

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1)  
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, AS  
AMENDED AND SECTION 39 OF THE *LAW AND EQUITY ACT*, R.S.B.C.  
1996, C.253, AS AMENDED

BETWEEN:

DUMAS HOLDINGS INC.

Petitioners

- and -

TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,  
TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES  
LTD., TERCON MRC LIMITED, FNP EVNTURES INC., TERCON MINING PV LTD.,  
TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.

Respondents

**AFFIDAVIT OF STEPHEN KARPIUK  
(SWORN JANUARY 13, 2013)**

I, STEPHEN KARPIUK, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am an Associate Vice President, Credit and Recovery of First Insurance Funding of Canada Inc. ("FIRST"), a creditor of Tercon Equipment Ltd. ("Tercon"). As such, I have knowledge of the matters hereinafter deposed to except where I indicate that such knowledge is based on the information of others. Where such information is obtained from others, I believe it to be true.

2. Among my current responsibilities is the supervision of FIRST's business record keeping. I am familiar with FIRST's policies, practices and procedures in connection with the daily receiving, recording, filing and retrieving of business information, including the maintenance of records relating to the financing of insurance premiums for commercial insurance policies. For the purposes of this application, I have reviewed FIRST's records in connection with Tercon, which records have been kept in accordance with such business practices.

3. FIRST's business involves the financing of insurance premiums for commercial enterprises pursuant to the terms set out in a standard form of contract called a Premium Instalment Contract ("PIC"). A party (the "Insured") obtains insurance with one or more insurers, usually making a down payment on the premiums due to the insurers. By the terms of the PIC the Insured agrees to pay the amount remaining in instalments. FIRST then makes payment of the remaining amounts due to the insurers, and pursuant to the PIC obtains an assignment of the right to receive payment of any amounts due from the insurers to the Insured. In exchange for financing the remaining premiums, FIRST earns a finance fee provided for by the PIC.

4. In the event that a policy or policies are cancelled before their full term, and sufficient down payments and/or premiums have been paid, the insurers will issue a credit in favour of the Insured for unearned premiums. Under the terms of the PIC, the Insured assigns to FIRST as collateral for the total balance due any and all unearned premiums and dividends which may become payable under the policies in question. The Insured also irrevocably and specifically appoints FIRST as its attorney, with full authority upon the insured's default under the PIC to cancel the policies and to receive all sums assigned under the PIC.

**The PIC**

5. At issue in this motion is a PIC between FIRST<sup>1</sup> and Tercon.
6. Under the terms of a PIC bearing number 52037 dated April 28, 2011 (the "PIC") executed by Tercon as "Insured", funds were advanced by FIRST in connection with premiums for a commercial insurance policy in favour of Tercon with Chartis Insurance.

Hereto annexed and marked as **Exhibit 1** to this my affidavit is a copy of the PIC.

7. The premiums and taxes under the PIC totalled \$199,291.00 plus a finance charge of \$3,492.16. Tercon paid a down-payment of \$29,893.65 leaving a balance of \$172,889.51 payable by Tercon to FIRST in 10 monthly instalments of \$17,288.95 commencing on April 30, 2011.

8. The PIC was renewed by renew dated April 2, 2012. This motion deals with the latest renewal of the PIC.

9. Pursuant to the renewal, the premiums owed by Tercon totalled \$263,411.00 plus a finance charge of \$4,615.73.64. Tercon paid a down-payment of \$39,511.65 and FIRST advanced the balance of \$228,515.08 which was repayable by Tercon to FIRST in 10 monthly instalments of \$22,851.51 commencing on April 30, 2012 and ending on February 28, 2013.

Hereto annexed and marked as **Exhibit 2** to this my affidavit is a copy of the Renewal of PIC dated April 2, 2012.

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<sup>1</sup> FIRST was then known as Macquarie Premium Funding Inc.

10. FIRST provided written notice of the assignment under the PIC to the affected Insurer under the renewal on and by notice dated April 3, 2012.

Hereto annexed and marked as **Exhibit 3** to this my affidavit is a copy of each of the Notices of Assignment dated April 3, 2012.

11. Pursuant to the terms and conditions of the PIC:

- (1) Tercon has irrevocably assigned to FIRST the right to cancel the insurance contract in the event of a default by Tercon under the PIC and Tercon has irrevocably designated FIRST as its agent to cancel the insurance contract in the event of a default by Tercon under the PIC; and
- (2) Tercon has also irrevocably assigned to FIRST its right to receive any unearned premiums in the event the underlying insurance contract is cancelled in accordance with the provisions of section 19(1) of the *Insurance Act*, S.B.S. 2012, c.37.

#### **DEFAULT BY TERCON**

**(a) *Tercon's Default under the PIC***

12. Tercon's cheque in the amount of \$22,851.51 in respect of its December 30, 2012 payment due under the PIC was not honoured by Tercon's bank and was returned by the bank marked NSF. Tercon has not replaced the December 30, 2012 payment under the PIC and is therefore in default under the PIC.

Hereto annexed and marked as **Exhibit 4** to this my affidavit is a copy of a statement of account in relation to the PIC.

### RECEIVERSHIP PROCEEDINGS

13. I am advised by counsel for FIRST, and do verily believe, that on December 14, 2012, FTI Consulting Canada Inc. (the "Receiver") was appointed as receiver without security of the undertakings and properties of Tercon (and related companies) pursuant to an order granted on the day (the "Receivership Order"). The Receivership Order effectively stays actions by creditors of Tercon, including the enforcement of the rights which FIRST has under the PIC to cancel the underlying policy of insurance and recover any unearned premiums on account of monies owed to it by Tercon.

### TOTAL OWING

14. On January 9, 2013, FIRST's lawyer wrote to the Receiver' counsel and the petitioning creditor's counsel to advise them of the default under the PIC and the fact that FIRST would terminate the underlying policies and collect the unearned premiums but for the stay of proceedings.

Hereto annexed and marked as **Exhibit 5** to this my affidavit is a copy of an email from Mr. Camelino of counsel for FIRST to counsel for the Receiver and the Petitioning Creditor.

15. If the policies of insurance whose premiums were financed under the PICs were terminated as at January 9, 2013, I calculate that the value of FIRST's collateral to be \$44,779.87 as particularized below. The daily reduction in the value of the collateral \$878.03 (which is due to the fact that the unearned premium becomes "earned" with the passage of time and until the policy of insurance is cancelled.

16. I make this affidavit in support of a motion by FIRST to obtain leave to allow FIRST to cancel the insurance policy underlying the PIC and to realize upon any unearned premiums there from.

SWORN before me at the City of Toronto, in the Province of Ontario, this 11<sup>th</sup> day of January, 2013.



Commissioner for Taking Affidavits

Benedict Felix Bingfai Chan, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires July 3, 2015.

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STEPHEN KARPIUK

**THIS IS EXHIBIT 1 TO  
THE AFFIDAVIT OF  
STEPHEN KARPIUK SWORN  
THE 11th DAY OF JANUARY,  
2013**



**Commissioner for Taking Affidavits**

Benedict Felix Bingfal Chan, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law,  
Expires July 3, 2015.

**PREMIUM INSTALLMENT CONTRACT**

MACQUARIE PREMIUM FUNDING INC.

20 Toronto Street, 10th Floor, Toronto, ON, M5C 2B8

T: 1 (888) 232 2238 F: 1 (888) 232 2209 MacquariePremiumFunding.ca

Quote ID 174213

CDN



<b>A</b>	TOTAL	\$199,291.00	<b>INSURANCE AGENT OR BROKER</b>		<b>BUYER (INSURED)</b>	
<b>B</b>	DOWN PAYMENT	\$29,893.65	Axis Insurance Managers Inc. 1108 West 8th Avenue Vancouver, BC V6H 3Z5		Tercon Equipment Ltd 100-2079 Falcon Road Kamloops, BC V2C 4J2	
<b>C</b>	PRINCIPAL BALANCE MINUS B	\$169,397.35	ATTN: Axis Insurance Managers Inc.		ATTN: Brad Gardner	
<b>D</b>	INTEREST *	\$3,492.16	<b>F</b>	INTEREST RATE *	PAYMENT SCHEDULE (EXCLUDING DOWN PAYMENT)	
				4.50%		
<b>E</b>	BALANCE DUE *	\$172,889.51	<b>G</b>	AMOUNT OF EACH CONSECUTIVE INST.	DUE DATE OF FIRST INSTALLMENT	Contract Term
	CPM D			\$17,288.95	30-Apr-2011	10 months

**DESCRIPTION OF POLICIES**

POLICY PREFIX AND NUMBER	INCEPTION DATE	NAME AND ADDRESS OF EACH INSURANCE COMPANY (INSURER(S)) NAME AND ADDRESS OF EACH GENERAL AGENT OR POLICY ISSUING AGENT (IF APPLICABLE)	TYPE OF COVERAGE FIRE/AUTO/MAR. L.M. CAS	POLICY TERM IN MONTHS	PREMIUM INCL. TAX
44260657	31-Mar-2011	Charis - Vancouver	COMM	12	\$199,291.00

TOTAL PREMIUM(S) INCL. TAX \$199,291.00

\* In the first year. These terms may change in subsequent years as identified in Renewal Advice Notices in respect of any renewal term.  
Buyer requests and the insurer(s) shown above ("Seller(s)") agrees to make a loan to Buyer in an amount equal to the Balance Due stated in box E. Buyer confirms that the insurance policy(ies) described above are taken in respect of Buyer's business.  
Upon signing below Buyer agrees that the provisions on the following pages hereof are incorporated by reference and constitute a part of this Contract. Receipt of a copy of this Contract is acknowledged by Buyer.  
Buyer is aware that this Contract may be assigned to Macquarie Premium Funding Inc. (MPF).  
Buyer consents to Seller's and any assign's (including Macquarie Premium Funding's) collection, use, disclosure and retention of Buyer's personal information, including credit reports, necessary to facilitate the execution and administration of this Contract.

**DO NOT SIGN THIS CONTRACT UNTIL YOU READ THE CONDITIONS APPEARING ON THE BALANCE OF THE PAGES FORMING THIS CONTRACT, INCLUDING THE AUTHORIZATION AND THE INSTALLMENT SCHEDULE.**

Broker Name: Axis Insurance Managers Inc.

Buyer Name: Tercon Equipment Ltd

Date: April 28, 2011

Buyer Signature: [Signature] Title: Director Finance

Seller by Its Agent: [Signature]  
Axis Insurance Managers Inc. (Agent/Broker)

Buyer Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Signature(s) must correspond with the language of the insurance policy(ies). All insureds designated in the policy(ies) must sign.

**TO MACQUARIE PREMIUM FUNDING INC. (MPF)**

For value received, the undersigned Seller(s) sells, assigns and transfers to Macquarie Premium Funding all its rights, title and interest in and to this Contract, certifies that this Contract arose from the sale of the insurance policy(ies) whose complete description appears above, that such policy(ies) complies with Macquarie Premium Funding eligibility requirements and is in force, and that a copy of this Contract has been given to Buyer, and further warrants that the Seller(s) has received the down payment and any other sums due as required by the Contract and is holding same, or they have been received by Macquarie Premium Funding or they are to be debited from Buyer's bank account.

See Policy Description Above for Name of Insurer(s) (Seller(s))

Seller by its Agent: [Signature]  
Axis Insurance Managers Inc. (Agent/Broker)

Broker Name: Axis Insurance Managers Inc.

Date: April 28, 2011

QUOTE VALID FOR 45 DAYS FROM CREATION DATE. QUOTE CREATION DATE: 01-Apr-2011

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Quote ID: 174213 Page 1 of 4



Apr 28 2011 11:12AM HP LASERJET FAX

P. 5

**CONDITIONS OF PREMIUM INSTALLMENT CONTRACT**

In consideration of the issuance and sale by the insurance company(ies) named as Seller on the first page of this agreement to the Buyer (whose signature appears on first page of this agreement) of the insurance policy(ies) listed in the schedule on the first page of this agreement, together with any policies subsequently purchased in addition to, in substitution for, and replacement or extension thereof, regardless of whether they are of the same type, for the same policy term, with the same or different insurer(s) or for different premium amounts (the "Policies") and the acceptance by Macquarie Premium Funding Inc. ("MPF") of the assignment of this agreement: THE BUYER

1. Agrees that, in the event that more than one insurer is shown in the description of policies on the first page of this contract (each a "Seller"), the Buyer hereby requests from the Sellers loans in an aggregate amount equal to the Balance Due stated in box E and each Seller agrees to make a loan to the Buyer in an amount equal to its proportionate share of such aggregate amount. The proportionate share of each Seller shall be determined based on the proportion that premiums due to each Seller are of the total premium(s) specified on the first page of this contract.
2. Promises to pay to the Seller the Balance Due stated in box E, or, in the event that there is more than one Insurance Company as Seller, the Buyer promises to pay to each Seller the proportionate share of such Seller (determined as set out in paragraph 1 above) of the Balance Due stated in Box E, in each case as adjusted from time to time by Renewal Advice Notices received by the Broker and/or the Buyer and proceeded with by the Buyer in respect of the Policies, in accordance with the payment schedule and terms and conditions of this Premium Installment Contract, as same may be modified from time to time by Renewal Advice Notices issued under this Premium Installment Contract in respect of any renewal term hereof. For certainty, upon assignment of this agreement by more than one Seller, the assignee shall be entitled to the Balance Due stated in box E, as adjusted in accordance with the foregoing sentence.
3. Agrees that failure to pay any installment on the due date constitutes a default hereunder.
4. Agrees that time is of the essence of this contract and that no indulgence or acceptance of a delinquent or partial payment shall constitute a waiver of the rights of the Seller.
5. Agrees that this contract contains the entire agreement, binds Buyers jointly and severally or solidarity, their heirs, representatives and successors and permitted assigns.
6. Agrees that Seller shall have the right to rescind this contract including the assignment to the assignee or the acceptance of the assignment thereof at any time in the event that the Downpayment is not received when required.
7. Assigns to Seller, as security for the balance due, any and all unearned premiums and dividends which may become payable under the Policies and, subject to any mortgages or loss payee interest, loss payments under the Policies which reduce the unearned premiums.
8. Hereby irrevocably and specifically and exclusively appoints and authorizes Seller as Buyer's Attorney-in-Fact or mandatory with full power of substitution and delegation, and with authority upon Buyer's default for and on behalf of Buyer to cancel the Policies (the effective date of cancellation to be as set forth in Seller's notice of cancellation), to receive all sums assigned and hypothecated hereunder, to endorse any bill and to execute and deliver all documents, forms and notices relating to the Policies in furtherance of this agreement. Such power of attorney is coupled with an interest and may be assigned by Seller together with any assignment of this contract.
9. Agrees that Seller may collect and enforce payment of the balance due hereunder without recourse to any unearned premium which may become payable; and that the receipt and acceptance of funds by Seller after it has mailed notice of cancellation of the Policies because of default shall not constitute reinstatement or obligate Seller to reinstate or request reinstatement of such cancelled Policies. Any sum received by the Seller shall be credited to the balance due; any surplus shall be paid to the Buyer or as otherwise required by law.
10. Agrees that the Policies will not be assigned or hypothecated by the Buyer, except for the interests of mortgagees or creditors holding hypothec on the insured property and loss payees, without the written consent of Seller.
11. Agrees that any notice from Seller may be given by ordinary mail and shall be deemed to have been received on the third business day following the date of mailing.
12. Agrees that in the event that Buyer's payment is returned to Seller by depository bank, then the Buyer shall pay to Seller a returned payment charge not to exceed \$50.00 during the first year of the term of this Premium Installment Contract and as specified in the Renewal Advice Notice during any subsequent renewal term.
13. Agrees that if the Buyer defaults in the payment in full of any scheduled installment for more than 10 days, the Buyer will pay to the Seller a delinquency charge of 5% of the amount of the installment in default subject to a minimum charge of \$5 during the first year of this Premium Installment Contract and thereafter, during any renewal term hereof, the delinquency charge and minimum charge may change and, if changed, will be as set out in the Renewal Advice Notice applicable to that renewal term.
14. ~~Agrees that upon cancellation due to Buyer's default, the Buyer shall pay to the Seller a cancellation fee not to exceed \$100.~~
15. Agrees that during the term of this contract the payment amount and/or the number of payments may be amended by Seller to reflect any increase or decrease in the balance payable resulting from any amendment to the Policies authorized by or for the Buyer; and Buyer specifically agrees that Seller may amend this contract to ensure that this contract conforms to the original or amendment finance quotation provided to the Broker and correctly sets forth the details of the Policies, all of which amendments shall be binding upon the Buyer.
16. Acknowledges and agrees that this Premium Installment Contract, as same may be modified from time to time by Renewal Advice Notices issued under this Premium Installment Contract in respect of any renewal term hereof, may be assigned or a security interest therein granted by Seller to any other person without the consent of the Buyer or any other person.
17. Acknowledges and agrees that:
  - (a) This Premium Installment Contract is an agreement to provide insurance Premium Financing by way of an ongoing contract which may be renewed or extended at the option of the Seller in accordance with a Renewal Advice Notice provided to the Buyer and the Broker;
  - (b) This Premium Installment Contract shall renew for a renewal term specified in a Renewal Advice Notice provided to the Buyer and the Broker, acted upon by the Buyer and/or the Broker and accepted by Macquarie Premium Funding, with such renewal, if accepted by the Seller, effective as of the inception date of the Policies and for the term stated in the Renewal Advice Notice;

QUOTE VALID FOR 45 DAYS FROM CREATION DATE. QUOTE CREATION DATE: 01-Apr-2011

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(c) All the terms and conditions of this Premium Installment Contract, save as varied by applicable Renewal Advice Notice(s), shall remain in full force and effect during any renewal term and that any terms and conditions so varied shall remain in full force and effect, as so varied, during any renewal term;

(d) The Downpayment requirement specified in a Renewal Advice Notice for any renewal term shall be satisfied, if the Buyer has not otherwise made payment of same to the Broker or to the Seller, by debit from the account of the Buyer upon acceptance of the Renewal Advice Notice by Macquarie Premium Funding;

(e) Subject to Buyer's right to revoke its authorization, as set out on page 4 of this Premium Installment Contract, Seller is authorized to debit the Buyer's account in the Authorization set out in the monthly payment amount specified on page one and on the Installment Schedule of this Premium Installment Contract or on any subsequent Renewal Advice Notice until the later of:

(i) Receipt by Macquarie Premium Funding of Notice of Cancellation of this Premium Installment Contract or of any subsequent Renewal Advice Notice from the Buyer; and

(ii) The end of the first month following the last month of the expired term of the Policies, under this Premium Installment Contract or under any Renewal Advice Notice accepted by Macquarie Premium Funding, if the Policies have not been bound by that date.

(f) All sums debited to the date specified in clause 17(e)(i), in excess of the sums payable to Seller, shall be paid by Seller to the Broker in trust for the Buyer and that such payment shall discharge all obligation of the Seller to the Buyer in respect of the sum so paid.

18. Acknowledges and agrees that the Seller assigns this contract to Macquarie Premium Funding Inc. ("MPF"), (a) Macquarie Premium Funding shall have all of the rights of Seller under this contract, including, without limitation, the right to act as Attorney-in-Fact of Buyer for the purposes set out in paragraph 8 above and (b) Macquarie Premium Funding is not the assignee of the Seller with respect to the obligations of the Seller under the Policies and Macquarie Premium Funding has no liability in respect of the Policies.

19. Expressly confirms that the Buyer is not engaged in the business of farming in the provinces of Alberta and Prince Edward Island. The Buyer expressly confirms that the Buyer is not engaged in the business of fishing in Prince Edward Island. For certainty, the Buyer confirms that the insurance policy(ies) described in this Premium Installment Contract were not taken primarily for farming purposes in the province of Alberta or primarily for fishing or farming uses in the province of Prince Edward Island.

ADDITIONAL CLIENT INFORMATION

Quote ID: 174213 Buyer (insured): Tarcon Equipment Ltd

Downpayment \$29,893.85 < Retained by broker

INSTALLMENT SCHEDULE (EXCLUDING DOWNPAYMENT)

Date	Amount
30-Apr-2011	\$17,288.95
30-May-2011	\$17,288.95
30-Jun-2011	\$17,288.95
30-Jul-2011	\$17,288.95
30-Aug-2011	\$17,288.95
30-Sep-2011	\$17,288.95
30-Oct-2011	\$17,288.95
30-Nov-2011	\$17,288.95
30-Dec-2011	\$17,288.95
30-Jan-2012	\$17,288.95

The additional Principal Balance resulting from any additional endorsement financing requested by Buyer, quoted by Macquarie Premium Funding and authorized by or for Buyer, during the term of this Premium Installment Contract, will, during the first year hereof, bear interest at the interest rate disclosed herein and during any renewal term hereof will bear interest at the interest rate disclosed in the Renewal Advice Notice applicable to that renewal term and may be subject to an amendment or administration charge in the amount identified in the additional endorsement or renewal financing quotation.

TO THE BUYER (INSURED):

Acceptance of the Assignment of this Premium Installment Contract by Macquarie Premium Funding will be effective as of, and evidenced by, the first debit from the account identified on the attached "void" cheque. MISSED PAYMENTS JEOPARDIZE BUYER'S INSURANCE PROTECTION. BUYER MUST ENSURE THAT PRE-AUTHORIZED DEBITS ARE HONORED ON THE DUE DATES SPECIFIED ON THE INSTALLMENT SCHEDULE IN ORDER TO KEEP INSURANCE IN FORCE.

X DeAr (Buyer Initial)

AUTHORIZATION

1. A specimen cheque for the account (the "Account") on which Macquarie Premium Funding is authorized to draw is attached and marked "void". Buyer warrants and guarantees that all persons whose signatures are required to sign on the Account have signed this Premium Installment Contract ("the Contract") where indicated on page 1.

2. Buyer hereby authorizes Macquarie Premium Funding to debit the Account for the following business purposes:

- (i) for making Buyer's initial down payment due under the Contract in the amount specified on page 1 of the Contract on or after the date of the Contract;
- (ii) for making all monthly installments due under the Contract in the amounts and on the dates set out in the Installment Schedule above provided however if this contract is delivered to Macquarie Premium Funding subsequent to the date of any date set out in the installment schedule, then in such circumstance, Macquarie Premium Funding shall be authorized from and after the date of receipt of the contract ("Receipt Date") to debit all monthly installments due under the contract prior to and including the receipt date; and
- (iii) for making any other payments which may become due under the terms of the Contract, including all payments due under any Renewal Advice Notices accepted by Macquarie Premium Funding, including any downpayment specified in any Renewal Advice Notice on the date noted therein, if not otherwise paid by the Buyer to the Broker and any revised payment amounts which may become due to Macquarie Premium Funding under the terms of the Contract.

Other than as provided in the Renewal Advice Notice, Buyer waives any pre-notification requirements in respect of any pre-authorized debits authorized in this Authorization.

3. This Authorization may be revoked on 30 days written notice by the Buyer to Macquarie Premium Funding. Revocation of this Authorization does not terminate the Contract; this Authorization only applies to the method of payment and does not otherwise have any bearing on the Contract.

4. Buyer undertakes to inform Macquarie Premium Funding of any change in Account Information provided in this Authorization by forwarding a new void cheque to Macquarie Premium Funding at least 30 days prior to the next scheduled installment date.

Macquarie Premium Funding Inc. (MPF) is not an authorized deposit taking institution for the purposes of the Banking Act (Cwlth) 1959. MPF's obligations do not represent deposits or other liabilities of Macquarie Bank Limited ABN 46 008 883 542 (MBL). MBL does not guarantee or otherwise provide assurance in respect of the obligations of MPF, unless noted otherwise. MPF is not regulated as a bank or other financial institution or as a holding company thereof.

QUOTE VALID FOR 45 DAYS FROM CREATION DATE. QUOTE CREATION DATE: 01-Apr-2011

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**THIS IS EXHIBIT 2 TO  
THE AFFIDAVIT OF  
STEPHEN KARPIUK SWORN  
THE 11th DAY OF JANUARY,  
2013**



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**Commissioner for Taking Affidavits**

Benedict Felix Bingfai Chan, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires July 3, 2015.



**MACQUARIE PREMIUM FUNDING**

Refer to this agreement number  
in all correspondence  
52037

**Renewal Request**

Quote ID 221115	All figures expressed are in CDN
Insurance Agent or Broker Axis Insurance Managers Inc. 1108 West 8th Avenue Vancouver, BC, V6H 3Z5 Attention: Axis Insurance Managers Inc.	Insured Tercon Equipment Ltd 100-2079 Falcon Road Kamloops, BC, V2C 4J2 Attention: Dave Horne

**Payment schedule**

Down payment percentage 15.00%	Number of payments 10 months	Day of month payments are due 30	First payment due date 30-Apr-2012
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Subsequent payments are due on the same day of each succeeding period.

Total premiums	-	Total down payment *	=	Amount financed The amount of loan provided to you or on your behalf	+	Finance charge The dollar amount the loan will cost you	=	Total of payments and amount of the charge The amount you will have paid when you have made all scheduled payments	Amount of each payment	Flat rate** This amount is calculated by dividing the finance charge by the amount financed
\$263,411.00		\$39,511.65		\$223,899.35		\$4,615.73		\$228,515.08	\$22,851.51	2.08%

\* Down payment and future installments to be collected by Macquarie Premium Funding.

\*\* The flat rate represents an annual percentage rate of [4.50]. This amount is based on a declining balance and accrues interest from the effective date of the policy. Interest under this Agreement is stated at an annual rate, calculated monthly.

**Schedule of policies covered by this Agreement**

Together with any policies subsequently purchased in addition to, in substitution for, or in replacement or extension, thereof, regardless of whether they are of the same type, for the same policy term, with the same or different insurer(s) or for different premium amounts (collectively, the "Policies").

Broker code	Policy number	Full name of insurance company and address of branch reporting office and full name and address of general agent	Type of insurance	Minimum earned %	Term in months	Policy effective date MM/DD/YYYY	Policy premium
	44269857-0 1	Chartis - Vancouver	COMM	0.09%	12	03-31-2012	\$263,411.00

**Renewal Details**

Total premiums	\$263,411.00
Total taxes	\$0.00
Subtotal	\$263,411.00
Broker fee	\$0.00
Additional fee	\$0.00
<b>Total contract</b>	<b>\$263,411.00</b>
Down payment	\$39,511.65
Less down payment previously collected	\$0.00
<b>Net down payment due upon acceptance of contract</b>	<b>\$39,511.65</b>

**Special requests**

**Specify whether the Broker or Macquarie will retain down payments**

Amount retained by Broker: Down payment amount retained: \$ 39,511.65 Number of installments retained: \_\_\_\_\_

OR  
Request Macquarie to retain the:  down payment and/or  past due installments on behalf of broker.

It is understood that Macquarie will require 10 business days to allow the payment(s) to clear prior to the disbursement of funds to the brokerage. In the event that the payment(s) are dishonoured, Macquarie reserves the right to revoke the Agreement and assumes no time on risk.

**Macquarie Premium Funding**

The undersigned does hereby certify that the said policy(ies) whose complete description appears above, comply with Macquarie Premium Funding's eligibility requirements and are in force, and that a copy of the original Continuous Premium Installment Contract has been given to the Buyer and the original remains with the policy file.

Broker Name: Axis Insurance Managers Inc.

See Schedule of Policies for Name of Insurer (Seller)

Date: April 2, 2012

By: [Signature]  
Signature of Agent or Broker

**Transmission Instructions**

Please sign this renewal request and fax it to Macquarie Premium Funding at 1 888 232 2209.

**THIS IS EXHIBIT 3 TO  
THE AFFIDAVIT OF  
STEPHEN KARPIUK SWORN  
THE 11th DAY OF JANUARY,  
2013**



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**Commissioner for Taking Affidavits**

Benedict Felix Bingfai Chan, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires July 3, 2015.



MACQUARIE PREMIUM FUNDING

Refer to this agreement number
in all correspondence
52037

Notice of assignment and acceptance (Insurer)

Table with 2 columns: Insurance company / wholesaler (Chartis - Vancouver) and Insured (name and address) (Tercon Equipment Ltd).

Payment schedule

Table with 4 columns: Date of notice and acceptance (03-Apr-2012), Final payment due (30-Jan-2013), Day of month payments are due (30), Number and frequency of instalments (10 months).

Description of policy(ies)

Table with 6 columns: Policy prefix and number, Inception date, Name and address of each insurance company, Type of coverage, Policy term in months, Premium.

If no other Agent is shown under the insurance company name, the submitting producer is shown on our records as the issuing Agent or the Broker of record

Table with 2 columns: Agent or Broker submitting this Agreement (Axis Insurance Managers Inc.) and Premium payment will be sent to the following payee (Axis Insurance Managers Inc.).

\*Please notify Macquarie Premium Funding if otherwise as premium will be paid accordingly.

To the Insurer

Macquarie Premium Funding Inc. (MPF) has agreed to accept the assignment of the Premium Finance Agreement referenced above (the 'Agreement') in respect of the premium on the policy(ies) described above (the Policy(ies)) subject to the conditions herein.

Please advise Macquarie Premium Funding on or before the payment release date set out above if:

- 1. Any of the Policy(ies) is NOT in full force and effect or if the premium has been fully earned.
2. Any of the Policy(ies) as issued differs in any way from the above description.
3. Any of the Policy(ies) requires more than 15 days Notice of Cancellation by any party.
4. Any of the Policy(ies) is an audit or reporting form policy on which the DEPOSIT PREMIUM IN YOUR OPINION IS NOT EQUIVALENT TO THE ESTIMATED PREMIUM TO BE EARNED FOR THE FULL POLICY TERM.
5. You wish the premium paid other than as indicated above.
6. Any of the Policy(ies) is written for a term of less than one year.
7. Any of the Policy(ies) contains a minimum retained premium of an amount in excess of \$250.00.
8. Any of the Policy(ies) covers any leased vehicles.

All details shown above were supplied by the submitting agent. The local branch office of the insurer, or general agent, if any, who has been designated by Insurer to receive notices of finance transactions and who has received a copy of this notice, should NOTIFY MACQUARIE PREMIUM FUNDING OF ANY DISCREPANCIES PRIOR TO PAYMENT.

In consideration of Macquarie Premium Funding accepting the assignment of the Agreement the insurer will:

- A. If the Insured fails to pay Macquarie Premium Funding and if Macquarie Premium Funding cancels any of the Policies or if the insured cancels any of the Policies it will pay Macquarie Premium Funding with or without surrender of the Policies, the gross short-rate unearned premium, such return premium to be based on the original financed premium stated in this Notice and advanced by Macquarie Premium Funding in respect of such Policies.
B. If any of the Policies is for any reason cancelled by the insurer or authorized agent, the insurer will pay Macquarie Premium Funding the gross pro-rata unearned premium, with or without surrender of such Policies. The Insurer will not assign any of the Policies, except for interests of mortgagees or loss payees, without the prior written consent of Macquarie Premium Funding.
C. The Insurer will pay Macquarie Premium Funding (i) all gross unearned premiums which may become payable resulting from endorsement and (ii) loss payments which reduce the unearned premium up to the amount of the unpaid balance due Macquarie Premium Funding from the Insured, subject to any mortgagee or loss payee interest; such returns to be based on the amount of premium advanced by Macquarie Premium Funding and as mentioned above.
D. The Insurer will not assign any of the Policies, except for interests of mortgagees or loss payees, without the prior written consent of Macquarie Premium Funding.
E. The terms of this Notice, and if extant, the written agreement of subscription between Macquarie Premium Funding and the Insurer, are fully applicable to this transaction.

PLEASE ADVISE MACQUARIE PREMIUM FUNDING IF ANY AGENT OR GENERAL AGENT, OTHER THAN THOSE INDICATED ABOVE, SHOULD BE NOTIFIED.

**THIS IS EXHIBIT 4 TO  
THE AFFIDAVIT OF  
STEPHEN KARPIUK SWORN  
THE 11th DAY OF JANUARY,  
2013**



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**Commissioner for Taking Affidavits**

Benedict Felix Bingfai Chan, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires July 3, 2015.



Refer to this agreement number in all correspondence.

**52037**

**Statement of account**

**Date**

**January 11, 2013**

Name of Insured

Name of Broker

**Tercon Equipment Ltd**

**Aon Reed Stenhouse Inc.**

<b>Total premium (including taxes/fees)</b>	<b>\$263,411.00</b>
<b>Down payment amount</b>	<b>-\$39,511.65</b>
<b>Amount financed</b>	<b>\$223,899.35</b>
<b>Service charge</b>	<b>\$4,615.73</b>
<b>Total of payments and amount of the charge</b>	<b>\$228,515.08</b>
<b>Less installment (if retained by broker)</b>	<b>\$0.00</b>
<b>Total</b>	<b>\$228,515.08</b>

<u>Date</u>	<u>Description</u>	<u>Amount</u>
30-Apr-12	1st installment	-\$22,851.51
30-May-12	2nd installment	-\$22,851.51
3-Jul-12	3rd installment	-\$22,851.51
30-Jul-12	4th installment	-\$22,851.51
30-Aug-12	5th installment	-\$22,851.51
1-Oct-12	6th installment	-\$22,851.51
9-Oct-12	Negative Endorsement #1	-\$9,342.00
9-Oct-12	Negative Endorsement Service Charge Adjustment	-\$116.71
30-Oct-12	7th installment	-\$20,486.83
30-Nov-12	8th installment	-\$20,486.83
4-Jan-13	NSF Fee on 9th installment	\$1,074.34
<b>Balance as of January 11, 2013</b>		<b>\$42,047.99</b>

**Schedule of Unpaid Installments**

<u>Date</u>	<u>Description</u>	<u>Amount</u>
30-Dec-12	9th installment	\$21,561.17
30-Jan-12	10th installment	\$20,486.82
<b>Total</b>		<b>\$42,047.99</b>

**THIS IS EXHIBIT 5 TO  
THE AFFIDAVIT OF  
STEPHEN KARPIUK SWORN  
THE 11th DAY OF JANUARY,  
2013**



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**Commissioner for Taking Affidavits**

Benedict Felix Bingfai Chan, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires July 3, 2015.

# McLEAN & KERR LLP

Barristers & Solicitors

SUITE 2800  
130 ADELAIDE STREET WEST  
TORONTO, CANADA M5H 3P5

TELEPHONE: 416 364 5371  
FAX: 416 366 8571  
EMAIL: mail@mcleankerr.com  
WEBSITE: www.mcleankerr.com

PLEASE REPLY ATTENTION OF

**G. F. Camelino**  
Direct Dial: 416-369-6621  
Email: gcamelino@mcleankerr.com

January 9, 2013

## By Email

### **BORDEN LADNER GERVAIS LLP**

Scotia Plaza  
40 King Street West  
44<sup>th</sup> Floor  
Toronto, ON M5H 3Y4

*Counsel for FTI Consulting Canada Inc.*

**Attention: Craig Hill/Magnus Verbugge**

### **OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6100, P.O. Box 50  
Toronto, ON M5X 1B8

*Counsel for Dumas Holdings Inc.*

**Attention: Marc Wasserman/Jeremy  
Dacks/Shawn Irving**

### **FARRIS, VAUGHAN, WILLS & MURPHY LLP**

P.O. Box 10026  
25<sup>th</sup> Floor  
Pacific Centre South  
700 West Georgia Street  
Vancouver, BC V7Y 1B3

*Counsel for Dumas Holdings Inc.*

**Attention: David Gruber**

**Re: In the Matter of the Receivership of Tercon Equipment Ltd. and others  
Claim by First Insurance Funding of Canada Inc.**

We are lawyers for First Insurance Funding of Canada Inc. (formerly known as Macquarie Premium Funding Inc.). Would you kindly arrange to have us added to the service list.

Pursuant to a Premium Instalment Contract ("PIC") dated April 28, 2011 and renewed on April 2, 2012, our client is a secured creditor of Tercon Equipment Ltd. ("Tercon"). Pursuant to the PIC, our client financed a commercial policy of insurance on behalf of Tercon and as security for the repayment of that financing Tercon appointed our client as its Attorney in Fact with a right to terminate the underlying policy of insurance and to receive the unearned premiums as at the termination date. The return of the unearned premium is our client's only collateral.

We are advised by our client that Tercon has failed to remit the monthly payment of \$22,851.51 due under the PIC on December 30, 2012 – to be more precise, the remitted cheque failed to clear Tercon's bank and was returned NSF.

As a result of Tercon's default under the PIC, our client is in a position to terminate the underlying policy of insurance and hereby puts the receiver on notice that it intends to do so should Tercon's default not be cured by no later than Friday, January 11, 2013. We would expect that the final payment due on January 30, 2013 be remitted on that date.

Be aware that this is an urgent matter for our client as its only collateral (the unearned premium) is valued at \$44,779.87 as at today's date and is depreciating at a daily rate of \$878.03.

Although we are of the view that our client is entitled to terminate the underlying policy and receive the unearned premiums without a court order, if the receiver objects to the termination of the policy by our client, we will bring a motion before the court at the earliest available date.

We look forward to hearing from the receiver on or before Friday, January 11, 2013.

Yours very truly,



G. F. Camelino  
GFC/ac

c.c. FTI Consulting Canada Inc. (Nigel Meakin/Jeffrey Rosenberg/Pamela Luthra)

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No. S-128887  
Vancouver Registry

In the Supreme Court of British Columbia

B E T W E E N:

DUMAS HOLDINGS INC.

Petitioner

- and-

TERCON INVESTMENTS LTD., TERCON A.C. LTD.,  
TERCON EQUIPMENT LTD., TERCON  
CONSTRUCTION LTD., TERCON MINING LTD.,  
TERCON ENTERPRISES LTD., TERCON MRC  
LIMITED, FNP EVNTURES INC., TERCON MINING  
PV LTD., TERCON EQUIPMENT ALASKA  
PARTNERSHIP AND TERCON ALASKA LTD.

Respondents

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AFFIDAVIT OF STEPHEN KARPIUK  
SWORN JANUARY 13, 2013

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McLEAN & KERR LLP  
Barristers and Solicitors  
Suite 2800  
130 Adelaide Street West  
Toronto, ON M5H 3P5  
**G.F. Camelino**  
LSUC# 45607S  
Tel: 1-416-369-6621  
Fax: 1-416-366-8571

Lawyers for First Insurance Funding of Canada Inc.