H. Clarkson

Title: President

This is EXHIBIT "C"

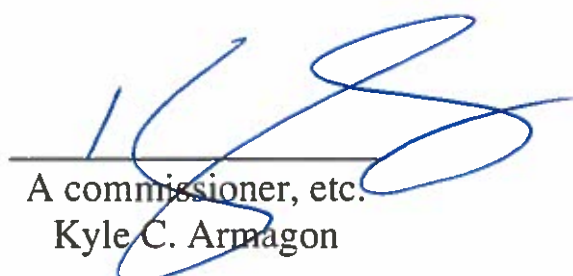
referred to

in the Affidavit of

THOMAS H. CLARKSON

sworn before me, this 28<sup>th</sup> day

of April 2020

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A commissioner, etc.  
Kyle C. Armagon

\*\*\*\*\* UNITED STATES DISTRICT COURT \*\*\*\*\*

NORTHERN

DISTRICT OF

NEW YORK

JUDGMENT IN A CIVIL CASE

DOCKET NO. 3:17-CV-1315 (LEK/ML)

MICRO FINES RECYCLING OWEGO LLC,

Plaintiff,

v.

FERREX ENGINEERING, LTD.,

Defendant.

         JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

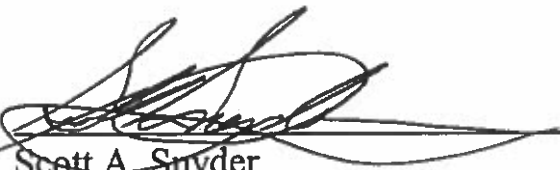
  XX   DECISION by COURT. This action came to trial or hearing before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED and ADJUDGED that in the above entitled action, the Court finds in favor of the Plaintiff and Default Judgment against the Defendant; IT IS FURTHER ORDERED that judgment in the amount of \$538,874.39 in liability and damages shall enter in favor of the plaintiff as against the defendant in accordance with the MEMORANDUM-DECISION and ORDER of the Honorable Lawrence E. Kahn, United States District Judge, dated February 24, 2020.

DATE: February 24, 2020

John M. Domurad

CLERK OF THE COURT



Scott A. Snyder  
Courtroom Deputy to the  
Honorable Lawrence E. Kahn

## Federal Rules of Appellate Procedure

### Rule 4. Appeal as of Right

#### (a) Appeal in a Civil Case.

##### 1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

##### (4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
- (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
- (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
- (iv) to alter or amend the judgment under Rule 59;
- (v) for a new trial under Rule 59; or
- (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice

of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

##### (5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

##### (7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

- (i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or
- (ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.

This is EXHIBIT “D”

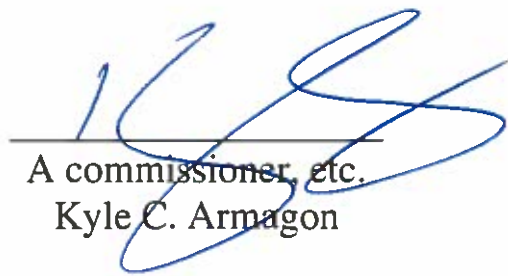
referred to

in the Affidavit of

THOMAS H. CLARKSON

sworn before me, this 28<sup>th</sup> day

of April 2020

A handwritten signature in blue ink, appearing to be 'K. Armagon', is written over a horizontal line. The signature is stylized and loops back under the line.

A commissioner, etc.  
Kyle C. Armagon



Industry Canada

Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2636073  
Estate No. 31-2636073

In the Matter of the Notice of Intention to make a  
proposal of:

**Ferrex Engineering Ltd.**  
Insolvent Person  
**MNP LTD / MNP LTÉE**  
Licensed Insolvency Trustee

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Date of the Notice of Intention: April 02, 2020

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**CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL**  
**Subsection 50.4 (1)**

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 02, 2020, 13:19

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**

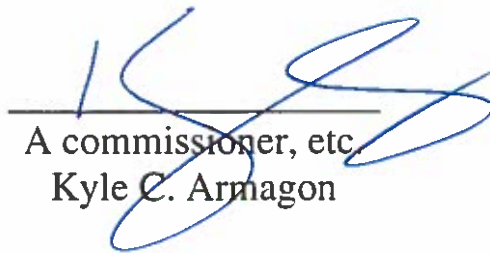
This is EXHIBIT "E"  
referred to

in the Affidavit of

THOMAS H. CLARKSON


sworn before me, this 28<sup>th</sup> day

of April 2020

  
A commissioner, etc.  
Kyle C. Armagon

So Ordered.

Signed this 22 day of April, 2020.



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Robert E. Littlefield, Jr.

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

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In re:

Chapter 15

FERREX ENGINEERING LTD.

Case No.: 20-10638

Debtor in a Foreign Proceeding.

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**ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER**

Ferrex Engineering Ltd. (the "Debtor") is the debtor and authorized foreign representative as defined by Section 101(24) of Title 11 of the United States Code (the "Bankruptcy Code") in a proceeding under Canada's Bankruptcy and Insolvency Act (the "Canadian Proceeding").

On April 20, 2020, the Debtor commenced this Chapter 15 case (the "Chapter 15 Case") by filing, pursuant to Sections 1504 and 1515 of the Bankruptcy Code, the *Verified Chapter 15*



*Petition for Recognition of Foreign Main Proceeding* (the “Verified Petition”)<sup>1</sup> along with the Official Form 401 (*Chapter 15 Petition for Recognition of a Foreign Proceeding*); the Application for an Order (i) Scheduling Recognition Hearing; (ii) Specifying Deadline for Filing Objections; (iii) Specifying Form and Manner of Notice (the “Notice Application”); and an *Ex Parte* Application for Temporary Restraining Order and Relief Pursuant to Sections 1519 and 105(a) of the Bankruptcy Code (the “Application for Provisional Relief”) and, collectively with the Verified Petition and Notice Application, the (“First Day Motions”).

The Debtor has also filed a memorandum of law (the “Memorandum of Law”), a Declaration of Tom Clarkson (the “Clarkson Declaration”) and a Declaration of Sheldon Title (the “Title Declaration”) in support of the First Day Motions.

By its Application for Provisional Relief, the Debtor requested (i) immediate entry, on an *ex parte* basis, of a temporary restraining order staying all proceedings against, including all efforts to execute on the assets of, the Debtor; applying Section 362 of the Bankruptcy Code in this Chapter 15 case on a provisional basis to the Debtor’s current assets in the United States and to any assets the Debtor may be ordered to bring in to and/or transfer to the United States; recognizing and enforcing in the United States, on an interim basis, the Canadian Stay entered on April 2, 2020 in the Canadian Proceeding; and scheduling a hearing on the Debtor’s request for a preliminary injunction; and (ii) if the Debtor’s request for recognition of the Canadian Proceeding has not been adjudicated prior to the hearing on the Debtor’s request for a preliminary injunction, entry of a preliminary injunction order extending the relief in the temporary restraining order until disposition of the Debtor’s Chapter 15 Verified Petition.

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Verified Petition.

The Court has considered and reviewed the Application for Provisional Relief, the Verified Petition, the Clarkson Declaration and the Title Declaration and all related documents filed contemporaneously therewith.

Based on the foregoing, **THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

- a) The Debtor has demonstrated a substantial likelihood of success on the merits that the Debtor is subject of a pending foreign main proceeding and the Debtor is a foreign representative;
- b) The Debtor has demonstrated that, without a stay of execution against the Debtor and the protections of Section 362 of the Bankruptcy Code, there is a material risk that the Debtor will suffer irreparable harm as a result of judgment enforcement efforts pending the disposition of the Verified Petition;
- c) No injury will result to any party that is greater than the harm to the Debtor in the absence of the requested relief;
- d) The interests of public will be served by this Court's granting of the relief requested by the Debtor;
- e) Due to the nature of the relief requested, the Court finds that no security is required under Rule 65(c) of the Federal Rules of Civil Procedure, to the extent applicable in these cases by Rule 7065 of the Federal Rules of Bankruptcy Procedure;
- f) It would not be feasible, prior to entry of this Order, for the Debtor to serve prior notice of the Application for Provisional Relief on parties in interest, and giving such prior notice would create the risk that creditors would rush to take actions that would undermine or defeat the purposes of the relief that the Debtor seeks;

- g) This Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334 and Section 501 of the Bankruptcy Code;
- h) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and
- i) Venue is proper in this District pursuant to 28 U.S.C. § 1410.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

- 1. The Debtor's Application is **GRANTED** as of 1:00 p.m. on April 22, 2020;
- 2. All parties in interest shall show cause before the United States Bankruptcy Court for the Northern District of New York at a hearing at 2:00 p.m. (Prevailing Eastern Time) on May 4, 2020 (the "Hearing") at the U.S. Bankruptcy Court, 445 Broadway, Albany, New York 12207 as to why an Order should not be entered:
  - a. establishing the Debtor as the "foreign representative" as defined in Section 101(24) of the Bankruptcy Code;
  - b. enjoining all persons and entities subject to this Court's jurisdiction from taking or continuing to take any act to seize, attach, possess, execute upon, encumber, exercise control over and/or enforce judgments or liens against any assets of the Debtor located, or that may become located, within the territorial jurisdiction of the United States pending the recognition hearing.
- 3. Subject to paragraph 4 below, pending the hearing on the preliminary injunction:
  - a. The Debtor is established, on an interim basis, as the "foreign representative" as defined in Section 101(24) of the Bankruptcy Code;
  - b. Pursuant to Sections 1519(a)(1) and 105(a) of the Bankruptcy Code, all persons and entities are enjoined from seizing, attaching, possessing, executing upon,

encumbering, exercising control over and/or enforcing judgments or liens against the assets and business operations of the Debtor;

- c. Pursuant to Sections 1519(a)(3) and 105(a) of the Bankruptcy Code, the automatic stay pursuant to Section 362 of the Bankruptcy Code is applicable in this Chapter 15 Case within the territorial jurisdiction of the United States; *provided, however*, that the automatic stay shall not enjoin police or regulatory act of a governmental unit to the extent provided in Section 362(b)(4) of the Bankruptcy Code.
- d. The Canadian Stay is recognized, on an interim basis.

4. Pursuant to Federal Rule 65(b)(4), any party in interest may make a motion seeking relief from or modifying this Order on no less than two (2) business days' notice to the Debtor's United States counsel, by filing a motion seeking an Order of this Court dissolving or modifying the injunction entered in this proceeding.

5. Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

6. Notice of entry of this Order and of the Hearing shall be served on the following parties by **electronic mail and overnight mail to be received no later than 5:00 p.m.**

**Prevailing Eastern Time on April 23, 2020:** (a) counsel for Micro Fines Recycling Owego, LLC: Jay R. Carson, Esq, Wegman Hessler, 6055 Rockside Woods Boulevard, Suite 200, Cleveland, OH 44131 and Rosario Vignali, Esq., Wilson Elser Moskowitz Edelman & Dicker LLP, 1133 Westchester Avenue, White Plains, NY 10604; (b) Ferrex Engineering Ltd., 230 Westney Rd., Suite 230, Ajax, Ontario L 1S 7 JS; (c) 1199541 Ontario, Inc., 3592 Trimble Lane, Greenwood, Ontario L0H 1H0; (d) Tom Clarkson, 3592 Trimble Lane, Greenwood, Ontario L0H 1H0; and (e) 1757084 Ontario, Inc., 1214 Abbey Road Pickering, Pickering, ON

LIX IV9. Notice of entry of this Order and of the Hearing shall be served within two business days of its entry by United States mail first-class postage prepaid on all other parties against whom relief is sought.

7. Service in accordance with this Order shall constitute adequate and sufficient notice.

8. Responses or objections to the Debtor's request for a preliminary injunction shall be (i) made in writing and shall set forth the basis therefor, and such responses or objections, if filed by an attorney, should be in accordance with the Local Rules for the Bankruptcy Court for the Northern District of New York (the "Local Rules"), setting forth the basis therefore, which response or objection must be filed electronically with the Court on the Court's electronic filing system in accordance with the Local Rules and General Orders (copies of which may be viewed on the Court's website at [www.nynb.uscourts.gov](http://www.nynb.uscourts.gov)), and by all other parties in interest in hard copy filed with the Office of the Clerk of the Court, 445 Broadway, Albany, NY 12207, and (ii) served by electronic mail and United States mail upon Natale & Wolinetz, Attn: Peter K. Rydel, Esq., 116 Oak Street, Glastonbury, CT 06033, counsel to the Debtor, via electronic mail to [prydel@natalelawfirm.com](mailto:prydel@natalelawfirm.com), so as to be filed with the Court and received on or before April 30, 2020.

9. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

###

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE MADAM ) MONDAY, THE 4<sup>th</sup>  
 )  
JUSTICE CONWAY ) DAY OF MAY, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FERREX ENGINEERING LTD., OF THE CITY OF AJAX,  
IN THE PROVINCE OF ONTARIO**

**ORDER  
(SALE PROCESS APPROVAL, EXTENSION OF TIME TO FILE A PROPOSAL AND  
ADMINISTRATIVE CHARGE)**

**THIS MOTION**, made by Ferrex Engineering Ltd. (the “**Company**”), pursuant to Sections 50.4(9) and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order, *inter alia*, approving a sale process (the “**Sale Process**”) in respect of the Company’s assets, as set out in the First Report of MNP Ltd., in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”) (the “**First Report**”), was heard this day by teleconference in substitution to an in-person hearing at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report, the affidavit of Thomas H. Clarkson sworn April 28, 2020 and on hearing the submissions of counsel for the Company, the Proposal Trustee, 1199541 Ontario Inc., and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of ♦ sworn April ♦, 2020,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing 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.

**APPROVAL OF SALE PROCESS**

2. **THIS COURT ORDERS** that the Sale Process, as set out in the First Report, be and are hereby approved and that the Proposal Trustee is authorized to conduct the Sale Process in accordance with the terms thereof.

3. **THE COURT ORDERS** that the Company and the Proposal Trustee (including its respective affiliates, partners, directors, employees, advisors, legal counsel, agents and controlling persons) shall have no personal or corporate liability in connection with the Sale Process.

4. **THIS COURT FURTHER ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee and the Company be and are hereby authorized and permitted to disclose and transfer to each Prospective Offeror, as defined in the Sale Process (the “Offerors”), if requested by such Offerors, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Company’s records pertaining to the Company’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale pursuant to the Sale Process (a “Sale”). Each Offeror 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 for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Proposal Trustee. The Successful Offeror(s), as defined in the Sale Process, shall maintain and protect the privacy of such information and, upon the closing of the transaction(s) contemplated in the Successful Offer(s), as defined in the Sale Process, shall be entitled to use the personal information provided to it that is related to the applicable business and/or assets of the Company acquired pursuant to the Sale



Process in a manner that is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Proposal Trustee, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Proposal Trustee.

#### **ADMINISTRATION CHARGE**

5. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the amount of \$100,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 7 hereof.

#### **PRIORITY OF ADMINISTRATION CHARGE**

6. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

7. **THIS COURT ORDERS** that the Administration Charge shall rank in priority as against all other validly perfected security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, granted by the Company or to which the Company is subject (together, the “**Encumbrances**”) as of the date of this Order.

8. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by further order of this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Administration Charge.

9. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Administration Charge (the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such an application; (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (together, the “**Agreements**”) which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
- (c) the granting of the Administration Charge, does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct or other challengeable or voidable transaction under any applicable law.

10. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only be a charge in the Company’s interest in such real property leases.

#### **EXTENSION OF TIME TO FILE PROPOSAL**

11. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to June 18, 2020.

**APPROVAL OF REPORT AND ACTIVITIES**

12. **THIS COURT ORDERS** that the Proposal Trustee's activities as set out in the First Report are hereby approved.

**GENERAL**

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Company, the Proposal Trustee, 1199541 and their respective 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 Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Company or, at the Company's option and with its consent, the Proposal Trustee, in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee shall be at liberty and are hereby authorize 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.

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF FERREX ENGINEERING LTD., OF THE CITY OF AJAX, IN THE  
PROVINCE OF ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

**PROCEEDING COMMENCED AT TORONTO**

**ORDER  
(SALE PROCESS APPROVAL, EXTENSION OF  
TIME TO FILE A PROPOSAL AND  
ADMINISTRATIVE CHARGE)**

**WALKER HEAD  
800-1315 Pickering Parkway  
Pickering, ON L1V 7G5**

**KYLE C. ARMAGON 49497F  
Tel: 905-839-4484  
Fax: 905-420-1073**

**Lawyers for Ferrex Engineering Ltd.**

**Court File No.: 31-2636073**  
**Estate File No.: 31-2636073**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FERREX  
ENGINEERING LTD., OF THE CITY OF AJAX, IN THE PROVINCE OF ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

**PROCEEDINGS COMMENCED AT TORONTO**

**MOTION RECORD  
RETURNABLE MAY 4, 2020**

**WALKER HEAD  
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