

Terms and Conditions of Sale

Vendor

- 1** The vendor is KPMG Inc. solely in its capacity as Court appointed receiver (the “**Receiver**” or the “**Vendor**”) of Acculink Fence & Wire Inc. (“**Acculink**”) and not in its personal capacity.

Property Subject to the Proposal (collectively the “Assets”)

- 2** Lot 1 - Machinery and equipment, identified and listed in the attached **Exhibit “1”**
Lot 2 - Inventory, identified and listed in the attached **Exhibit “2”**
Lot 3 – Intangible assets

Proposals

- 3** It is expressly acknowledged that Acculink operates from leased premises at 10 Holland Drive, Bolton, ON (the “**Premises**”) owned by a party related to Acculink.
- 4** Proposals must be sealed and marked “CONFIDENTIAL” and addressed to:

KPMG Inc.
Suite 700, 21 King Street West
Hamilton, ON L8P 4W7

Attention: Mr. Brad Newton

All proposals must be submitted by no later than **2:00 p.m. (EDT) on April 28, 2016**. All proposals must be accompanied by a refundable deposit of 15% of the purchase price offered and conform with these terms and conditions. Nothing contained in the information package precludes the Vendor from entering into an agreement to sell any or all assets prior to April 28, 2016 and furthermore, nothing herein shall prevent the Vendor from withdrawing the invitation for proposals at any time and for any reason without liability to the Vendor.

- 5** Each proposal shall be submitted in accordance with these Terms and Conditions which shall be deemed to form part of such proposal and the proposal shall be submitted in the form of offer attached hereto as **Exhibit “3”**.
- 6** The purchase price shall be allocated among each of the Lots being proposed on. Unless otherwise specified, the Vendor may accept the proposal for one or more Lots, independent of proposals submitted for other Lots. En bloc offers for all Lots will be given special consideration.
- 7** The highest or any proposal shall not necessarily be accepted. Upon receipt by the Vendor of any proposal, no persons shall be entitled to retract, withdraw, vary or countermand their proposal prior to acceptance or rejection thereof for a period of 10 business days after the submission deadline.
- 8** If a proposal is accepted, in whole or in part, the Vendor shall notify the successful party (hereinafter referred to as the “**Proposer**”) of its acceptance by notice in writing delivered to the successful Proposer and the 15% deposit that was submitted with the offer will be deposited by the Receiver and credited against the purchase price upon completion of the transaction, or returned to the Proposer

in the event of termination in accordance with the terms hereof for any reason not attributable to the default of the Proposer. The Proposer acknowledges that any such acceptance by the Vendor is subject to final Court approval and the issuance of an order approving the sale and vesting the purchased assets in the Proposer (the “**Court Order**”) in a form satisfactory to the Vendor.

- 9 The Proposer acknowledges that the Vendor shall have no personal or corporate liability under these Terms and Conditions. In the event that the sale of any Lot(s) is enjoined by Order of a Court of competent jurisdiction or where any Lot(s) of assets subject to a proposal or any part thereof is removed from the control of the Vendor by any means or process, or where any Lot(s) of assets subject to a proposal or any part thereof is redeemed by a party entitled thereto at law, on or prior to the date of closing (the “**Closing Date**”), the Agreement (as defined below) shall be terminated at the option of the Vendor without any penalty or liability whatsoever to the Vendor or Proposer.

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- 10 The Proposer acknowledges that, the property descriptions contained in the Lots, equipment lists and any other material provided by the Vendor describing the property which are the subject matter of this call for proposals, have been prepared solely for the convenience of prospective Proposers and are not warranted to be complete or accurate or correct. Proposals will be accepted and sales completed only on the basis that the Proposer has inspected the Assets and unless otherwise specifically stated in these Terms and Conditions, no representation, warranty or condition is expressed nor can be implied as to title, outstanding liens, description, fitness for purpose, merchantability, quantity, condition or quality thereof or in respect of any other matter or thing whatsoever and each Proposer shall be deemed to have relied entirely on its own inspection and investigation. No adjustment shall be allowed to the Proposer for changes in the condition of the Assets described in the Exhibits hereto from the date hereof to the Closing Date.

General

- 11 Upon the Vendor’s acceptance of the Proposer’s proposal, the Vendor and the Proposer shall enter into an agreement of purchase and sale in the form of the draft attached as **Exhibit “4”** (the “**Agreement**”). The Agreement will be subject to final Court approval.
- 12 The notification by the Vendor of the granting of the Court Order shall constitute a binding agreement between the Vendor and Proposer in accordance with the Agreement, and these Terms and Conditions shall be deemed to be a part of the resulting Agreement.
- 13 All stipulations herein as to time shall be of the essence.
- 14 The Assets and operations shall be and remain at the risk of the Vendor as its interest may appear until closing. Pending completion of the sale, the Vendor shall hold all insurance policies or proceeds thereof in trust for itself, the Proposer and others as their respective interests may appear. In the event of loss or theft or of substantial damage to the Assets subject to a proposal, then the Vendor, at its option, may elect, by giving notice in writing to the Proposer that it intends to take the proceeds payable under the existing insurance policies on the Assets and terminate the Agreement. In this event, the Agreement shall be automatically terminated and deemed null and void and the deposit returned without interest or deduction and the Proposer shall have no other claim or cause of action against the Vendor or its principals.
- 15 If the Vendor does not exercise the above noted option, the Proposer may either have the proceeds of the insurance, if any, and complete the purchase and sale, or may cancel the Agreement and have all moneys paid returned without interest, but shall have no other claim or cause of action against the Vendor or its principals.

- 16 After granting of the Court Order, if the successful Proposer defaults in completing the transaction, all payments made to the Vendor shall be forfeited, and the Assets may be sold or resold by the Vendor in such manner and on such Terms and Conditions as the Vendor, in its sole discretion, determines, and the deficiency, if any, on such sale or resale, together with all charges attending the same or occasioned by the defaulting Proposer, shall be the responsibility of such Proposer and shall be paid forthwith by such Proposer to the Vendor.
- 17 The Vendor shall remain in possession of the Assets and operations until the purchase is completed and title to any parcel shall not pass to the Proposer, nor shall it be entitled to possession of the same, until the purchase price and taxes, respectively, have been paid in full.
- 18 From and after the time of closing on the Closing Date, the purchased assets shall be at the risk of the Proposer.
- 19 Any notices, requests, demands or other communications to be given under this Agreement (herein referred to as “**Notice**”) shall be in writing and shall be either hand delivered, faxed, emailed, or mailed (prepaid registered mail) and addressed as follows:

As to the Proposer: at the address set forth in its proposal.

As to the Vendor:

KPMG Inc. Receiver of Acculink Fence & Wire Inc.
Suite 700, 21 King Street West
Hamilton, ON L8P 4W7
Fax number: 905-523-2200
Email: bradnewton@kpmg.ca
Attention: Mr. Brad Newton

Notice shall be effective upon personal delivery or, if mailed, on the date of deposit with the post office.

- 20 Each Proposer, if so requested by the Vendor prior to closing, will represent and warrant to the Vendor that it is not a “non-resident person” as defined in the Investment Canada Act, nor is it a “non-resident person” of Canada within the meaning of S. 116 of the Income Tax Act (Canada).
- 21 Any term and condition herein which the Vendor might otherwise insist upon may be waived at the sole discretion of the Vendor, in whole or in part, and a Proposer will be bound by any such waiver.
- 22 Unless otherwise specifically stated herein, all obligations of the parties contained in these Terms and Conditions shall survive the completion of the sales.
- 23 The validity and interpretation of these Terms and Conditions, and of each provision and part thereof, and the Agreement shall be governed by the laws of the Province of Ontario.
- 24 The Proposer agrees to abide by the following terms and conditions: (i) the purchased asset(s) must be removed from the Premises on the Closing Date unless the Proposer makes its own arrangements with the landlord of Acculink. The successful bidder must take responsibility for and make reparations for any damage caused to the Premises when removing the purchased asset(s) and shall indemnify the Vendor for any liability or expenses incurred arising from the removal or failure to remove purchased assets. The Premises shall be left in a clean, broom swept condition, with all electrical wires and air/water/other lines removed and/or capped to the bus bar/nearest wall; (ii) sales will be completed only on the basis that the successful bidder has inspected the assets and unless otherwise specifically stated herein, no representation, warranty or condition is expressed nor can be

implied as to title, outstanding liens, description, fitness for purpose, merchantability, quantity, condition or quality thereof or in respect of any other matter or thing whatsoever and each successful bidder shall be deemed to have relied entirely on its own inspection and investigation. No adjustment shall be allowed to the successful bidder for changes in the condition of the assets described in the Exhibits hereto from the date hereof to the Closing Date; (iii) title passes on payment in full in compliance with the Court Order; (iv) from and after the time of closing on the Closing Date, the purchased assets shall be at the risk of the successful bidder; (v) taxes are the responsibility of the successful bidder; (vi) if the Vendor is unable to deliver equipment, for any reason, the only recovery is the return of the purchase price.

- 25** All applicable federal and provincial taxes in connection with the sale including sales tax and goods and services tax, if any, shall be over and above the tendered purchase price and shall be in all cases the responsibility of the Proposer.
- 26** The Vendor is acting solely as Receiver, and neither the Receiver nor its agents, officers, partners, employees nor solicitors shall have any personal liability as a result of the sale hereunder. It is further acknowledged that if any offer is not accepted, or any agreement is rescinded, terminated, delayed or enjoined for any reason whatsoever the Receiver, its agents, officers, partners, employees and solicitor shall not be liable for any losses, expenses or damages suffered or alleged to be suffered.