

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

**SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER
June 11, 2010**

INTRODUCTION AND PURPOSE

1. This supplement (the “**Supplemental Report**”) to the Third Report of the Receiver dated May 19, 2010 (the “**Third Report**”) should be read together with the Third Report and is filed to provide this Honourable Court with additional information regarding the status of the Alban Amount (as defined herein) and the Receiver’s motion originally returnable on April 23, 2010 concerning payment of the Alban Amount.

TERMS OF REFERENCE

2. In preparing this Supplemental Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with the management and employees of the Respondents, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver did not audit, review or otherwise attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information presented in this Supplemental Report or relied upon by the Receiver in preparing this Supplemental Report. Further, the nature of the Receiver’s work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.
3. All references to monetary amounts in this Supplemental Report are in Canadian dollars unless otherwise noted.
4. Capitalized terms not defined in this Supplemental Report are as defined in the Third Report.
5. Copies of court materials in these proceedings may be obtained from the Receiver’s website established in connection with the Respondents (www.ey.com/ca/atcon).

ATCON CONSTRUCTION AND SHELL

6. As has been previously disclosed to this Honourable Court, Shell is indebted to Atcon Construction as a result of services provided under the Albion Contract in respect of Shell's interest in Alberta Crown Oil Sands Lease No. 7277080T13 ("**Shell Lease 13**"). The Receiver and Shell have agreed that the amount to be paid by Shell to satisfy Shell's obligations to Atcon Construction under the Albion Contract is \$8,432,503.30 (the "**Albian Amount**").
7. At the hearing before this Honourable Court on May 21, 2010, the Receiver requested, and this Honourable Court granted, an adjournment of the Receiver's motion and Shell's motion regarding payment of the Albian Amount, to be spoken to on June 9, 2010, so that the interested parties would have additional time to attempt to reach a consensual resolution regarding payment of the Albian Amount.
8. Following the adjournment of the Receiver's motion and Shell's motion, the Receiver, through its legal counsel, engaged in numerous discussions with Shell, CRA, Emeco, Caterpillar and the Bank regarding the terms of a potential draft Order. As such discussions were had on a without prejudice basis, the Receiver is not in a position to disclose the contents of such discussions in this Supplemental Report. However, as is set out in further detail in the First Report of the Receiver dated April 21, 2010 and the Third Report, the Receiver and the other interested parties have been working diligently for the past two (2) months in an attempt to reach a consensual resolution as to the payment of the Albian Amount that protects the interests of all stakeholders of Atcon Construction that may have an interest in the Albian Amount.
9. Despite the efforts of all parties, at the time of the completion of this Supplemental Report, the terms of draft Order that deals with the disposition of the Albian Amount has not been agreed to by all interested parties.

ATCON CONSTRUCTION AND EMECO

10. The Receiver understands that Atcon Construction was a party to an Equipment Rental Agreement with Emeco executed on January 6, 2010 (the "**Emeco Agreement**"),

pursuant to which Atcon Construction agreed to rent certain equipment specified in the Emeco Agreement (the “**Emeco Equipment**”). The Receiver, based on its discussions with former employees of Atcon Construction, understands that the Emeco Equipment was rented by Atcon Construction for use in connection with the Albion Agreement. Attached hereto as **Appendix “A”** is a copy of the Emeco Agreement.

11. In the Third Report, the Receiver stated that the net amount of the Emeco Builders Lien for equipment rental charges under the Emeco Agreement was \$195,352.72. However, the Receiver has since confirmed that the amount owed by Atcon Construction for equipment rental charges under the Emeco Agreement prior to March 1, 2010 is \$228,900.22 (the “**Emeco Amount**”), as amounts properly attributable for equipment rental charges following March 1, 2010 were mistakenly applied against the pre-March 1, 2010 charge amounts. Attached hereto as **Appendix “B”** are copies of the Emeco invoices regarding such charges.
12. The Receiver, following a review of the books and records of Atcon Construction and the documentation provided by Emeco and discussions with former employees of Atcon Construction, is satisfied as to the quantum of the Emeco Amount and the validity of the Emeco Builders Lien. Additionally, the Receiver is satisfied and has agreed that the claim of the Receiver against the Albion Amount in connection with the Receiver Builders Lien shall be subordinate to the claim of Emeco against the Albion Amount in connection with the Emeco Builders Lien, to the extent of the amount of \$228,900.22.

CRA AND THE RECEIVERSHIP PROCEEDING

13. As set out in the Third Report and the letter dated April 7, 2010 from CRA to the Receiver attached as Appendix “H” to the Third Report, the CRA has issued notices of assessment dated February 26, 2010 to Atcon Construction in connection with alleged unremitted employee income tax, CPP and EI source deductions. To date, the CRA has taken certain enforcement steps in connection with such notices of assessment, including without limitation the CRA’s demand for payment by the Receiver of \$3,784,276.68 to the CRA (the “**Deemed Trust Claim**”). In the April 7 Letter, CRA demanded that payment of this amount be made in priority to all other creditors and referenced section

159 of the *Income Tax Act* (Canada), which provides, among other things, that a legal representative of a taxpayer may be held personally liable if its distributes property in its possession or control without obtaining a clearance certificate.

14. Pursuant to paragraph 21 of the Receivership Order, this Honourable Court authorized the Receiver to apply reasonable amounts out of the monies in its hands against its fees, expenses and disbursements, including legal fees and disbursements, prior to the passing of the Receiver's accounts. However, as a result of the statements in the April 7 Letter and the position of the CRA, the Receiver has only paid for disbursements that were crucial for the receivership proceeding to continue in an orderly fashion, such as amounts owed for insurance coverage, utilities, and amounts owed to former Atcon Construction employees for services provided to the Receiver. The Receiver has generally not been in a position to make payments to persons that would, in the ordinary course of a receivership proceeding, be paid for other services provided to the receivership estate. Such payments include amounts owed to equipment lessors in connection with equipment used by the Receiver during the receivership proceeding, and the fees and disbursements of the Receiver and its counsel.
15. It is the Receiver's view that, in the event that matters relating to the Shell Requirement to Pay, the Pennecon Requirement to Pay and the Deemed Trust Claim are not resolved shortly, the Receiver will require additional borrowings of at least \$3,200,000 (in addition to the initial \$1,200,000 of Receivership Borrowings that has previously been drawn) to sustain the receivership proceedings on a go forward basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of June 2010

ERNST & YOUNG INC.
in its capacity as the Court-appointed
Receiver of the Respondents and not in its
personal or corporate capacity

By:



Paul D. Hickey, CA•CIRP
Senior Vice President

APPENDIX “A”



Emeco Canada Limited
(Hereinafter "Emeco")

Equipment Rental Agreement
(Hereinafter the "Agreement")

Contract No.: AGTA3878

Part 1 – Agreement Details and Special Conditions

The Customer

Name:	Atcon Construction		
Site Description:			
Site Contact Details:	Fort McMurray	AB	
	506-623-6347		Gary Coull
	Phone (including Area Code)	Fax (including Area Code)	Contact Name
Customer Contact Details:	Kim Cameron-Sweeney		
	Mailing Address (include city or town, province and postal code if applicable)		
	506-450-0327		ksweeney@atcongroup.ca
	Phone (including Area Code)	Fax (including Area Code)	email
Other Information:	Emeco GST# 104545959		
PO Number	080900		

1. Equipment rental details (See attached Schedule A)

Model & Fleet No.	Serial No.	Year of Build	Rental Start Date	Rental Start Hours	Min Rental Hours
ZX800 - EXC024	FF017VQ005550	2005	Jan 04, 2009	495	200
JD850 - XHC001	FF850DX973055	2008	Jan 05-2009	4000	200

Machine	Hrs / Month	Calc Rate/ hr
Hitachi ZX800 John Deere JD850	200 hrs minimum-249	\$ 150.00
	250-299	\$ 140.00
	300-349	\$ 130.00
	350-399	\$ 125.00
	400-449	\$ 120.00
	450 -499	\$ 115.00
	500 Plus	\$ 110.00

2. Required Insurances

Insurance is to be provided by the Customer unless otherwise indicated.

- ☒ (a) **Public and Products Liability**
A comprehensive general liability insurance written on an occurrence basis with limits of not less than \$5,000,000 per occurrence for death, bodily injury and/or property damage (including loss of use of tangible property caused by an occurrence)
- ☒ (b) **Motor Vehicle Insurance**
automobile liability insurance covering all licensed vehicles whether owned, non-owned, leased or hired which insurance shall provide a minimum combined single limit of liability for bodily injury and property damage
- ☒ (c) **Workers Compensation Insurance**
Insurance in respect of all claims and liabilities arising whether at common law or under statute relating to workers compensation or employer's liability from any accident or injury to any person employed by the Customer in connection with this Agreement.
- ☒ (d) **Transit Insurance**
Transit Insurance in respect of the Mobilisation and Demobilisation of the Equipment for an amount not less than \$ 355,000 being the agreed replacement value of the Equipment.
- ☒ (e) **Equipment Insurance**
All risks insurance for the Equipment from the time it is delivered up to the time it is returned for an amount not less than \$ 355,000, being the agreed replacement value of the Equipment.
- ☒ (f) **Contract Plant and Equipment Insurances**
Insurance against any and all Liability and Loss of any kind arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of any plant, tools appliances or other property owned, rented or Rental by the Customer and used in connection with the Equipment. Minimum cover of \$ 3,000,000_ per claim. Customer shall have the option to self-insure this exposure

3. Responsibilities of the Parties

The following shall be the responsibility of the of the party indicated:	Party responsible for task and for bearing associated costs (tick appropriate box)	
	Emaco	Customer
Mobilization & assembly costs (see clause 1.3(a) of the Standard Terms and Conditions)		X
PM 300 Hr service (includes parts, labour and SOS)		X
Major OEM service (includes 600/1200 hr services, parts, labour and SOS)	X	X
All fluids required at PM and OEM service intervals		X
Minor Repairs less than \$250.00		X
Major Repairs (see clause 6 of the Standard Terms and Conditions)	X	
Modifications for site conformance		X
Body/blade/bucket/ripper damage (other than normal wear and tear)		X
Demobilization and disassembly costs (see clause 1.3(a) of the Standard Terms and Conditions)		X
Fuel costs (see clause 1.3(b) and 2.5(d) of the Standard Terms and Conditions)		X
Replacement of ground engaging tools (including filament)		X
Pre-start inspection before each start of shift		X
Daily servicing (including top ups of oils, grease and water)		X
Provision of equipment operator (see clause 2.7(a) of the Standard Terms and Conditions)		X
Cranage/Tire Handler (if applicable)		X
Undercarriage supply - initial	X	

Undercarriage supply – replacement (other than normal wear and tear)		X
Undercarriage supply – replacement (normal wear and tear)	X	
Undercarriage wear rate based on 5000 hours	X	X
Supply monthly hours		X
Tire Supply – replacement (normal wear and tear)	NA	NA
Panel/glass damage and replacement		X
Cleaning of Equipment for servicing (see clause 2.7(c) of the Standard Terms and Conditions)		X
Cleaning immediately prior to Rental End Date		X
Inspection of Equipment at completion of rental	X	
Tire/Track Inspection at completion of rental	X	

If Emeco is required to perform maintenance or repairs during the term of the rental the customer shall, unless otherwise agreed in writing, pay Emeco its standard mechanical rate, on a time spent basis including travel time to and from the nearest Emeco inspection facility, together with the cost of all parts and supplies consumed in the maintenance or repair.

4. Special conditions

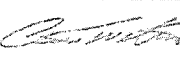
The following special conditions and the Additional Special Conditions form part of the terms and conditions of this Agreement and will apply notwithstanding any inconsistency with the Standard Terms and Conditions set out in Part 2 of this Agreement

The undercarriage life is based on 5000 hours. A percentage of wear to be charged based on undercarriage reports of wear used.

5. Customers Acceptance

The Customer agrees to rent the Equipment on the terms and conditions of this Agreement. The Customer expressly acknowledges and agrees that:

- (a) The Customer has read and understood the Emeco Canada Ltd. Standard Rental Terms and Conditions set out in Part 2 of this Agreement;
- (b) the Emeco Canada Ltd. Standard Rental Terms and Conditions form part of this Agreement and apply except to the extent of any inconsistency with the Special Conditions set out in section 4 above and the additional Special Conditions, in which case the latter will prevail to the extent of the inconsistency; and
- (c) In entering into this Agreement, EMECO is relying on this acknowledgment by the Customer.

Signed by the Customer:	Signed by Emeco:
Signature: 	Signature: 
Name: Gary Conell	Name: Clint Webster
Dated: Jan 6/10	Dated: Jan 06, 2010

Part 2 - Emeco Canada Ltd. Standard Rental Terms and Conditions

1. Rental Charges

- 1.1 The Customer must pay the Rental Charges in respect of the Rental Period.

- 1.2 If the Equipment is used for more than the Minimum Rental Hours, the Customer shall pay the Rental Rate for Excess Hours for each additional hour's usage of the Equipment in excess of the Minimum Rental Hours during the remainder of the period in respect of which the Minimum Rental Hours is specified.
- 1.3 The Customer must pay in addition to the Rental Charges:
- (a) all Mobilization Costs and Demobilization Costs, if applicable;
 - (b) all Operating Costs during the Rental Period;
 - (c) any charges incurred under the provisions of this Agreement;
 - (d) any costs incurred by Emeco in modifying the Equipment to conform to the Customer's requirements;
 - (e) any taxes, duties, levies, charges or imposts on or in connection with this Agreement;
 - (f) any other costs as indicated in the Responsibilities Section in part 1 of this Agreement;
 - (g) a sum equal to the amount of any goods and services tax (GST) payable by Emeco on any supplies made by Emeco under or in connection with this Agreement; and
 - (h) any costs or expenses reasonably incurred by Emeco in order to return the Equipment to the same condition as at Rental Start Date (including cleaning costs).
- 1.4 All Rental Charges due by the Customer to Emeco under the terms of this Agreement are due in advance of the first day of each rental period. All other amounts owing by the Customer to Emeco under the terms of this Agreement are due on demand. The Customer is not entitled to set off any monies owing to it by Emeco against monies owing to Emeco without the express written consent of Emeco.
- 1.5 Emeco may charge the Customer interest calculated on a daily basis and compounded monthly on overdue amounts from the date on which a payment is due to the date of actual receipt of the payment at an interest rate which is 5% greater than the nominal per annum commercial lending rate being charged from time to time by the Royal Bank of Canada to customers of the highest credit standing for short term unsecured commercial loans made in Canada in Canadian dollars.
- 1.6 If the Customer remains in possession of the Equipment after the expiration of the Rental Period, such Rental shall be extended as follows:
- (a) where the rental rate has been quoted by the week, extension shall be for one week and thereafter from week to week;
 - (b) where the rental has been quoted by the month, extension shall be one month and thereafter from month to month; and
 - (c) where the rental rate has been quoted by the day, extension shall be for one day and thereafter day to day;
- Notwithstanding the foregoing, at any time after the expiration of the Rental Period, Emeco may, by notice to the Customer require that the Customer deliver up possession of the Equipment immediately, or as at a date, within the renewal term, specified in the notice.
2. Customer obligations
- 2.1 The Customer acknowledges that Emeco retains full title to the Equipment notwithstanding the delivery of the Equipment to, and the possession and use of the Equipment by, the Customer and that the Customer will have possession of the Equipment as a bailee subject to the terms and conditions of this Agreement. The Customer acknowledges and consents to the granting of security by Emeco to Emeco's financiers over its rights under this Agreement (Security) at Emeco's sole cost and expense. The Customer further acknowledges and agrees that neither the execution of the Security nor the exercise by the holder of the Security, its agent or a security trustee of any power under the Security entitles the Customer to terminate or suspend performance of its obligations under this Agreement. This Agreement may form a deemed security interest under the *Personal Property Security Act* and as such, Emeco may register its interest with the appropriate registries at its sole cost and expense. Upon termination of this Agreement, Emeco shall forthwith discharge any Security and register any such discharge with the appropriate registry or registries, at its sole cost and expense.
- 2.2 Risk in the Equipment passes to the Customer on delivery of the Equipment to the Customer and remains with the Customer until the Equipment is collected by or returned to Emeco. Delivery to the Customer is deemed to occur either when the Equipment is made available to the Customer's nominated carrier for shipment or when Emeco delivers the Equipment to the Site or other location agreed between the parties, as the case may be. Upon delivery, Customer and Emeco shall jointly inspect the Equipment and complete the Initial Condition Report.
- 2.3 Following delivery of the Equipment to the Customer, the Customer is liable to Emeco for and indemnifies Emeco against:
- (a) any and all loss or damage to the Equipment, other than normal wear and tear;
 - (b) any claim made against Emeco arising from the operation of the Equipment by the Customer;
 - (c) any losses, costs or expenses incurred by Emeco arising from or in connection with a breach by the Customer of its obligations under this Agreement including any and all legal fees on a solicitor-client basis; and
 - (d) all costs incurred in respect of repairing or replacing the Equipment at the full replacement cost, together with salvage costs and Rental Charges incurred while the Equipment is being repaired or replaced.
- unless any such losses or damages are contributed to by Emeco's negligence or misconduct.

- 2.4 Neither Emeco nor Customer shall be liable to the other party for any consequential loss, loss of opportunity, revenue or profit suffered by a party no matter how such loss occurred. Nothing herein will in any way limit the right of either party to be indemnified for consequential losses that are part of a proceeding by a third party
- 2.5 Emeco and Customer acknowledge that neither party is liable to the other for defects in the equipment that are not directly attributed to the operation of the equipment or the maintenance of the equipment. Both parties agree to assist each other to the fullest extent possible in dealing with any losses incurred by either party resulting from a manufacturing defect in the equipment.
- 2.6 Emeco's right of indemnity under clause 2.3 is in addition to any rights it has as a co-insured under a policy of insurance taken out by the Customer pursuant to clause 4 of this Agreement. The Customer's obligation to indemnify Emeco under this clause is a continuing and separate obligation of the Customer which survives the termination of this Agreement.
- 2.7 The Customer must ensure that the Equipment is:
- (a) operated only by competent and properly trained personnel who have all of the licences, permits and approvals required by law to operate the equipment, are wearing appropriate protective clothing and equipment and are not under the influence of drugs or alcohol;
 - (b) operated in accordance with the methods and standards of operation recommended and approved by the Equipment's manufacturer or as required by any relevant Law;
 - (c) serviced, maintained, cleaned and repaired according to the manufacturer's specifications and procedures so that the Equipment is at all times in good condition;
 - (d) returned to Emeco in the same condition as at the Rental Start Date (except for normal wear and tear) with a full tank of fuel;
 - (e) used only for the general purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
 - (f) not removed from the Site without Emeco's prior written consent;
 - (g) not modified without Emeco's written consent; and
 - (h) at all times stored safely and protected from theft, loss or damage.
- 2.8 If the Equipment breaks down or becomes unsafe to operate, the Customer must immediately stop using the Equipment, ensure it does not sustain any further damage, prevent the Equipment from causing injury, loss or damage to any person or property and advise Emeco as soon as practicable of the breakdown or the circumstances which make the Equipment unsafe to operate.
- 2.9 The Customer must:
- (a) ensure that all safety and operating information supplied with the Equipment is attached to or otherwise kept with the Equipment and brought to the attention of any person using the Equipment;
 - (b) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment;
 - (c) must not alter, affix or attach any thing to the Equipment without Emeco's prior written consent;
 - (d) maintain any manuals and log books supplied with the Equipment.
- 2.10 The Customer must comply with all relevant Laws in relation to the use of the Equipment and must not permit the Equipment to be used for any illegal purpose or in any manner that would amount to a breach of any relevant Law.
- 2.11 If during the term of this Agreement the Equipment is involved in any incident which results in physical injury to a person, damage to or loss of the Equipment or damage to or loss of any property of the Customer or a third party, the Customer must as soon as practicable advise Emeco and provide details of the incident.
3. Access and Inspection
- The Customer shall, upon notice by Emeco, use its best efforts to enable Emeco and its representatives to gain entry to the Site to inspect, maintain and/or repair the Equipment...
4. Insurance
- 4.1 The Customer must take out and maintain the Required Insurances with a reputable insurance company throughout the term of this Agreement.
- 4.2 The Customer must provide Emeco with a copy of all certificates of Required Insurance prior to the delivery of the Equipment.
- 4.3 The Customer must immediately notify Emeco if any Required Insurance is cancelled or changed in any material way.
5. Hours of Operation

5.1 Hours of operation of the Equipment will be determined as Service Meter Units (SMU's). If the factory installed service meter fails it must be replaced within 3 working days within which period operating hours must be recorded by the Customer but in any event shall not be less than the hours of each shift during which the Equipment is being used. The Equipment must not be used for more than 3 days without a functioning service meter.

6. Major Repairs

6.1 All Major Repairs not caused or contributed to by the Customer's neglect or a failure to comply with its obligations under this Agreement are the responsibility of Emeco, refer to Schedule B. However, Emeco has the right, instead of carrying out such repairs, to replace the Equipment with similar Equipment or alternatively terminate this Agreement in so far as it relates to the damaged Equipment.

6.2 Emeco may, at its sole discretion, authorise the Customer to perform Major Repairs at Emeco's sole cost and expense. If the Customer is so authorised, it must submit, in a timely manner, a full report of the Major Repairs completed. All Major Repairs must be completed to the specifications and in the manner directed by Emeco.

7. Termination

7.1 Subject to clause 7.2, this Agreement will terminate when the Customer delivers the Equipment to Emeco during normal working hours at the end of the Rental Period or upon the prior 30 days' notice described in the Special Conditions. This Agreement will terminate with respect to each piece of Equipment at the time of such return.

7.2 Emeco may terminate the Agreement and repossess the Equipment at any time by written notice to the Customer if the Customer is in breach of the Agreement and fails to remedy that breach within 7 days of receiving notice requiring the Customer to do so or the Customer becomes insolvent, enters receivership or administration, or otherwise is unable to pay its debts as they fall due.

7.3 If the Customer fails to return the Equipment when required by the Agreement or within 24 hours of oral or written demand to the Customer, the Customer will be deemed to be in unlawful possession of the Equipment without Emeco's consent.

7.4 As soon as practicable after the end of the Rental Period, Emeco and the Customer will jointly inspect the Equipment to assess its condition. The percentage use of tires, truck bodies, shovel buckets, tracks, undercarriage and ground engaging tools during the Rental Period will be established from the joint inspection and the Initial Condition Report. The Customer will be charged for any reduction in life during the Rental Period and credited for any increase in life remaining on these items.

7.5 Clauses 2.1, 2.3 and 2.4 shall survive the termination of this Agreement.

8. Customer Acknowledgements

8.1 Subject to any terms that cannot be excluded, the Customer acknowledges and agrees that:

- (a) it is satisfied the Equipment is fit for the particular purpose for which the Customer is renting the Equipment and otherwise meets its requirements;
- (b) in deciding to rent the Equipment it did not rely on any representations as to the Equipment's design or suitability for the particular purpose or on Emeco's skill or judgment or the skill and judgment of anyone for whom Emeco is responsible; and
- (c) it is satisfied that the particular purpose for which the Customer is renting the Equipment is a purpose for which the Equipment was designed;

Emeco is relying on the acknowledgements of the Customer in this clause 8 and would not enter into this Agreement but for these Customer acknowledgements.

8.2 The Equipment is and shall at all times be and remain personal property regardless of the manner in which it may be attached or affixed to any real estate. If installation is required, the Customer must install the Equipment in a manner which will permit removal without any material injury to the place of installation and the Customer shall be responsible for any damage done to any real estate, building, or structure by the removal of the Equipment.

9. Claims

9.1 Where use of Equipment by the Customer results in any accident, claim, damage or loss, the Customer:

- (a) must as soon as practicable provide to Emeco a report setting out details of the accident, claim, damage or loss (as the case may be) and any statements, information or assistance (including meeting with both parties' legal advisers) which Emeco or its insurer may reasonably require;
- (b) must not, without Emeco's written consent which shall not be unreasonably withheld, make or give any offer, promise of payment, settlement, waiver, indemnity or admission of liability; and
- (c) agrees that Emeco or its insurer may at their own cost bring, defend, enforce, or settle any legal proceedings against third parties.

10. Dispute resolution

- 10.1 If a dispute or difference arises between the Customer and Emeco one party requires it to be resolved, that party must promptly give the other party written notice identifying, and giving details of, the dispute or difference.
- 10.2 Within ten (10) business days of a party receiving the notice referred to in clause 10.1, a delegate of Emeco and a delegate of the Customer must meet and attempt to resolve the dispute or difference.
- 10.3 If, within two (2) business days of the first meeting under clause 10.2 the dispute or difference is not resolved, the delegates of Emeco and the Customer must meet again within a further ten (10) business days and attempt to resolve the dispute or difference.
- 10.4 If, within twenty (20) business days of the first meeting under clause 10.3, the dispute or difference is not resolved, the chief executive of Emeco or his nominee and a Vice President of the Customer or his nominee must meet within a further ten (10) business days and attempt to resolve the dispute or difference.
- 10.5 If the dispute is not resolved in the meeting convened pursuant to clause 10.4, the matter may be litigated.
- 10.6 Except as provided by clause 10.7, neither party may commence any legal proceedings against the other party, unless the requirements of clause 10 have first been satisfied or the other party has for its part, failed to comply with any of those requirements.
- 10.7 Nothing in clause 10 prejudices the right of a party to seek injunctive or declaratory relief which may be required in relation to the Agreement.

11. Default

- 11.1 The occurrence or happening of any one of the following events constitutes an event of default:
- (a) if a petition is filed, an order is made or an effective resolution is passed for the winding up, liquidation or dissolution of the Customer;
 - (b) the Customer becomes insolvent or makes an assignment or bulk sale of its assets, or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency, or if in a petition in bankruptcy is filed or presented against Customer, or if a receiver of the Customer is appointed under any instrument or pursuant to the order of any court of competent jurisdiction;
 - (c) if the proceeding with respect to the Customer is commenced under the Companies' Creditors Arrangements Act;
 - (d) if the Customer ceases or threatens to cease to carry on its business;
 - (e) if the ability of Customer to carry on its ordinary business in the Province which the Equipment is situated is impaired or destroyed by its status or lack thereof with any Authority governing the existence of Customer or its powers;
 - (f) if the Equipment or any part thereof is seized under legal process, confiscated, sequestered or attached, or if distress is levied thereon and be not re Rental or satisfied within ten (10) days thereafter.
 - (g) if the Equipment or any part thereof is in imminent danger of loss, serious damage or destruction; or
 - (h) if the Customer or Emeco fails to observe and perform or commits any act in breach of any term, condition or provision of this Agreement.

12. Remedies on Default

- 12.1 If the Customer repudiates this agreement or if any event of default occurs, Emeco may:
- In the event the customer shall default in the payment of rent or any other sums payable by the customer herein, and such default shall continue for a period of thirty days, or if the customer shall default in the performance of any other covenants or agreements of this lease and such default shall continue for thirty days after written notice thereof, or if the customer should become bankrupt or insolvent or any debtor proceedings be taken by or against the customer, then in addition to any and all other legal remedies and rights, Emeco may declare the current balance owing to be due and payable and may collect the same by distress or otherwise.

13. Miscellaneous

- (a) The expiry or termination of the Agreement does not effect any rights of the parties which have accrued before that expiry or termination.
- (b) Time is of the essence in respect of all obligations of the Customer under this Agreement.
- (c) Emeco may assign or subcontract all or any of its rights under this Agreement. The Customer may not assign all or any of its rights under this Agreement without Emeco's prior written consent.
- (d) The Agreement is governed by the laws of the Province Alberta.
- (e) No term or condition of this agreement may be waived, amended or varied except by in writing and signed by both the Customer and Emeco. Forbearance or indulgence by Emeco in any regard whatsoever does not constitute a waiver of the term or condition to be performed by the Customer to which the same may apply.
- (f) This Agreement may be executed in counterparts, each of which when delivered, by facsimile or otherwise, will be deemed to be an original and all of which together will constitute one and the same document.

14. Definitions

Agreement means this agreement comprised of Part 1 - Agreement Details and Special Conditions, Part 2 – Emeco Standard Rental Terms and Conditions the Additional Special Conditions and Schedules "A", "B" and "C" attached hereto.

Approval means any licence, permit, consent, approval, determination, certificate or permission which is required from any Authority or under any Law to perform the Agreement.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

Equipment means the equipment specified in the table at Schedule "A" of this Agreement and includes all attachments and fittings attached to the Equipment.

Demobilisation Costs means, in relation to the Equipment, the costs of decommissioning, disassembly, loading, transport, unloading and delivery of the Equipment from the Site to the Emeco premises from which the Equipment was mobilised, including but not limited to freight costs, labour and equipment rental and crane rental.

Rental Charges means the Rental rates for the Equipment specified Schedule "A" of this Agreement.

Rental End Date means, in relation to each item of Equipment, the date specified as such in the table at Schedule "A" of this Agreement or the date on which this Agreement is terminated, as the case may be.

Rental Period means the period from and including the Rental Start Date to and including the Rental End Date.

Rental Rate for Excess Hours means, in relation to each item of Equipment, the rate specified as such in the table in Schedule "A" of this Agreement.

Rental Start Date means, in relation to each item of Equipment, the date specified as such in the table in Schedule "A" of this Agreement.

Initial Condition Report means the report prepared jointly by the parties at or prior to the Rental Start Date setting out the condition of the Equipment.

Law means:

- (a) Federal, Provincial or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) the common law; and
- (c) Approvals (including any condition or requirement under them).

Minimum Rental Hours means the minimum Rental hours specified at Schedule "A" of this Agreement. The minimum rental hours may be a minimum number of hours per day, per week or per month.

Minor Repairs means individual repairs with a total cost of parts less than \$1200 per event.

Major Repairs means individual repairs caused by normal wear and tear with a total cost of parts greater than \$1200 per event.

Mobilisation Costs means, in relation to the Equipment, all of the costs in connection with the assembly, commissioning, transport and delivery of the Equipment to the Site, including but not limited to freight costs, labour and Equipment rental and crane rental.

Operating Costs means the costs of all consumables necessary for the day to day running and upkeep of the Equipment including but not limited to costs of all fuels, oils, lubricants and coolants, and, if the Customer is not responsible for making the Minor Repairs, the costs incurred by Emeco in undertaking all necessary Minor Repairs.

Required Insurances means the insurances specified in the table at item 3 of part 1 of this Agreement.

Site means the site at which the Customer advises Emeco the equipment is to be used.

Additional Special Conditions

The following special conditions form part of the terms and conditions of this Agreement and will apply notwithstanding any inconsistency with the Standard Terms and Conditions set out in Part 2 of this Agreement:

- No option to purchase is expressed or implied
- The customer has also performed a machine inspection
- Customer will forward all SOS samples to Emeco



Customer's Signature

SCHEDULE "A"
DEFINITION OF INSURED VALUE

Model & Fleet No.	Serial No.	Year of Build	Insured / Replacement Value	Contract #	Purchase order #
ZX800 - EXC024	FF017VQ006550	2005	\$330,000	AGTA3878	080900
JD850 - XHC001	FF850DX973055	2008	\$450,000	AGTA3878	080900

SCHEDULE "B"
DEFINITION OF MAJOR COMPONENTS
Major Components

ITEM	EQUIPMENT TYPE/DESCRIPTION	MAINTENANCE FUNCTION
1	Engine Assembly	(a) Removal and Replacement of complete assembly as per recommended change out interval; (b) Repairs which are deemed necessary to achieve optimal component life cycle cost; is replacement of internal components such as Pistons, Shafts and Gears etc (c) Excludes replacement of leaking seals, gaskets or hoses.
2	Transmission Assembly	
3	Radiator	
4	Torque Converter	
5	Differential	
6	Wheel End	
7	Bevel Gears	
8	Main Hydraulic Pumps (HEX only)	
9	Main Hydraulic Motors (HEX only)	
10	Pump Drives (HEX Only)	
11	Swing Gears/Bearings (HEX only)	
12	Engine Coupling (HEX only)	
13	Hydraulic Cylinders (HEX only)	

APPENDIX “B”



Earthmoving equipment solutions

Invoice

Number - INVMA1762

Date: 1/11/2010

Page: 1

INVOICE TO:

Atcon Construction Inc.

1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Ph: 780-742-1233 Fax:

DELIVERY TO:

Atcon Construction Inc.

1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Ph: 780-742-1233 Fax:

Purchase Order No		Customer No	Sales Person	Freight Method	Payment Terms	
080900		ATC001	Tyson Stel	DELIVERY	Net 30 days	
Qty	Item No	Item Description		Unit Price	Extended Price	
1.00	FRT	EXC024 - Emeco FM to Atcon ZX800 Excavator hauled by Mammot from Emeco Fort MacKay to Atcon. (Emeco PO - 20656)		1,790.32	1,790.32	
1.00	FRT	XHC001 - Emeco FM to Atcon JD850 Excavator hauled by Mammot from Emeco Fort MacKay to Atcon. (Emeco PO - 20656)		1,790.32	1,790.32	

Subtotal 3,580.64
Misc 0.00
GST 179.04
Freight 0.00

Total 3,759.68



Earthmoving equipment solutions

Invoice

Number - INVMA1832

Date: 3/3/2010

Page: 1

INVOICE TO:

Atcon Construction Inc.

1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Ph: 780-742-1233 Fax:

DELIVERY TO:

Atcon Construction Inc.

1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Ph: 780-742-1233 Fax:

Purchase Order No		Customer No	Sales Person	Freight Method	Payment Terms	
		ATC001	Tyson Stel	DELIVERY	Net 30 days	
Qty	Item No	Item Description		Unit Price	Extended Price	
1.00	FRT	Move from Albion to J Road		4,354.56	4,354.56	

XHC001, s/n: FF850DX973055, moved on Jan. 15, 2010

Subtotal	4,354.56
Misc	0.00
GST	217.73
Freight	0.00

Total	4,572.29
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Earthmoving equipment solutions

Invoice

Number - INVRA10776

Date: January 31, 2010

Customer:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Job Site:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Customer ID	Customer Ref. Number	Emeco Contact	Payment Terms			
ATC001	080900	Gene Huse	Net 30 days			
Emeco Equip ID	Equipment Description Period Start Period End		Qty	Rate	Unit	Total
XHC001	Jan 06, 2010 to Jan 31, 2010		533	\$110.00	Per Hour	\$58,630.00

Comment

Serial Number FF850DX973055

JOHN DEERE 850DLC EXCAVATOR S/N: FF850DX973055

C/W 8.4 M BOOM; STICK; Q/A W/ 64" DIG BUCKET S/N162154, 94" CLEANUP BUCKET; CAB W/ A/C, RADIO, 36" SHOES

36" SHOES; ROPS CAB W/ RADIO, AC

Rental Agreement Number: AGTA3879

Rental:	\$58,630.00
Transport:	\$0.00
Miscellaneous:	\$0.00
GST	\$2,931.50
Provincial Tax	\$0.00

Invoice Total:	\$61,561.50
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Emeco Equipment Rental Inc.



Earthmoving equipment solutions

Invoice

Number - INVRA10777

Date: January 31, 2010

Customer:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Job Site:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Customer ID	Customer Ref. Number	Emeco Contact	Payment Terms			
ATC001	080900	Gene Huse	Net 30 days			
Emeco Equip ID	Equipment Description		Qty	Rate	Unit	Total
	Period Start	Period End				
EXC024	Hitachi ZX800 Excavator		489	\$115.00	Per Hour	\$56,235.00
	Jan 05, 2010 to Jan 31, 2010					

Comment

Serial Number FF017VQ006550
27' 1" Boom s/n 5D5263F, 14' 5" Arm s/n 5EKY121, Weldco Coupler s/n 3-89969-1, Fire Extinguisher, Weldco
Q/C 84" Clean-Up Bucket s/n 3-89884-1, weldco o/c Dig Bucket 64" s/n 3-89885-1

Rental Agreement Number: AGTA3878

Rental:	\$56,235.00
Transport:	\$0.00
Miscellaneous:	\$0.00
GST	\$2,811.75
Provincial Tax	\$0.00

Invoice Total:	\$59,046.75
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Emeco Equipment Solutions

Emeco Equipment Solutions
1100, 340 12th Avenue S.W.
Calgary AB T2R 1L5
Phone: (403) 243-8888
Fax: (403) 243-8889
Email: sales@emeco.ca
Website: www.emeco.ca



Earthmoving equipment solutions

Invoice

Number - INVRA10887

Date: February 28, 2010

Customer:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Job Site:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Customer ID	Customer Ref. Number	Emeco Contact	Payment Terms
ATC001	080900	Clint Webster	Net 30 days

Emeco Equip ID	Equipment Description Period Start Period End	Qty	Rate	Unit	Total
EXC024	Hitachi ZX800 Excavator Feb 01, 2010 to Feb 28, 2010	425	\$120.00	Per Hour	\$51,000.00

Comment

Serial Number FF017VQ006550
27' 1" Boom s/n 5D5263F, 14' 5" Arm s/n 5EKY121, Weldco Coupler s/n 3-89969-1, Fire Extinguisher, Weldco
Q/C 84" Clean-Up Bucket s/n 3-89884-1, weldco o/c Dig Bucket 64" s/n 3-89885-1

Rental Agreement Number: AGTA3878

Rental:	\$51,000.00
Transport:	\$0.00
Miscellaneous:	\$0.00
GST	\$2,550.00
Provincial Tax	\$0.00

Invoice Total:	\$53,550.00
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Earthmoving equipment solutions

Invoice

Number - INVRA10888

Date: February 28, 2010

Customer:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Job Site:

Atcon Construction Inc.
1100, 340 12th Avenue S.W.

Calgary AB T2R 1L5

Customer ID	Customer Ref. Number	Emeco Contact	Payment Terms			
ATC001	080900	Clint Webster	Net 30 days			
Emeco Equip ID	Equipment Description		Qty	Rate	Unit	Total
	Period Start	Period End				
XHC001	Feb 01, 2010 to Feb 28, 2010		340	\$130.00	Per Hour	\$44,200.00

Comment

Serial Number FF850DX973055

JOHN DEERE 850DLC EXCAVATOR S/N: FF850DX973055

C/W 8.4 M BOOM; STICK; Q/A W/ 64" DIG BUCKET S/N162154, 94" CLEANUP BUCKET; CAB W/ A/C, RADIO, 36"

SHOES

36" SHOES; ROPS CAB W/ RADIO, AC

Rental Agreement Number: AGTA3879

Rental:	\$44,200.00
Transport:	\$0.00
Miscellaneous:	\$0.00
GST	\$2,210.00
Provincial Tax	\$0.00

Invoice Total:	\$46,410.00
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Emeco Construction Solutions Inc. 2010