

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

BETWEEN:

2624492 ONTARIO INC.

APPLICANT

- and -

**VERTEX PRECISION MANUFACTURING INC., DELLCOM AEROSPACE INC.,
MERCAP HOLDINGS INC., 1527039 ONTARIO LTD., 867822 ONTARIO INC., AERO-
SAFE PROCESSING INC. and AERO-SAFE TECHNOLOGIES INC.**

RESPONDENTS

**SUPPLEMENT TO THE FIRST REPORT OF THE RECEIVER
MARCH 21, 2018**

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Confidential Appendix	Accommodation Agreement dated March 20, 2018

1.0 INTRODUCTION

1.1 This Supplement to the First Report (“**First Report**”) of Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed receiver and receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of Vertex Precision Manufacturing Inc. (“**Vertex**”), Dellcom Aerospace Inc. (“**Dellcom**”), Mercap Holdings Inc. (“**Mercap**”), 1527039 Ontario Ltd. (“**152**”, incorrectly named in the Appointment Order as 1527039 Ontario Inc.), 867822 Ontario Inc. (“**867**”), Aero-Safe Processing Inc. (“**ASP**”) and Aero-Safe Technologies Inc. (“**AST**”) (collectively, the “**Companies**”) is filed in connection with the motion by the Receiver scheduled for March 23, 2018.

1.2 All capitalized terms not defined herein are used as defined in the First Report.

1.3 In the First Report, the Receiver explained, among other things, that:

(a) after extensive negotiations between Bombardier and the Receiver following the date of the Appointment Order, during which input was obtained from Core Industrial and from Dellcom management, Bombardier and the Receiver had agreed in principle to the terms of an Accommodation Agreement which amends the current supply and payment terms and which will supersede those of the Supply Contract during this Proceeding;

(b) as at the date of issuance of the First Report, the Accommodation Agreement had not been signed; and

(c) the Receiver intended to serve and file a supplement to the First Report when the Accommodation Agreement was signed which would include a summary of the agreement and the reasons for the Receiver's recommendation that it be approved by the Court.

1.4 The purpose of this Supplement is to describe the Accommodation Agreement and the reasons for the Receiver's recommendation that it be approved by the Court.

1.5 The terms of reference and disclaimer in the First Report also apply to this Supplement.

2.0 ACCOMMODATION AGREEMENT

2.1 The salient terms of the Accommodation Agreement are summarized as follows:

a) **Parties:** Bombardier and the Receiver;

b) **Effective Date:** March 12, 2018;

c) **Termination:** June 21, 2018, unless otherwise terminated (upon discharge of the Receiver, on the sale of the Companies or substantially all of their assets, properties and undertakings, or by the Receiver on 30-days written notice to Bombardier or on five business days' notice if intending to move to an orderly wind-down) or extended by the parties in accordance with the other provisions of the agreement;

d) **Conditions:** the Accommodation Agreement is subject to Court approval;

e) **Summary of business issues addressed by the Accommodation Agreement:**

- pricing and payment terms for all goods shipped to Bombardier after the Effective Date;
- payment terms for pre-receivership accounts receivable;
- arrangements for the continued processing of all purchase orders issued by Bombardier to Dellcom prior to this Proceeding and agreement in respect of the delivery dates for same;
- provisions to allow for the imposition by the Receiver of minimum order quantities in respect of purchase orders issued by Bombardier after the Effective Date;
- limitations on Bombardier's withholding and/or setoff rights against Dellcom, being only for: raw materials, components or other goods supplied by or paid for by Bombardier, defective or non-conforming parts, short shipments, incorrect invoices or billing errors;
- default provisions providing that, in the event that Bombardier fails to materially perform its obligations, including failure to make payments when due, and such failure is not cured within 10 business days of notice of default, the Receiver shall have no continuing obligation to Bombardier and the parties are not obligated to perform under the Accommodation Agreement; and

- provisions providing for the orderly wind-down of the Dellcom business in the event of termination of the Accommodation Agreement, which will assist Bombardier to resource the production of its parts on an orderly basis in the event that it becomes necessary to do so.

2.2 A copy of the Accommodation Agreement will be submitted to the Court as a Confidential Appendix. As the Accommodation Agreement includes certain sensitive business information, including pricing information and production schedule information, Bombardier has requested that this information be sealed. The Receiver believes it is appropriate for the Accommodation Agreement to be sealed until further order of this Court. A redacted copy of the Accommodation Agreement is attached as **Appendix "A"**.

2.3 The Receiver recommends that the Court issue an order approving the Accommodation Agreement for the following reasons:

- a) it provides a mechanism to fund the business of Dellcom during this Proceeding;
- b) it provides a mechanism to maximize the value of the inventory which is custom produced and therefore only saleable to Bombardier, as well as maximizing the value the accounts receivable owing by Bombardier;
- c) given that Bombardier is Dellcom's largest customer, it will assist to stabilize the operations of the Dellcom business during this Proceeding and to reduce operating losses while the Receiver markets the businesses and assets for sale;

- d) it provides a framework for Dellcom to execute an orderly wind-down of its business, should a purchaser for the Dellcom business and assets not be identified; and
- e) Core Industrial has advised the Receiver that it is supportive of the terms of the Accommodation Agreement.

3.0 CONCLUSIONS AND RECOMMENDATIONS

- 3.1 Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief sought in the Receiver's Notice of Motion and detailed in Section 1.2 of this First Report.

All of which is respectfully submitted,

**Alvarez & Marsal Canada Inc., in its capacity
as Receiver of Vertex Precision Manufacturing Inc., Dellcom Aerospace Inc.,
Mercap Holdings Inc., 1527039 Ontario Ltd., 867822 Ontario Inc.,
Aero-Safe Processing Inc., and Aero-Safe Technologies Inc.**



Per: Michael G. Stewart, Senior Vice-President

Appendix “A”

ACCOMMODATION AGREEMENT

WHEREAS pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court"), dated March 12, 2018 (the "Receivership Order"), Alvarez & Marsal Canada Inc. was appointed as receiver (the "Receiver") of Dellcom Aerospace Inc. ("Supplier"), Vertex Precision Manufacturing Inc., Mercap Holdings Inc., Aero-safe Processing Inc., Aero-safe Technologies Inc., 1527039 Ontario Ltd. and 867822 Ontario Inc.;

AND WHEREAS Supplier and Bombardier Inc. ("Customer") are parties to the Contract for the Procurement of Fabricated Metal Parts, dated November 1, 2016, bearing Contract Number [REDACTED] (the "Supply Contract");

AND WHEREAS as part of the receivership proceedings, Receiver is actively searching a potential acquirer of Supplier with the intent of securing an agreement for the continuation of Supplier's operations.

AND WHEREAS in accordance with the terms hereof, the Customer has agreed to provide certain financial and other accommodations to Supplier and the Receiver during the receivership proceedings with the goals of maintaining the production of Items and securing a Potential Acquirer;

AND WHEREAS the provisions of this Accommodation Agreement will supersede the terms of the Supply Contract for the term of this Accommodation Agreement, which continues in force, as superseded, and all capitalized terms used herein but not defined shall have the meanings ascribed in the Supply Contract;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

Customer	Bombardier Inc.
Supplier	Dellcom Aerospace Inc.
Effective Date	March 12, 2018
Pricing	All Recurring Prices (and any other prices for Customer Items) for Items shipped after the Effective Date shall increase on the Effective Date by [REDACTED]. Receiver/Supplier will use one third [REDACTED] of the increase in Recurring Prices to pay sub-tier critical suppliers which are necessary to maintain the production and Delivery of Items to Customer ("Critical Sub-tier Suppliers"). With respect to amounts owed to Critical Sub-tiers Suppliers prior to the Receivership Date, Receiver shall seek to obtain an authorisation from the Court to pay up to an aggregate maximum amount of [REDACTED]. For clarity, Customer assume no responsibility for payment and management of Critical Sub-tier Suppliers required for production and Delivery of Items to Customer whether or not such Item was ordered on a Purchase Order issued prior to, or after the Receivership Date.

Payment Terms

As of the Effective Date, prior to shipment of Items (free and clear of any Charges other than the obligations to make payments hereunder), Receiver/Supplier will allow Customer access to the Items in order to confirm the accuracy of the shipment to Customer. Each week, Receiver shall provide a complete and updated statement of account of Receiver/Supplier and invoices for the previous week's shipment of Items to Customer no later than Tuesday at 12:00pm EST. Such invoices shall be issued at

[REDACTED] Invoices will become payable to Receiver/Supplier upon [REDACTED]. For clarity, the [REDACTED] refers to Customer's process where Customer

[REDACTED]

Invoices payable to Supplier shall be paid [REDACTED] to the Receiver/Supplier, in full, without any set-off or reduction of any kind (except Permissible Setoffs)..

Pre-Receivership A/R

For Items shipped to Customer prior to the Receivership Date, Receiver/Supplier shall provide a complete and updated statement of account and provide any un-issued invoices at

[REDACTED] Invoices will become payable to Receiver/Supplier upon confirmation of [REDACTED] (free and clear of any Charges other than the obligations to make payments hereunder) by Customer. Invoices payable to Receiver/Supplier in relation to Items shipped prior to the Receivership Date shall be paid [REDACTED] to the Receiver/Supplier, in full, without any set-off or reduction of any kind (except Permissible Setoffs)

Purchase Orders

Customer and Receiver/Supplier shall honour all Purchase Orders issued by Bombardier to Supplier or Receiver, including all Purchase Orders issued prior to the Receivership Order.

Receiver/Supplier shall meet the delivery dates set out in each Purchase Order. For Purchase Order where Receiver/Supplier has not met the delivery dates set out in the Purchase Order or believe that it will not meet the Purchase Order delivery date, Receiver/Supplier will collaborate, to the best of their ability, with Customer in accordance with the Management Assistance to ship the Items in order to meet the mitigation delivery dates set out in the [REDACTED] Date provided by Bombardier. Provided Receiver/Supplier collaborates with Customer as set out in this section, Bombardier will not exercise its right to withhold or setoff payment of any invoice. In

exchange to Supplier/Receiver's agreement to comply with the obligations of this section, the Customer agrees to not waive its withholding or set-off right pre-receivership claims against Supplier on Pre-Receivership A/R.

In the event Customer requests delivery of any Items on an expedited basis, Customer shall pay to the Receiver, on terms agreed to by the Receiver, a fee to cover the costs of expedited delivery (in an amount determined by the Receiver, in its sole discretion) (the "Expedite Fee"). The payment of an Expedite Fee with respect to any Items shall be subject to pre-approval by Customer; provided, however, that Receiver shall have no obligation to expedite delivery of any Item in the event Customer does not agree to pay the Expedite Fee. Receiver shall use commercially reasonable efforts to meet any expedited delivery date and failure to meet an expedited delivery date shall not entitle Customer to withhold or setoff payment of any invoice.

Minimum Order Quantity

The Receiver may, in its discretion, impose a minimum order quantity ("MOQ") with respect to any Purchase Order. For greater certainty, the imposition of MOQ with respect to any Purchase Order shall be subject to pre-approval by Customer.

FAI Items

In the event Customer requests production of FAI Items (excluding Delta FAI Items), Customer shall pay to the Receiver, in advance of production, [REDACTED] "FAI Fee" per FAI report.

For greater certainty, no FAI Fee shall be charged for Delta FAI Items and the terms Article 10 (Execution of Design Changes) shall continue to apply to any design changes during the term of this Accommodation Agreement.

Defaults

In the event Customer fails to materially perform its obligations to Receiver/Supplier, including failure to make payments when due, and such failure is not cured within [REDACTED] business days of issuance of a notice of event of default, the Receiver shall have no continuing obligation to Customer and the Receiver and Supplier should not be obligated to perform under this Accommodation Agreement upon issuance of a notice of termination for default of the Accommodation Agreement which shall be deemed to be terminated without any further notice.

In the event Receiver/Supplier fails to materially perform its obligations to Customer, and such failure is not cured within [REDACTED] business days of issuance of a notice of event of default, the Customer shall have no continuing obligation to

Receiver/Supplier other than payment of the Items in accordance with the Payment Terms upon issuance of a notice of termination for default of the Accommodation Agreement which shall be deemed be terminated without any further notice. If requested by Customer, Receiver shall collaborate with Customer to complete work in progress and ship any remaining Items under Purchase Order to Customer subject to the Orderly Wind-Down provision herein.

Termination by the Receiver Notwithstanding anything to the contrary herein, the Receiver may terminate this Accommodation Agreement at any time upon [REDACTED] business days' notice to Customer or may give [REDACTED] business days' notice to Customer of the intent to move to an Orderly Wind Down.

Orderly Wind-Down Upon termination of this Accommodation Agreement, Receiver will oversee the orderly wind-down of Supplier's business, provided that the Receiver shall collaborate with Customer to complete work in progress and ship any remaining Items under Purchase Order to Customer. Customer will pay Receiver/Supplier for the cost of such work in progress up to the value of the Items as set out in the Purchase Order including the Recurring Price increase provided herein. Customer shall purchase from the Receiver Raw Materials used to manufacture Customer's Items (provided that such Raw Materials were specifically acquired to complete a Purchase Order for Customer) and any inventory manufactured for the Customer that is the subject of a Purchase Order whether or not such Purchase Order was issued after the Effective Date.

Permissible Setoffs

Except for Permissible Setoffs or the gross negligence or willful misconduct of the Receiver/Supplier, Customer shall not to assert any defences, rights or claims for setoff, recoupment or deductions of any nature or kind, including in connection with any prior, existing or future defaults under the Supply Contract or other agreements between Supplier and Customer. Permissible setoffs are limited to:

- a) setoffs for raw materials, components or other goods supplied by, or paid for by Customer;
- b) setoffs for defective or nonconforming products, quality problems, short shipments, incorrect invoices, or billing errors, subject to the provision of appropriate supporting documentation to the Receiver; and
- c) payments made by Customer for amounts owing by Supplier subsequent to the Effective Date, subject to prior consultation by Customer with the Receiver before making any such payment and, if requested, the provision of appropriate supporting documentation to the Receiver.

Guaranteed Inventory

The production of Guaranteed Inventory (inventory bank), if requested by Customer, shall be at the sole discretion of the Receiver. All costs of Guaranteed Inventory are at the cost of Customer and shall be funded to the Receiver in advance of any production.

Term

The term of this Accommodation Agreement shall be for three (3) months, commencing on the Effective Date and, unless otherwise terminated in accordance with its terms, terminating on June 21, 2018. The term of this Accommodation Agreement may be extended by mutual written agreement of the parties.

Notwithstanding anything to the contrary herein, this Accommodation Agreement shall automatically terminate upon the discharge of the Receiver or the sale of Supplier (or substantially all of Supplier's assets, undertakings and properties).

Assignment

This Accommodation Agreement shall not be assigned by either party without the other's express written consent.

Supply Contract

This Accommodation Agreement and the terms hereof supersede the terms of the Supply Contract and all Purchase Orders issued by Customer. Except as superseded hereby, the Supply Contract remains in full force and effect.

Conflict of Terms	In the event of a conflict or inconsistency between the terms of this Accommodation Agreement and the Supply Contract, a Purchase Order or any other agreement between Customer and Supplier, the terms of this Accommodation Agreement shall prevail.
Court Approval	This Accommodation Agreement shall be subject to approval by the Court.
Confidentiality	The terms of this Accommodation Agreement shall be kept strictly confidential by the parties. To the extent this Accommodation Agreement is filed with the Court, its commercially sensitive terms will be redacted from the public record and the unredacted version filed under seal.
Governing Law:	This Accommodation Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
Counterparts	This Accommodation Agreement may be executed in counterparts each of which shall be deemed to be an original. Facsimile or pdf signatures shall be accepted as binding.
Dated:	March 20, 2018

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IN WITNESS HEREOF, the parties hereby execute this Accommodation Agreement as of the date set forth above.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as the Court-appointed receiver of Dellcom Aerospace Inc., Vertex Precision Manufacturing Inc., Mercap Holdings Inc., Aero-safe Processing Inc., Aero-safe Technologies Inc., 1527039 Ontario Ltd. and 867822 Ontario Inc., and not in its personal or corporate capacity

Michael Stewart

By: _____
Name: Michael G. Stewart
Title: Senior Vice-President

BOMBARDIER INC.

By: 
Name: FRANCIS CLOUTIER
Title: DIRECTOR PROCUREMENT
By: _____
Name:
Title:

2624492 ONTARIO INC.

VERTEX PRECISION MANUFACTURING INC. et al.

Applicant

Respondents

Court File No. CV-18-593678-00CL

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

Proceedings commenced at TORONTO

**SUPPLEMENT TO THE FIRST REPORT OF
THE RECEIVER**

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