

## SUMMARY OF CURRENT DOCUMENT

Name of Issuing Party	Ingersoll-Rand																					
Date of Document	January 17, 2003																					
Summary of Order/Relief Sought or Statement of Purpose in Filing	<div><ul style="list-style-type: none"><li>• Interlocutory Application (<i>Inter Partes</i>) by Ingersoll-Rand Canada Inc.</li><li>• Ingersoll-Rand Canada Inc. applies for:<ul style="list-style-type: none"><li>a) a determination of its priority and entitlement, <i>vis-à-vis</i> other claimants, to the proceeds from the sale of the following assets of Hickman Equipment,</li><li>b) for an order that the Receiver pay to Ingersoll-Rand Canada Inc. the following amounts, as explained in greater detail herein, from the proceeds of the sale of the following assets of Hickman Equipment, less a reasonable <i>pro rata</i> amount for the costs of the administration of the estate:<table><tr><th>S/N</th><th>Description</th><th>Payout</th></tr><tr><td>R14246FF</td><td>1998 Ingersoll-Rand ECM590 Hydraulic Drill</td><td>\$68,400.00</td></tr><tr><td>R14245FF</td><td>1998 Ingersoll-Rand ECM590 Hydraulic Drill</td><td>\$79,800.00</td></tr><tr><td>R11115EF</td><td>1998 Ingersoll-Rand ECM590 Hydraulic Drill</td><td>\$100,608.28</td></tr><tr><td>160180</td><td>1999 Ingersoll-Rand DD110 Compactor</td><td>\$60,662.03</td></tr><tr><td>167316</td><td>2001 Ingersoll-Rand SD110D Compactor</td><td>\$110,000.00</td></tr><tr><td colspan="2">TOTAL:</td><td>\$419,470.31</td></tr></table></li><li>c) for an order that the Receiver pay to Ingersoll-Rand Canada Inc. from the proceeds from the sale of asset number 21 currently being held in trust, the amount of \$92,497.27, being the total amount owing on the asset, less a reasonable <i>pro rata</i> amount for the costs of the administration of the estate:</li></ul></li></ul></div>	S/N	Description	Payout	R14246FF	1998 Ingersoll-Rand ECM590 Hydraulic Drill	\$68,400.00	R14245FF	1998 Ingersoll-Rand ECM590 Hydraulic Drill	\$79,800.00	R11115EF	1998 Ingersoll-Rand ECM590 Hydraulic Drill	\$100,608.28	160180	1999 Ingersoll-Rand DD110 Compactor	\$60,662.03	167316	2001 Ingersoll-Rand SD110D Compactor	\$110,000.00	TOTAL:		\$419,470.31
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2002 01 T0352

### IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR TRIAL DIVISION, in Bankruptcy and Insolvency

**IN THE MATTER OF** a Court-ordered Receivership of Hickman Equipment (1985) Limited ("Hickman Equipment") pursuant to Rule 25 of the *Rules of the Supreme Court*, 1986 under the *Judicature Act*, R.S.N.L. 1990, c.J-4, as amended

**AND IN THE MATTER OF** the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA")

### INTERLOCUTORY APPLICATION (*Inter Partes*)

The Application of Ingersoll-Rand Canada Inc. ("Ingersoll-Rand"), the Applicant herein, says that:

1. By Order of this Court dated March 13, 2002 and filed March 14, 2002, PricewaterhouseCoopers Inc. ("PWC") was appointed Receiver of the assets of Hickman Equipment (the "Receivership Order").
2. By further Order of this Court dated March 13, 2002 and filed March 14, 2002, Hickman Equipment was adjudged bankrupt and PWC was appointed as Trustee of the estate of the bankruptcy (the "Receiving Order").
3. By further Order of this Court dated May 14, 2002 and filed May 17, 2002, PWC's plan for the realization of the assets of Hickman Equipment was approved (the "Realization Plan Order").
4. The Realization Plan Order approved PWC's plan for the determination of the rights and entitlement of creditors and claimants to the assets of Hickman Equipment (the "Claims Plan").
5. Under paragraphs 6 and 7 of the Claims Plan, the determination of the rights and entitlement of creditors and claimants to the assets of Hickman Equipment involved a two stage process, as follows:
  - a. A determination of whether a claimant had a valid, perfected and enforceable ownership or security interests in the assets of Hickman Equipment or the proceeds arising therefrom; and
  - b. A determination of the priority of a claimant's interests *vis-à-vis* other claimants.
6. Under paragraph 20 of the Claims Plan, PWC proposed that the order of priority of claims to an asset of Hickman Equipment or to the proceeds arising therefrom be determined using the priority rules established by the *Personal Property Security Act*, S.N.L. 1998, c.P-7.1 (the "PPSA") and other applicable law.

7. Under paragraph 21 of the Claims Plan, issues of priority and entitlement to collateral between secured claimants may, upon Application, be brought before this Court for determination, pursuant to the provisions of Section 68 of the PPSC.

8. Ingersoll-Rand presented its security interest claim to PWC (the "Claim").

9. The Claim dealt with the following 28 items:

	Description	S/N		Description	S/N
1.	1998 Ingersoll-Rand ECM 590 Hydraulic Drill	R14246FF	2.	1998 Ingersoll-Rand ECM 590 Hydraulic Drill	R14245FF
3	1998 Ingersoll-Rand ECM 490 Hydraulic Drill	R14186AE	4.	1997 Ingersoll-Rand ECM 490/YH70 Hydraulic Drill	R14200DE
5	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11212GG	6.	Ingersoll-Rand ECM 590 Hydraulic Drill	R11237DH
7.	2000 Ingersoll-Rand ECM 590 Hydraulic Drill	R11241EH	8.	2000 Ingersoll-Rand ECM 590 Hydraulic Drill	R11245EH
9.	2000 Ingersoll-Rand ECM 590 Hydraulic Drill	R11246EH	10	Ingersoll-Rand ECM 590 Hydraulic Drill	R11247EH
11	1998 Ingersoll-Rand ECM 590 Hydraulic Drill	R11115EF	12	1998 Ingersoll-Rand ECM 590 Hydraulic Drill	R11116EF
13	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11189CG	14	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11209FG
15	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11183CG	16	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11205EG
17	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11185CG	18	1999 Ingersoll-Rand ECM 590 Hydraulic Drill	R11206EG
19	2000 Ingersoll-Rand ECM 590 Hydraulic Drill	R11224AH	20	1999 Ingersoll-Rand DD110 Compactor	160180
21	1999 Ingersoll-Rand SD100DA Compactor	163713	22	2001 Ingersoll-Rand SD110D Compactor	167316
23	2001 Ingersoll-Rand SD110D Roller	167317	24	Ingersoll-Rand SD115D Compactor	161154
25	1999 Ingersoll-Rand VR642 Forklift	154621	26	2000 Ingersoll-Rand PF5510 Paver	55102864
27	2001 Ingersoll-Rand PF5510 Paver	55103033	28	1999 Ingersoll-Rand PF5510 Paver/Finisher	55102843

10. Of these units, at the time of bankruptcy, only units number 1, 2, 11, 20, and 22 remained in the inventory of Hickman Equipment (the "Remaining Assets"). The rest had been sold to third parties.

11. The proceeds from the sale of asset number 21 were identified, and were held in trust by the Monitor, and are now being held in trust by the Trustee.

12. The proceeds from the sale of the Remaining Assets are:

No.	Description	S/N	Proceeds
1.	1998 Ingersoll Rand ECM590 Hydraulic Drill	R14246FF	\$68,400.00
2.	1998 Ingersoll Rand ECM 590 Hydraulic Drill	R14245FF	\$79,800.00
11	1998 Ingersoll Rand ECM 590 Hydraulic Drill	R11115EF	\$100,608.28
20	1999 Ingersoll Rand DD110 Compactor	160180	\$60,662.03
22	2001 Ingersoll Rand SD110D Compactor	167316	\$110,000.00

13. The total net amount obtained from the auction is therefore \$419,470.31.

14. In addition, the Trustee is holding in trust the proceeds from the sale of asset number 21 in the amount of \$95,000.00. The total amount owing on this asset is \$92,497.27, and Ingersoll-Rand is therefore claiming this amount.

15. The total amount claimed by Ingersoll-Rand is therefore \$511,967.58.

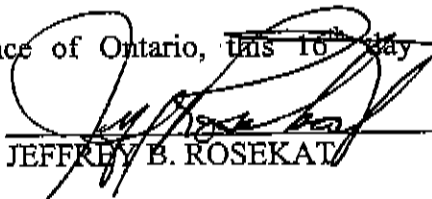
16. Ingersoll-Rand is willing to allow a certain percentage of this amount to be withheld by the Trustee to contribute to the costs of administration of the estate.

17. PWC has issued its Final Determination of the Claim and has allowed Ingersoll-Rand's claim as a valid secured claim.

18. Ingersoll-Rand therefore applies, pursuant paragraph 21 of the Claims Plan and Section 68 of the PPSA for:

- a. a determination of the priority and entitlement of Ingersoll-Rand, *vis-à-vis* other claimants, to the proceeds from the sale of the Remaining Assets;
- b. an order that PWC pay the proceeds from the sale of the Remaining Assets (less a reasonable *pro rata* amount for the costs of administration of the estate) to Ingersoll-Rand; and
- c. an order that PWC pay the proceeds of the sale of asset number 21 which are currently being held in trust in the amount of \$95,000.00 less a reasonable *pro rata* amount for the costs of administration of the estate.

**DATED** at the City of Toronto in the Province of Ontario, ~~this 16<sup>th</sup> day of January,~~  
2003.

  
JEFFREY B. ROSEKAT

**Baker & McKenzie**  
Barristers & Solicitors  
181 Bay Street, Suite 2100,  
PO Box 874  
Toronto, Ontario M5J 2T3

T: (416) 865-2310  
F: (416) 863-6275  
E: jeffrey.rosekat@bakernet.com

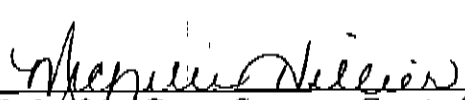
Solicitors for the Applicant, Ingersoll-Rand  
Canada Ltd.

**ADDRESS FOR SERVICE:**

c/o Learmonth, Dunn & Clarke  
Barristers and Solicitors  
22 Church Hill, P.O. Box 700  
St. John's, Newfoundland A1C 5L4

**ISSUED** at the City of St. John's in the Province of Newfoundland and Labrador, this 17 day  
of ~~December, 2002.~~

*January, 2003*

  
Clerk of the Court, Supreme Court of  
Newfoundland and Labrador

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IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION, in Bankruptcy and Insolvency

IN THE MATTER OF a Court-ordered Receivership of Hickman Equipment (1985) Limited ("Hickman Equipment") pursuant to Rule 25 of the *Rules of the Supreme Court*, 1986 under the *Judicature Act*, R.S.N.L. 1990, c.J-4, as amended

AND IN THE MATTER OF the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA")

## NOTICE

Your are hereby notified that the foregoing application will be heard by the Judge presiding in Chambers at the Court House at St. John's, Newfoundland and Labrador, on the 5<sup>th</sup> day of June, 2003, at the hour of 10:00 o'clock in the forenoon or so soon thereafter as the application can be heard.

AND FURTHER TAKE NOTICE that on hearing of the application, the judge may make an order in favour of the applicant in your absence and without further notice unless you or your solicitor

- (a) cause to be delivered to the applicant or the applicant's solicitor at the address named herein for service, not later than two clear days before the hearing of the application, a true copy of any affidavit or other material that you or your solicitor intend to read on the hearing of the application, and,
- (b) appear on the hearing of the application at the time and place appointed for the hearing.

To: See Schedule "A" Attached.

**SCHEDULE "A"**

**DISTRIBUTION LIST**

TO: ABN Amro Bank Canada/ ABN Amro Leasing & Tramac Equipment Ltd.	Aubrey L. Bonnell, Q.C. Brian Winsor David Timms Brent Keenan	709-722-7521   416-868-0673
Bombardier Capital Leasing & Culease Financial Services	J. Vernon French, Q.C.	709-754-2701
Caterpillar Equipment	Colin D. Grant	905-849-5512
CAT Finance	James Smyth, Q.C. Phillip Warren	709-754-5662
Cedarrapids	Les Baumbach Francoise Belzil	319-399-4760 780-413-3152
CIBC	R. Wayne Myles Geoffrey Spencer	709-579-2647
CIBC Equipment Finance Ltd./ CIT Financial Ltd.	Gregory W. Dickie	709-722-9210
Contract Funding Group Inc.	Mark G. Klar	416-218-1831
DaimlerChrysler Financial Services/ DaimlerChrysler Capital Services/ Mercedes-Benz of Canada Inc.	Philip Buckingham Peter O'Flaherty Elaine Gray	709-722-4720  416-863-3527
Fabtek Corp.	Linc A. Rodgers Rhodie E. Mercer, Q.C.	416-863-2653 709-726-5705
GE Capital	Harvey Chaiton Frederic Scalabrini	416-218-1849 905-319-4855
GMAC	Thomas R. Kendell, Q.C.	709-722-1763
Group Holdings Ltd./Hickman Equipment/Hickman Holdings Ltd.	Robert Stack/ Griffith D. Roberts	709-726-2992
Ingersoll-Rand Canada Inc.	R. Barry Learmonth Jonathan Wigley	709-739-8151 416-863-6275



MTC Leasing Inc./  
National Leasing Group Inc.

R. Paul Burgess

709-754-0915

ORIX Financial Services Canada Ltd.

Donald Yaeck

416-236-3010

Goodman Associates

Paul G. Goodman

902-425-3777

Merrick Holm

Carl Holm, Q.C.

902-429-8215

Royal Bank of Canada

Thomas O. Boyne, Q.C.

902-463-7500

TD Asset Financial Corp.

D. Bradford L. Wicks

709-753-5221

Wells Fargo Equipment Finance Co.

Richard Jones

416-361-6303

Patterson Palmer Hunt Murphy

Frederick J. Constantine

709-722-0483

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**AND IN THE MATTER OF** the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA")

## AFFIDAVIT OF AGAKO NOUCH

I, **AGAKO NOUCH**, of the City of Toronto, in the Province of Ontario, **HEREBY MAKE OATH AND SAY:**

1. I am the President of Ingersoll-Rand Canada Inc. ("Ingersoll-Rand"), and therefore have knowledge of the matters referred to in the Application and to the matters herein. I have also spoken with others regarding my evidence where necessary. Where my evidence is based on information that I have received from others, I have identified the source of my information, and in each such case, I verily believe it to be true.
2. Since at least May, 1997, Ingersoll-Rand has been providing various pieces of heavy equipment manufactured by Ingersoll-Rand to Hickman Equipment (1985) Ltd. on a conditional sale basis.
3. Each of the conditional sales agreements contain the following term in paragraph 1:  
  

*"The title and property in the machinery ... (hereinafter called "the equipment") sold or delivered hereunder whether or not attached to real or immoveable property, shall not pass to the Purchaser until the entire purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company..."*
4. The details of each transaction are provided below and the supporting documentation is attached hereto as exhibits. In each case, it was the intention of both Ingersoll-Rand and Hickman Equipment to create a Purchase Money Security Interest ("PMSI") under section 35 of

the *Personal Property Security Act* ("PPSA"). Such an interest was created in fact by virtue of the Conditional Sales Agreements which were executed in each case.

5. In each case, the security interest was in fact registered in the Personal Property Register ("PPR"). Each of the registrations includes a brief but specific description including the serial number of the collateral.

6. Due to an oversight, notice of the PMSI interest was not given to other creditors pursuant to section 35(2)(b) of the PPSA. Ingersoll-Rand's position is that the failure to provide this notice is merely a defect in the PMSI, making the security interest an unperfected PMSI.

#### **Asset #1**

7. On June 4, 1999, Ingersoll-Rand and Hickman Equipment entered into an Equipment Rental Agreement whereby Hickman Equipment agreed to rent one "ECM490 Hydraulic Drill" with the serial number R14246FF (hereinafter "Asset #1"). The agreement provides that equipment be delivered to Hickman Equipment's premises in Mount Pearl on June 10, 1999. Attached as *exhibit "A1"* to this affidavit is a true copy of this Equipment Rental Agreement.

8. A Conditional Sales Agreement for the purchase of Asset #1 was executed by a representative of Ingersoll-Rand on January 22, 2001 and by a representative of Hickman Equipment on January 16, 2001. The terms of the agreement were: "*10% + HST invoice. Three (3) month floor plan. Balance over 48 months at bank prime plus 1% on the declining balance*

with Jan/Feb and March yearly skips." A true copy of this agreement is attached to my affidavit as *exhibit "A2"*.

9. The purchase price was \$250,000 plus \$37,500 H.S.T. and \$25,000 was paid on the execution of the order. Payments totaling \$51,674 were made up until the last payment was made on December 20, 2001. The principal outstanding as at January 20, 2002 was \$183,260.82. An account statement for Asset #1 is attached hereto as *exhibit "A3"*.

10. A security interest was registered in the PPSA on January 23, 2001 at 7:00 p.m. as registration number 764,969 citing the serial number and a brief description of Asset #1. Attached hereto as *exhibit "A4"* is a true copy of the Registration Statement, which also registered the interest in Asset #2.

#### Asset #2

11. On June 4, 1999, Ingersoll-Rand and Hickman Equipment entered into an Equipment Rental Agreement whereby Hickman Equipment agreed to rent one "ECM490 Hydraulic Drill" with the serial number R14245FF (hereinafter "Asset #2"). The agreement provides that equipment be delivered to Hickman Equipment's premises in Mount Pearl on June 10, 1999. Attached as *exhibit "B1"* to this affidavit is a true copy of this Equipment Rental Agreement.

12. A Conditional Sales Agreement for the purchase of Asset #2 was executed by a representative of Ingersoll-Rand on January 22, 2001 and by a representative of Hickman Equipment on January 16, 2001. The purchase price was \$245,000 plus \$36,750 H.S.T. The

terms of the agreement were: *"10% + HST invoice. Three (3) month floor plan. Balance over 48 months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips."* A true copy of this agreement is attached to my affidavit as ***exhibit "B2"***.

13. The purchase price was \$245,000 plus \$36,750 H.S.T. and \$24,500 was paid on the execution of the order. Payments totaling \$50,645 were made up until the last payment was made on December 20, 2001. The principal outstanding as at January 20, 2002 was \$179,591.03. An account statement for Asset #2 is attached hereto as ***exhibit "B3"***.

14. A security interest was registered in the PPSA on January 23, 2001 at 7:00 p.m., as registration number 764,969 citing the serial number and a brief description of Asset #1. Attached hereto as ***exhibit "B4"*** is a true copy of the Registration Statement.

#### **Asset #11**

15. A Conditional Sales Agreement for the purchase of one ECM590 Hydraulic Drill with the serial number R11115EF ("hereinafter Asset #11") was executed by a representative of Ingersoll-Rand on June 18, 1998 and by a representative of Hickman Equipment on May 21, 1998. The terms of the agreement were: *"10% Down + H.S.T. Floor Plan to Jan. 1, 1999. Finance balance over 48 months at bank prime plus 1% on the declining balance with Jan/Feb/March yearly skips."* A true copy of this agreement is attached to my affidavit as ***exhibit "C1"***.

16. The purchase price was \$362,000 plus \$54,300 H.S.T. and \$90,500 was paid on the execution of the order. Payments totaling \$199,918 were made up until the last payment was made on December 20, 2001. The principal outstanding as at January 20, 2002 was \$100,608.28. An account statement for Asset #11 is attached hereto as *exhibit "C2"*.

17. The Conditional Sales Agreement was registered under the former *Conditional Sales Act* on June 19, 1998 at 2:30 p.m. as registration number 698841.

18. Due to an oversight, the prior registration was not properly renewed during the transition period allowed by the PPSA. A security interest was registered in the PPSA on January 25, 2002 at 3:53 p.m., as registration number 1,567,557 citing the serial number and a brief description of Asset #11. Attached hereto as *exhibit "C3"* is a true copy of the Registration Statement.

#### **Asset #20**

19. A Conditional Sales Agreement for the purchase of one DD110 Compactor with the serial number 160180 ("hereinafter Asset #20"), was executed by a representative of Ingersoll-Rand on June 7, 2000 and by a representative of Hickman Equipment on May 31, 2000. The terms of the agreement were: "*H.S.T. on invoice. Balance over 36 months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips.*" A true copy of this agreement is attached to my affidavit as *exhibit "D1"*.

20. The purchase price was \$129,111.00 plus \$19,366.65 H.S.T. Payments totaling \$80,730 were made up until the last payment was made on December 20, 2001. The principal outstanding as at January 20, 2002 was \$60,662.03. An account statement for Asset #20 is attached hereto as *exhibit "D2"*.

21. A security interest was registered in the PPSA on June 7, 2000 at 8:08 p.m., as registration number 334,706 citing the serial number and a brief description of Asset #20. Attached hereto as *exhibit "D3"* is a true copy of the Registration Statement.

22. A competing but subordinate PPSA registration was made on Asset # 20 in favour of Hickman Leasing Limited on January 25, 2002 as registration number 1,567,165.

#### **Asset #21**

23. A Conditional Sales Agreement for the purchase of one SD100 Asphalt Compactor with the serial number 163713 ("hereinafter Asset #21"), was executed by a representative of Ingersoll-Rand on June 28, 2000 and by a representative of Hickman Equipment on June 20, 2000. The terms of the agreement were: *"10% Down. H.S.T. on invoice. Six (6) month Floor Plan. Balance over 36 months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips."* A true copy of this agreement is attached to my affidavit as *exhibit "E1"*.

24. The purchase price was \$128,000 plus \$19,200 H.S.T. and \$12,800 was paid on execution of the order. Payments totaling \$30,944 were made up until the last payment was made



on December 20, 2001. The principal outstanding as at January 20, 2002 was \$92,497.37. An account statement for Asset #21 is attached hereto as *exhibit "E2"*.

25. A security interest was registered in the PPSA on June 28, 2000 at 7:28 p.m., as registration number 390,278 citing the serial number and a brief description of Asset #21. Attached hereto as *exhibit "E3"* is a true copy of the Registration Statement.

26. A competing but subordinate PPSA registration was made on Asset # 21 in favour of Hickman Leasing Limited on January 25, 2002 as registration number 1,567,165.

27. Asset # 21 was sold on January 25, 2002 to Westside Asphalt for \$95,000. The proceeds were identified by the Monitor and held in trust by the Monitor, and then by the Receiver/Trustee, and remain in trust.

#### Asset #22

28. A Conditional Sales Agreement for the purchase of one SD110D Compactor with serial number 167316 ("hereinafter Asset #22"), was executed by a representative of Ingersoll-Rand on March 30, 2001 and by a representative of Hickman Equipment on March 27, 2001. The terms of the agreement were: *"10% Down. H.S.T. on invoice. Six (6) month Floor Plan. Balance over 48 months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips."* A true copy of this agreement is attached to my affidavit as *exhibit "F1"*.

29. The purchase price was \$132,000 plus \$19,800 H.S.T. and \$13,500 was paid on execution of the order. One payment of \$3,940.00 was made on December 20, 2001. The principal outstanding as at January 20, 2002 was \$116,384.69. An account statement for Asset #22 is attached hereto as *exhibit "F2"*.

30. A security interest was registered in the PPSA on March 30, 2001 at 7:05 p.m., as registration number 872,754 citing the serial number and a brief description of Asset #22. Attached hereto as *exhibit "F3"* is a true copy of the Registration Statement.

#### **Competing Interests**

31. According to the Final Determination of the Receiver, the relevant dates for determining priority for the Remaining Assets and Asset #21 are as follows:

No.	Priority Date
1	January 23, 2001
2	January 23, 2001
11	January 25, 2002 (or June 18, 1998)
20	June 7, 2000
21	June 28, 2000
22	March 30, 2001

32. With the exception of the two subordinate registrations by Hickman Leasing limited with respect to Assets #20 and #21, there are no other registrations to my knowledge with respect to these specific assets.

33. It is my understanding that the only creditor who has asserted a general security interest is CIBC. I also understand that CIBC's security documents specifically state that CIBC's security interest is subordinate to any unperfected PMSI holders.

#### **Payment Out**

34. Ingersoll-Rand therefore requests that this Court make a determination that it has priority over the proceeds from the assets in question, and that the Receiver be ordered to pay the proceeds over to Ingersoll-Rand as follows:

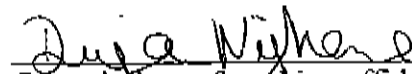
No.	Proceeds	Debt	Payout
1	\$68,400	\$183,260.82	\$68,400.00
2	\$79,800	\$179,591.03	\$79,800.00
11	\$117,963	\$100,608.28	\$100,608.28
20	\$95,000	\$60,662.03	\$60,662.03
21	\$95,000	\$92,497.27	\$92,497.27
22	\$110,000	\$116,384.69	\$110,000.00
Total:			\$511,967.58

35. In view of the Cost Allocation Plan approved by the Court on May 6, 2002, Ingersoll-Rand is agreeable to having a portion of this payout held in trust by the Receiver to be used for Ingersoll-Rand's share of the administration costs of the estate.

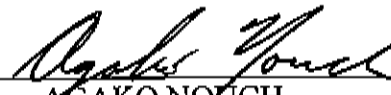
SWORN BEFORE ME in the City of

Toronto, in the Province of Ontario

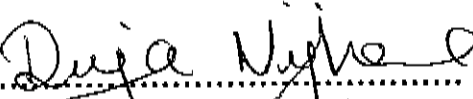
this 16<sup>th</sup> day of January, 2003.

  
Commissioner for taking affidavits, etc.

Diya Sneholata Nijhawan, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

  
AGAKO NOUCH

*This is Exhibit "A1" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005



# INGERSOLL-RAND CANADA INC.

## Equipment Rental Agreement

Agreement of Lease made at Mount Pearl in the Province of NF at 10:00 AM, on the 4 day of June 1999.

by and between—

Hereinafter called "the lessor"  
(Address for all purposes hereof

**Ingersoll-Rand Canada Inc.**  
**Suite 1, 10 Akerley Blvd., Dartmouth, N.S., B3B 1J4)**

Of the One Part;

and

hereinafter called "the Lessee"  
(Address for all purposes hereof

**Hickman Equipment (1985) Limited P.O.45957b**  
**1269 Topsail Rd, Mount Pearl, Newfoundland, A1N 3C8)**

Of the Other Part:

**Witnesseth:** That the Lessor and Lessee have mutually agreed as follows:

1. The Lessor hereby leases to the Lessee under the terms and conditions of this Agreement and for the approximate rental period stated hereinbelow, the equipment hereinafter described under the heading "Details of Equipment" (the same being referred to as "the Equipment") for use by the Lessee at or near

2. The Lessor shall deliver such Equipment free on board at Mount Pearl in good condition and working order, with all necessary tools peculiar to the Equipment, excluding however any standard tools, extra parts, piping, hose, fuel, lubricants, supplies or crew.

### Details of Equipment

Item of Equipment	Lessor's Identification No. or Manufacturer's No.	Replacement Value of New Equipment	Approximate Rental Period	Rental Rate
LCM490 Hydraulic Drill	R14246FF	\$380,000.00	3 Mths	\$13,500.00 80/20 split

(This contract is based on the standard form of rental agreement approved by Canadian Construction Association.)

# General Conditions

## 1. THE RENTAL PERIOD:

The rental period shall commence on and include the date of assignment of the equipment from the Lessor's shipping point to the Lessee, or the Lessee's agent, including any public carrier taking same for transit to the Lessee;

The rental period shall end on and include the date of actual delivery of the equipment to the Lessor, or at any other equidistant point if instructions to do so are given by the Lessor.

## CALCULATION OF RENTAL CHARGES:

The Lessee shall pay rental for the entire rental period on each article listed under Details of Equipment at the rate therein stipulated and on the following basis:

- (a) Monthly rental rates are for a minimum rental period of one month, i.e., from the date of commencement of the rental period up to, but not including the same date in the next week, i.e., from the day of commencement of the rental period up to, but not including the same day in the following week, daily rates are for a rental period of twenty-four consecutive hours or less.
- (b) After the minimum rental period has been realized, the rental payable for a fraction of any succeeding period shall be the proportionate part of the applicable rental rate according to the number of calendar days in such fraction.
- (c) The rental rates stipulated under Details of Equipment shall apply when the number of hours the equipment is operated does not exceed 200 hours in any one month, or does not exceed 50 hours in any one week or does not exceed 10 hours in any one day. When equipment is operated in excess of the above rated hourly maximums, such excess will be charged at 50% of the applicable rate stated under Details of Equipment for double-shift operation and at 100% of the applicable rate stated under Details of Equipment for triple-shift operation. The Lessee hereby agrees to notify the Lessor when the equipment is operated in excess of the above stated hourly maximums and to pay the increased rental as described above.

Rental rates shall not be subject to any deduction on account of non-working time during the rental period nor because the equipment is returned before the expiration of such period.

## 2. PAYMENTS:

The rentals due under this Lease shall be paid monthly or weekly (as the case may be) in advance to the office of the Lessor at the address designated above. The rental for the minimum rental period is payable before delivery of the Equipment to the Lessee or the latter's agent or carrier.

All overdue payments shall bear interest at the rate of 18% per annum, without prejudice to the Lessor's right, as hereinafter stipulated, to terminate this Lease for non-payment of rental.

## 3. LOADING, UNLOADING AND TRANSPORTATION:

The Lessor shall at its own expense load the Equipment for transit to the Lessee and unload it upon its return and shall pay any demurrage charges accruing at its own shipping and receiving point.

The Lessee shall at his (its) own expense do all other loading, unloading, installing, dismantling and hauling, and shall pay any demurrage accruing at his (its) own shipping or receiving point.

The Lessee shall pay all transportation charges from and to the Lessor's shipping and receiving points; provided however that, unless otherwise agreed, the Lessee shall not pay return transportation charges greater than those necessary to return the Equipment to the point from which it was originally shipped to the Lessee.

The Lessor may ship the Equipment in accordance with its own judgment, if shipping instructions are not furnished on the signing of the present agreement.

## 5. RECALLING AND RETURNING NOTICE:

The Lessor may recall any or all of the Equipment upon giving thirty (30) days' written notice to the Lessee and, subject to the provisions of General Condition No. 2 as to the Lessee's obligation to pay rental for a minimum period, the Lessee may return any or all of the Equipment to the Lessor at any time.

## 5. RECALLING AND RETURNING NOTICE: (Cont'd)

The Lessor reserves the right to remove the Equipment from the job at any time when, in the Lessor's opinion, the Equipment is in danger because of strikes or any other condition.

## 6. MAINTENANCE, OPERATION AND REPAIRS:

The Lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment, and shall see that the Equipment is not subjected to careless or needlessly rough usage, and shall, at the Lessee's own expense, maintain and ultimately return to the Lessor the Equipment and its appurtenances, together with any tools and accessories pertaining thereto, the whole in good repair and running order, fair wear and tear excepted.

Without limiting the generality of the foregoing, the Lessee shall, at the Lessee's own expense, during the term of this Lease, pay the cost of:

- (a) all fuel and lubricants required to operate the Equipment;
- (b) all repairs required to be made to the Equipment in order to keep it in good repair and running order;
- (c) replacing broken or worn out parts, fair wear and tear excepted;
- (d) any and all local, municipal, provincial and federal taxes, assessments and charges levied upon the Equipment while in the possession of the Lessee.

## 7. SUPPLYING OPERATORS:

Unless otherwise agreed in writing, the Lessee shall supply and pay all operators employed on the Equipment during the term of this Lease and shall only employ persons who are competent to perform their respective duties. Should the Lessor furnish any operators or other workmen, they shall for all legal purposes be constituted the employees of the Lessee working at the latter's responsibility and the Lessee shall pay them such salary or wages on the Lessee's regular pay days and provide them with such travelling expenses, board and lodging as may be agreed upon between the Lessee and Lessor. The Lessee shall provide and pay for all workmen's compensation, assessments and/or insurance and pay all taxes required by law or otherwise applying to such operator's and workmen.

## 8. DAMAGE TO EQUIPMENT:

The Lessee shall indemnify the Lessor against all loss and damage to the Equipment during the rental period and the appraisal of any such loss or damage shall be based on the value stated in the Details of Equipment. Any shortage or damage claimed by either party must be made known in writing to the other party within two weeks after receipt by claimant of the Equipment, otherwise any such claim shall be extinguished.

## 9. LIABILITY OF LESSEE:

The Lessee shall indemnify the Lessor against all loss, expenses, penalties, damages, condemnations and law costs which the Lessor may suffer or may be required or condemned to pay for personal injuries (including death) and/or property damage suffered by any person by reason of the operation, handling, transportation or use of the Equipment by or while in the hands of the Lessee or the latter's employees, agents or carriers.

The Lessee hereby renounces all claims which he (it) may have against the Lessor for any loss or damage which he (it) may suffer, either directly or indirectly by reason of the condition of the Equipment or its suitability for the work it may be required to perform.

## 10. INSPECTION:

Before the Equipment is loaded for transit to the Lessee, the latter may have an inspection thereof made by a competent authority and if the Equipment is proven not to be substantially in the condition required by this Lease, then the cost of such inspection shall be paid by the Lessor.

If the Lessee fails to have such inspection made, the Equipment shall be presumed for all purposes hereof to be in good condition and running order when delivered to the carrier. The Lessee's right of inspection shall be in lieu of any warranties or guarantees and it is agreed that the Lessor makes no warranty or guarantee whatsoever as to the Equipment or its performance.

## 10. INSPECTION: (Cont'd)

The Lessor shall have the right at any time to enter upon the premises occupied by the Equipment and shall be given free access thereto and afforded all necessary facilities for the purpose of inspecting the Equipment.

The Lessor shall have the right to inspect the Equipment at the Lessee's shipping point prior to re-shipment and shall be notified prior to such re-shipment and given ample opportunity to make such inspection.

#### **TITLE:**

Title to the Equipment shall at all times be and remain vested in the Lessor and nothing contained in this Lease shall be deemed to have the effect of conferring upon the Lessee any right or title whatsoever in or to the equipment, other than that of a Lessee.

The Lessee shall give the Lessor immediate notice in case any of the equipment is levied upon or from any cause becomes liable to seizure.

#### **TERMINATION OF LEASE:**

Should the Lessee fail to make any payment for more than thirty (30) days or it becomes due or become bankrupt or fail to maintain and operate or to return the Equipment as provided by this Lease, or violate any other provision hereof, the Lessor may after giving the Lessee three (3) days' notice in writing, terminate this Lease re-take possession of the Equipment without becoming liable for trespass and recover all rentals due and full damages for injury to and all expenses incurred in obtaining the return of the equipment.

Should the Lessor fail to ship the Equipment in substantially the condition stipulated in this Lease, the Lessee may upon giving the Lessor three (3) days' notice in writing, terminate this Lease and recover any amount paid by it to the Lessor hereunder.

#### **13. INSURANCE:**

Unless advised to the contrary in writing, the Lessee shall maintain, at the Lessee's own expense, fire and liability and any other insurance required to indemnify the Lessor against any loss to or of the Equipment to the extent of the value of the Equipment as stated in the Details of Equipment.

#### **1. INSURANCE: (Cont'd)**

#### **SHIPPING INSTRUCTIONS:**

The Lessor is to deliver the Equipment to Mount Pearl on or about the 10 day of June 19 99 for shipment to the Lessee.

#### **10. PURCHASE OPTION CLAUSE:**

For the purpose of this option clause, the sale price of the equipment on the commencement of this agreement is established

ECM490 S/N R14246FF

\$338,500.00

#### **PURCHASE OPTION CONDITIONS:**

- Rentals collected on 80/20 basis.
  - 100% of rentals to apply against purchase price.
  - The consignee shall indemnify the consignor against all loss and damage to the equipment during consignment period and the appraisal of any such loss or damage shall be based on the value stated in details of equipment.
- This RPO expires November 01,99.

This insurance shall be kept in effect from the time the Equipment is shipped by the Lessor until it is returned to the Lessor or delivered to another Lessee of the Lessor.

#### **14. BOND:**

If requested by the Lessor, the Lessee at the latter's own expense, shall furnish a bond satisfactory to the Lessor, in an amount equal to the value of the Equipment as stated in the Details of Equipment to insure the fulfillment of the Lessee's obligations under this Lease.

#### **15. SUBLETTING:**

None of the Equipment shall be sublet by the Lessee, nor shall he (it) assign or transfer any interest in this Lease, without the previous written consent of the Lessor.

#### **16. NOTICE:**

Wherever the giving of a notice is required by this Lease, such notice shall be given in writing and shall be considered for all purposes hereof to have been received on the next juridical day after that on which the notice is mailed by registered post with mailing charges prepaid.

#### **17. ARBITRATION:**

Should any dispute arise between the parties on any matter or thing arising out of this agreement, it shall be referred to a single arbitrator. If the parties fail to agree on the selection of the sole arbitrator, each party shall forthwith appoint an arbitrator, and these two shall elect a third arbitrator. Should the first two arbitrators fail to agree on the third arbitrator, the latter shall be appointed by a Judge of the Supreme Court or of a Superior Court of the Province of Newfoundland

18. The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language.

Les parties reconnaissent et confirment par les présentes qu'elles ont exigé que les termes et conditions du présent contrat soient rédigés en anglais.

## Special Conditions

The following Special Conditions form part of this Lease and in the event of there being a conflict between the provisions of the Special Conditions and those of the General Conditions, the Special Conditions and those of the General Conditions, the Special Conditions shall prevail:

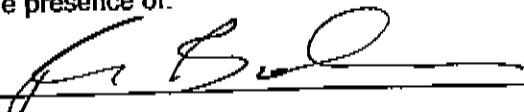
In Witness Whereof the parties hereto have executed this Agreement of Lease on the day and date hereinabove first written.


In the presence of:

\_\_\_\_\_  
Witness

  
INGERSOLL-RAND CANADA INC. Lessor

In the presence of:

  
Witness

  
Lessee



*This is Exhibit "A2" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya S. Nijhwa*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhwa, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

Quotations are subject to change without notice and are for cash F.O.B. as specified on invoice. Prices are payable in Canadian funds at par Toronto, except when otherwise specified. Interest charged on overdue accounts at the rate currently in effect at the time the account becomes overdue.

INGERSOLL-RAND CANADA INC.

6759072

(hereinafter called "the Company")

Inv. 6759072

PLEASE SHIP TO : Hickman Equipment (1985) Limited  
1269 Topsail Rd, Mount Pearl, Newfoundland, A1N 3C8

VIA : Truck

CHARGE TO : Hickman Equipment (1985) Limited P.O. 59924  
(hereinafter called the "Purchaser")  
P.O. Box 820, Mount Pearl, Newfoundland, A1N 3C8  
(address)

subject to the terms and conditions printed on the front and back of this Form, the following equipment :

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
One	ECM490 Hydraulic Drill s/n R14246FF		\$250,000.00
		HST	\$37,500.00
	S/N: R14246FF	TOTAL	\$287,500.00
	AMOUNT PAID ON EXECUTION OF ORDER \$ 25,000.00		
	THE BALANCE OWING \$ 225,000.00		
	TERMS : 10% + HST invoice. Three (3) month floor plan. Balance over 48 Months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips.		

Acceptance of this order is subject to the approval of an Executive Officer of the Company, and, when so approved, shall form a binding contract of purchase and sale. The Purchaser authorizes the Company to insert herein or in any copy hereof such further description of the equipment as the company may consider advisable for the Purposes of making the said equipment more easily or readily known or distinguished.

Prov. Sales Tax License No. 23869-9-15

The Above Order is hereby accepted subject to all the terms and conditions set forth on the front and back of this form.

FOR THE PURCHASER, THIS  
DAY OF JAN 16 2001

Hickman Equipment (1985) Limited  
PURCHASER  
BY

FOR INGERSOLL-RAND CANADA INC.  
BY Don B. Cuthbert  
REPRESENTATIVE

APPROVED, 22<sup>nd</sup> DAY OF January 2001  
THIS  
BY  
EXECUTIVE OFFICER

(OVER)

# CONDITIONS

## IT IS AGREED THAT:

(1) The title and property in the machinery, goods, chattels and merchandise (hereinafter called "the equipment") sold or delivered hereunder, whether or not attached to real or immovable property, shall not pass to the Purchaser until the entire purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company, and if the Purchaser fails to pay the purchase price, or any installment thereof, or any other charge or amount strictly in accordance with the terms hereof, or fails to comply with any condition hereof, or if proceedings in bankruptcy be instituted against the Purchaser, or in the event of the equipment being seized under any distress for rent or under any execution against the Purchaser, or upon any attempt by the Purchaser to sell, dispose of, or remove from its destination or the registration district or province in which its destination is situated, all or any of the said equipment or any part or parts thereof without the consent in writing of the Company previously given, or upon any act of abandonment of the equipment by the Purchaser, then the full balance of the purchase price, together with all other amounts then owing hereunder shall forthwith become due and payable without notice and the Purchaser's right of possession together with all payments made on account of the purchase price, shall immediately be forfeited as liquidated damages, or at the option of the Company as rental for use of the equipment, and the Company shall be at liberty and entitled, without any previous demand, notice or delay, to bring action for the aggregate amount of such balance of the purchase price and other amounts owing hereunder and to enter upon the premises where the equipment may be and to take possession of and, whether or not the said equipment be affixed or attached to real or immovable property remove and upon notice as required by law resell the same by public auction or at a private sale absolutely freed and discharged from all claims of the Purchaser thereto, and the Purchaser shall be liable to the Company for any balance of the purchase price not realized from such sale and shall forthwith pay to the Company all costs and expenses incurred in such taking of possession, removal and resale, and waiving all claims for loss or damage sustained by reason of such entry, removal and resale, shall deliver the equipment to the Company in like condition as when received, ordinary wear and tear only expected.

(2) The taking or discounting by the Company of any note as security for the payment of the price of equipment or any installment thereof shall in no way operate as a merger, novation or payment on account of such indebtedness or so as in any way to alter the conditions hereof or postpone or otherwise affect the installment payments hereunder, provided that payment by the Purchaser of any such note shall discharge the obligation hereby secured.

(3) The Purchaser shall not countermand the order contained herein. The equipment shall from the time of shipment be at the risk of the Purchaser who shall fully insure and keep fully insured the same with loss payable to the Company until payment in full of the purchase price thereof. The Purchaser shall deliver to the Company the policy or policies of insurance forthwith upon the issue thereof, and upon failure to do so within ten days after receipt of the equipment, the Company is hereby authorized to effect such insurance, and the cost of so insuring shall be deemed to be part of the Purchaser's indebtedness hereunder subject to all the conditions hereof and shall be forthwith payable in cash by the Purchaser to the Company.

(4) The Purchaser undertakes to maintain the equipment in good and substantial repair and condition at its own expense while title to such equipment vests in the Company and to permit the Company at all reasonable times to have access to the equipment and to inspect the state and condition thereof.

(5) Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

The Company shall not be liable for loss, damage, detention, or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other labour difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, car shortage wrecks or delay in transportation, inability to obtain necessary labour, materials or manufacturing facilities from usual sources, faulty forgings or castings or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

(6) Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

(7) Unless otherwise agreed in writing by the Company, the equipment shall be set up and erected by the Purchaser at the Purchaser's expense. The Company upon request will provide a competent supervisor to advise and consult during the setting up or starting of the equipment, in accordance with the terms and conditions as the Company ordinarily furnishes such supervisors.

(8) The Company reserves the right to make such changes, in detail or design, construction, arrangement or equipment as shall, in its judgment constitute an improvement over former practices.

(9) The Company warrants that the equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the equipment in operation or eighteen months from the date of shipment, whichever shall first occur. Should any failure to conform to this Warranty be reported in

option, correct such nonconformity, by suitable repair to such equipment or, to furnish a replacement part F.O.B. point of shipment, provided the Purchaser has stored installed, maintained and operated such equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements or adjustments to the equipment or any costs of labour performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's Warranty. Performance warranties are limited to those specifically stated by the Company. Unless responsibility for meeting such performance warranties are limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided above.

The company makes no other warranty or representation of any kind whatsoever, expressed or implied except that of title, and all implied warranties, including any warranty or merchantability and fitness for a particular purpose provided by law, including the civil code of quebec, are hereby disclaimed.

Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such equipment.

(10) The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract or the equipment and services furnished hereunder in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of equipment upon which such liability is based.

The Company and its suppliers shall in no event be liable to the Purchaser any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, direct or indirect, special or punitive damages arising out of this contract or any breach thereof, or any defeat in, or failure of, or malfunction of the equipment hereunder, whether based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase of replacement power or claims of Purchaser or customers. Purchaser for service interruption whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

(11) The Purchaser acknowledges that the Equipment has been purchased for use in the conduct of its business, that it is familiar with the Equipment, and the specifications pertaining thereto, that its own engineering staff have reviewed and/or participated in preparing such specifications and that consequently purchaser is satisfied that the Equipment is functional for the purposes for which it has been acquired.

(12) This document shall apply to, bind and enure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

(13) The Purchaser hereby waives notice of any transfer or assignment hereof and title to the equipment herein mentioned. Purchaser shall not be entitled to assign its rights hereunder without the prior written consent of the Company.

(14) The order contained herein is taken subject to the approval of an Executive Officer of the Company, and when so approved shall form a binding contract of purchase and sale and shall be deemed to have been made at the head of ice of the Company.

(15) This document contains all the terms of the contract between the parties and no salesman or agent of the Company is authorized to make any other terms or conditions, verbal or otherwise or in any way to alter the terms or conditions hereof. Purchaser hereby waives, to the full extent allowed by law, the provisions of The Limitations of Civil Rights Act (Saskatchewan), Sections 19 to 24 of the Sales of Goods on Condition Act (British Columbia) and Sections 47, 49 and 50 of the Law of Property Act (Alberta). Any provisions hereof prohibited by the law of any jurisdiction governing the same, shall be deemed to be modified in accordance with such law which shall effectively define the rights of the parties hereto and no other provision hereof shall be affected by such prohibition.

(16) The company shall have the right to enforce one or more remedies provided by these CONDITIONS or by law successively or concurrently and such enforcement shall not operate to estop or prevent the Company from pursuing any further remedy which it may have hereunder or at law, and if two or more remedies hereunder shall, according to the applicable law or any jurisdiction, be incompatible it may elect to employ such one or more remedies as are compatible according to such law.

(17) The Purchaser acknowledges the receipt of a copy of this document.

(18) The parties hereby acknowledge and confirm that they have drawn in the English language.

Les parties reconnaissent et confirment par les presentes qu'elles ont exigé que les termes et conditions du present contrat soient rédigés en anglais.

*This is Exhibit "A3" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhwa*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhwa, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law,  
Expires June 20, 2005

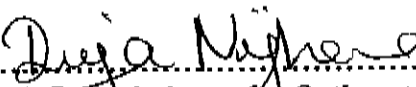
# Customer Accounts Payable Report (Actual)

Customer Name: HICKMAN EQUIPMENT (1985) LTD  
 Address: 1269 TOPSAIL ROAD  
 P. O. BOX 820  
 MOUNT PEARL, NF  
 A1N 3C8  
 Interest Rate: 8.5  
 Effective Date: 04/20/2001

Customer #: C41115  
 Contract #: 1596  
 Invoice #: 6759072  
 Model #: ECM490  
 Serial #: R14246FF  
 Reference #:  
 Page #: 1  
 Date: 27/Feb/2002

Payment #	Due Date	Interest Rate	Principal Payment	Interest Payment	Total Payment	Principal Total
FP1	2001 Feb 20	0.00 %	0.00	0.00	0.00	225,000.00
FP2	2001 Mar 20	0.00 %	0.00	0.00	0.00	225,000.00
FP3	2001 Apr 20	0.00 %	0.00	0.00	0.00	225,000.00
1	2001 May 20	7.50 %	5,975.75	1,406.25	7,382.00	219,024.25
2	2001 Jun 20	7.25 %	1,323.27-	1,323.27	0.00	220,347.52
3	2001 Jul 20	7.25 %	13,432.73	1,331.27	14,764.00	206,914.79
4	2001 Aug 20	7.00 %	1,207.00-	1,207.00	0.00	208,121.79
5	2001 Sep 20	6.75 %	6,211.31	1,170.69	7,382.00	201,910.48
6	2001 Oct 20	6.25 %	6,330.38	1,051.62	7,382.00	195,580.10
7	2001 Nov 20	5.50 %	6,485.59	896.41	7,382.00	189,094.51
8	2001 Dec 20	5.00 %	6,594.11	787.89	7,382.00	182,500.40
*sk 1 *	2002 Jan 20	5.00 %	760.42-	760.42	0.00	183,260.82
*sk 2 *	2002 Feb 20	4.75 %	725.41-	725.41	0.00	183,986.23

*This is Exhibit "A4" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

  
.....  
*A Commissioner for Oaths, etc.*

Diya Snehotata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

# Registration Details

Province/Territory : Newfoundland and Labrador  
 Registration Type : PPSA Financing Statement  
 Registration Number : 764969  
 Registration Date/Time : 2001-01-23 / 19:00

Expiry Date : 2006-01-23  
 Your File Number : 45451-CC9

## History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	764969	2001-01-23	19:00	2006-01-23	45451-CC9

Debtors	ADDED	DELETED
Debtor Type : Enterprise Hickman Equipment (1985) Ltd. 1269 Topsail Road Mount Pearl NF Canada A1N 3C8	764969	

Secured Parties	ADDED	DELETED
Ingersoll-Rand Canada Inc. 51 Worcester Road Rexdale ON Canada M9W 4K2	764969	

Serial Numbered Collateral	ADDED	DELETED
Collateral Type		
Serial Number		
Motor Vehicle		
R11241EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle		
R11245EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle		
R11246EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle		
R11247EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle		
R14245FF	1998 Ingersoll-Rand ECM490 Hydraulic	764969
Motor Vehicle		
R14246FF	1998 Ingersoll-Rand ECM490 Hydraulic	764969

*This is Exhibit "B1" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhwa*  
-----  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhwa, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005





# INGERSOLL-RAND CANADA INC.

## Equipment Rental Agreement

Agreement of Lease made at Mount Pearl in the Province of NF at 10:00 AM, on the 4 day of June 1999.

by and between—

Hereinafter called "the lessor"  
(Address for all purposes hereof

Ingersoll-Rand Canada Inc.  
Suite 1, 10 Akerley Blvd., Dartmouth, N.S., B3B 1J4)

Of the One Part;

id

hereinafter called "the Lessee"  
(Address for all purposes hereof

Hickman Equipment (1985) Limited P.O.45957a  
1269 Topsail Rd, Mount Pearl, Newfoundland, A1N 3C8)

Of the Other Part:

**Witnesseth:** That the Lessor and Lessee have mutually agreed as follows:

1. The Lessor hereby leases to the Lessee under the terms and conditions of this Agreement and for the approximate rental period stated hereinbelow, the equipment hereinafter described under the heading "Details of Equipment" (the same being referred to as "the Equipment") for use by the Lessee at or near

2. The Lessor shall deliver such Equipment free on board at Mount Pearl in good condition and working order, with all necessary tools peculiar to the Equipment, excluding however any standard tools, extra parts, piping, hose, fuel, lubricants, supplies or crew.

### Details of Equipment

Item of Equipment	Lessor's Identification No. or Manufacturer's No.	Replacement Value of New Equipment	Approximate Rental Period	Rental Rate
CM490 Hydraulic Drill	R14245FF	\$380,000.00	3 Mths	\$13,500.00 80/20 split

(This contract is based on the standard form of rental agreement approved by Canadian Construction Association.)

# General Conditions

## THE RENTAL PERIOD:

The rental period shall commence on and include the date of commencement of the equipment from the Lessor's shipping point to the Lessee, or the Lessee's agent, including any public carrier taking same for transit to the Lessee;

The rental period shall end on and include the date of actual delivery of the equipment to the Lessor, or at any other equidistant point if instructions to do so are given by the Lessor.

## CALCULATION OF RENTAL CHARGES:

The Lessee shall pay rental for the entire rental period on each article listed under Details of Equipment at the rate therein stipulated and on the following basis:

- Monthly rental rates are for a minimum rental period of one month, i.e., from the date of commencement of the rental period up to, but not including the same date in the next week, i.e., from the day of commencement of the rental period up to, but not including the same day in the following week, daily rates are for a rental period of twenty-four consecutive hours or less.
  - (b) After the minimum rental period has been realized, the rental payable for a fraction of any succeeding period shall be the proportionate part of the applicable rental rate according to the number of calendar days in such fraction.
  - (c) The rental rates stipulated under Details of Equipment shall apply when the number of hours the equipment is operated does not exceed 200 hours in any one month, or does not exceed 50 hours in any one week or does not exceed 10 hours in any one day. When equipment is operated in excess of the above rated hourly maximums, such excess will be charged at 50% of the applicable rate stated under Details of Equipment for double-shift operation and at 100% of the applicable rate stated under Details of Equipment for triple-shift operation. The Lessee hereby agrees to notify the Lessor when the equipment is operated in excess of the above stated hourly maximums and to pay the increased rental as described above.
- Rental rates shall not be subject to any deduction on account of non-working time during the rental period nor because the equipment is returned before the expiration of such period.

## PAYMENTS:

The rentals due under this Lease shall be paid monthly or weekly (as the case may be) in advance to the office of the Lessor at the address designated above. The rental for the minimum rental period is payable before delivery of the Equipment to the Lessee or the latter's agent or carrier.

All overdue payments shall bear interest at the rate of 18% per annum, without prejudice to the Lessor's right, as hereinafter stipulated, to terminate this Lease for non-payment of rental.

## LOADING, UNLOADING AND TRANSPORTATION:

The Lessor shall at its own expense load the Equipment for transit to the Lessee and unload it upon its return and shall pay any demurrage charges accruing at its own shipping and receiving point.

The Lessee shall at his (its) own expense do all other loading, unloading, installing, dismantling and hauling, and shall pay any demurrage accruing at his (its) own shipping or receiving point.

The Lessee shall pay all transportation charges from and to the Lessor's shipping and receiving points; provided however that, unless otherwise agreed, the Lessee shall not pay return transportation charges greater than those necessary to return the Equipment to the point from which it was originally shipped to the Lessee.

The Lessor may ship the Equipment in accordance with its own judgment, if shipping instructions are not furnished on the signing of the present Agreement.

## 3. RECALLING AND RETURNING NOTICE:

The Lessor may recall any or all of the Equipment upon giving thirty (30) written notice to the Lessee and, subject to the provisions of General Condition No. 2 as to the Lessee's obligation to pay rental for a minimum period, the Lessee may return any or all of the Equipment to the Lessor at any time.

## 5. RECALLING AND RETURNING NOTICE: (Cont'd)

The Lessor reserves the right to remove the Equipment from the job at any time when, in the Lessor's opinion, the Equipment is in danger because of strikes or any other condition.

## 6. MAINTENANCE, OPERATION AND REPAIRS:

The Lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment, and shall see that the Equipment is not subjected to careless or needlessly rough usage, and shall, at the Lessee's own expense, maintain and ultimately return to the Lessor the Equipment and its appurtenances, together with any tools and accessories pertaining thereto, the whole in good repair and running order, fair wear and tear excepted.

Without limiting the generality of the foregoing, the Lessee shall, at the Lessee's own expense, during the term of this Lease, pay the cost of:

- (a) all fuel and lubricants required to operate the Equipment;
- (b) all repairs required to be made to the Equipment in order to keep it in good repair and running order;
- (c) replacing broken or worn out parts, fair wear and tear excepted;
- (d) any and all local, municipal, provincial and federal taxes, assessments and charges levied upon the Equipment while in the possession of the Lessee.

## 7. SUPPLYING OPERATORS:

Unless otherwise agreed in writing, the Lessee shall supply and pay all operators employed on the Equipment during the term of this Lease and shall only employ persons who are competent to perform their respective duties. Should the Lessor furnish any operators or other workmen, they shall for all legal purposes be constituted the employees of the Lessee working at the latter's responsibility and the Lessee shall pay them such salary or wages on the Lessee's regular pay days and provide them with such travelling expenses, board and lodging as may be agreed upon between the Lessee and Lessor. The Lessee shall provide and pay for all workmen's compensation, assessments and/or insurance and pay all taxes required by law or otherwise applying to such operator's and workmen.

## 8. DAMAGE TO EQUIPMENT:

The Lessee shall indemnify the Lessor against all loss and damage to the Equipment during the rental period and the appraisal of any such loss or damage shall be based on the value stated in the Details of Equipment. Any shortage or damage claimed by either party must be made known in writing to the other party within two weeks after receipt by claimant of the Equipment, otherwise any such claim shall be extinguished.

## 9. LIABILITY OF LESSEE:

The Lessee shall indemnify the Lessor against all loss, expenses, penalties, damages, condemnations and law costs which the Lessor may suffer or may be required or condemned to pay for personal injuries (including death) and/or property damage suffered by any person by reason of the operation, handling, transportation or use of the Equipment by or while in the hands of the Lessee or the latter's employees, agents or carriers.

The Lessee hereby renounces all claims which he (it) may have against the Lessor for any loss or damage which he (it) may suffer, either directly or indirectly by reason of the condition of the Equipment or its suitability for the work it may be required to perform.

## 10. INSPECTION:

Before the Equipment is loaded for transit to the Lessee, the latter may have an inspection thereof made by a competent authority and if the Equipment is proven not to be substantially in the condition required by this Lease, then the cost of such inspection shall be paid by the Lessor.

If the Lessee fails to have such inspection made, the Equipment shall be presumed for all purposes hereof to be in good condition and running order when delivered to the carrier. The Lessee's right of inspection shall be in lieu of any warranties or guarantees and it is agreed that the Lessor makes no warranty or guarantee whatsoever as to the Equipment or its performance.

## 10. INSPECTION: (Cont'd)

The Lessor shall have the right at any time to enter upon the premises occupied by the Equipment and shall be given free access thereto and afforded all necessary facilities for the purpose of inspecting the Equipment.

The Lessor shall have the right to inspect the Equipment at the Lessee's shipping point prior to re-shipment and shall be notified prior to such re-shipment and given ample opportunity to make such inspection.

#### **TITLE:**

Title to the Equipment shall at all times be and remain vested in the Lessor and nothing contained in this Lease shall be deemed to have the effect of conferring upon the Lessee any right or title whatsoever in or to the equipment, other than that of a Lessee.

The Lessee shall give the Lessor immediate notice in case any of the Equipment is levied upon or from any cause becomes liable to seizure.

#### **2. TERMINATION OF LEASE:**

Should the Lessee fail to make any payment for more than thirty (30) days after it becomes due or become bankrupt or fail to maintain and operate or to return the Equipment as provided by this Lease, or violate any other provision hereof, the Lessor may after giving the Lessee three (3) days' notice in writing, terminate this Lease re-take possession of the Equipment without becoming liable for trespass and recover all rentals due and full damages for any injury to and all expenses incurred in obtaining the return of the equipment.

Should the Lessor fail to ship the Equipment in substantially the condition stipulated in this Lease, the Lessee may upon giving the Lessor three (3) days' notice in writing, terminate this Lease and recover any amount paid by him (it) to the Lessor hereunder.

#### **13. INSURANCE:**

Unless advised to the contrary in writing, the Lessee shall maintain, at the Lessee's own expense, fire and liability and any other insurance required to indemnify the Lessor against any loss to or of the Equipment to the extent of the value of the Equipment as stated in the Details of Equipment.

#### **3. INSURANCE: (Cont'd)**

#### **SHIPPING INSTRUCTIONS:**

The Lessor is to deliver the Equipment to Mount Pearl on or about the 10 day of June 19 99 for shipment to the Lessee.

#### **10. PURCHASE OPTION CLAUSE:**

For the purpose of this option clause, the sale price of the equipment on the commencement of this agreement is established at:

**ECM490 S/N R14245FF**

**\$330,600.00**

#### **PURCHASE OPTION CONDITIONS:**

- Rentals collected on 80/20 basis.
  - 100% of rentals to apply against purchase price.
  - The consignee shall indemnify the consignor against all loss and damage to the equipment during consignment period and the appraisal of any such loss or damage shall be based on the value stated in details of equipment.
- This RPO expires November 01,99.

This insurance shall be kept in effect from the time the Equipment is shipped by the Lessor until it is returned to the Lessor or delivered to another Lessee of the Lessor.

#### **14. BOND:**

If requested by the Lessor, the Lessee at the latter's own expense, shall furnish a bond satisfactory to the Lessor, in an amount equal to the value of the Equipment as stated in the Details of Equipment to insure the fulfillment of the Lessee's obligations under this Lease.

#### **15. SUBLETTING:**

None of the Equipment shall be sublet by the Lessee, nor shall he (it) assign or transfer any interest in this Lease, without the previous written consent of the Lessor.

#### **16. NOTICE:**

Wherever the giving of a notice is required by this Lease, such notice shall be given in writing and shall be considered for all purposes hereof to have been received on the next juridical day after that on which the notice is mailed by registered post with mailing charges prepaid.

#### **17. ARBITRATION:**

Should any dispute arise between the parties on any matter or thing arising out of this agreement, it shall be referred to a single arbitrator. If the parties fail to agree on the selection of the sole arbitrator, each party shall forthwith appoint an arbitrator, and these two shall elect a third arbitrator. Should the first two arbitrators fail to agree on the third arbitrator, the latter shall be appointed by a Judge of the Supreme Court or of a Superior Court of the Province of Newfoundland.

18. The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language.  
Les parties reconnaissent et confirment par les présentes qu'elles ont exigé que les termes et conditions du présent contrat soient rédigés en anglais.

## Special Conditions

The following Special Conditions form part of this Lease and in the event of there being a conflict between the provisions of the Special Conditions and those of the General Conditions, the Special Conditions and those of the General Conditions, the Special Conditions shall prevail:

In Witness Whereof the parties hereto have executed this Agreement of Lease on the day and date hereinabove first written.


In the presence of:

Witness

  
INGERSOLL-RAND CANADA INC. Lessor

In the presence of:

Witness

  
Lessee

*This is Exhibit "B2" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhowne*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

ations are subject to change without notice and are for cash F.O.B. as specified on invoice. Prices are payable in Canadian funds at par Toronto, except  
en otherwise specified. Interest charged on overdue accounts at the rate currently in effect at the time the account becomes overdue.

# INGERSOLL-RAND CANADA INC.

6759073

(hereinafter called "the Company")

PLEASE SHIP TO : Hickman Equipment (1985) Limited

Inv. 6759073

1269 Topsail Rd, Mount Pearl, Newfoundland, A1N 3C8

VIA : Truck

CHARGE TO : Hickman Equipment (1985) Limited P.O. 59924

(hereinafter called the "Purchaser")

P.O. Box 820, Mount Pearl, Newfoundland, A1N 3C8

(address)

Subject to the terms and conditions printed on the front and back of this Form, the following equipment :

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
One	ECM490 Hydraulic Drill s/n R14245FF		\$245,000.00
		HST	\$36,750.00
		TOTAL	\$281,750.00
	S/N: R14245FF		
	AMOUNT PAID ON EXECUTION OF ORDER \$ 24,500.00		
	THE BALANCE OWING \$ 220,000.00		
	TERMS : 10% + HST invoice. Three (3) month floor plan. Balance over 48 Months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips.		

Acceptance of this order is subject to the approval of an Executive Officer of the Company, and, when so approved, shall form a binding contract of  
purchase and sale. The Purchaser authorizes the Company to insert herein or in any copy hereof such further description of the equipment as the  
Company may consider advisable for the Purposes of making the said equipment more easily or readily known or distinguished.

Prov. Sales Tax License No. 23869-9-15

The Above Order is hereby accepted subject to all the terms and conditions set forth on the front and back of this form.

FOR THE PURCHASER, THIS

FOR INGERSOLL-RAND CANADA INC.

DAY OF

JAN 16 2001

BY

REPRESENTATIVE

Hickman Equipment (1985) Limited

PURCHASER

APPROVED,  
THIS

22<sup>nd</sup>

DAY OF

January

2001

BY

EXECUTIVE OFFICER

(OVER)

# CONDITIONS

## IT IS AGREED THAT:

(1) The title and property in the machinery, goods, chattels and merchandise (hereinafter called "the equipment") sold or delivered hereunder, whether or not attached to real or immovable property, shall not pass to the Purchaser until the entire purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company, and if the Purchaser fails to pay the purchase price, or any installment thereof, or any other charge or amount strictly in accordance with the terms hereof, or fails to comply with any condition hereof, or if proceedings in bankruptcy be instituted against the Purchaser, or in the event of the equipment being seized under any distress for rent or under any execution against the Purchaser, or upon any attempt by the Purchaser to sell, dispose of, or remove from its destination or the registration district or province in which its destination is situated, all or any of the said equipment or any part or parts thereof without the consent in writing of the Company previously given, or upon any act of abandonment of the equipment by the Purchaser, then the full balance of the purchase price, together with all other amounts then owing hereunder shall forthwith become due and payable without notice and the Purchaser's right of possession together with all payments made on account of the purchase price, shall immediately be forfeited as liquidated damages, or at the option of the Company as rental for use of the equipment, and the Company shall be at liberty and entitled, without any previous demand, notice or delay, to bring action for the aggregate amount of such balance of the purchase price and other amounts owing hereunder and to enter upon the premises where the equipment may be and to take possession of and, whether or not the said equipment be affixed or attached to real or immovable property remove and upon notice as required by law resell the same by public auction or at a private sale absolutely freed and discharged from all claims of the Purchaser thereto, and the Purchaser shall be liable to the Company for any balance of the purchase price not realized from such sale and shall forthwith pay to the Company all costs and expenses incurred in such taking of possession, removal and resale, and waiving all claims for loss or damage sustained by reason of such entry, removal and resale, shall deliver the equipment to the Company in like condition as when received, ordinary wear and tear only excepted.

(2) The taking or discounting by the Company of any note as security for the payment of the price of equipment or any installment thereof shall in no way operate as a merger, novation or payment on account of such indebtedness or so as in any way to alter the conditions hereof or postpone or otherwise affect the installment payments hereunder, provided that payment by the Purchaser of any such note shall discharge the obligation thereby secured.

(3) The Purchaser shall not countermand the order contained herein. The equipment shall from the time of shipment be at the risk of the Purchaser who shall fully insure and keep fully insured the same with loss payable to the Company until payment in full of the purchase price thereof. The Purchaser shall deliver to the Company the policy or policies of insurance forthwith upon the issue thereof, and upon failure to do so within ten days after receipt of the equipment, the Company is hereby authorized to effect such insurance, and the cost of so insuring shall be deemed to be part of the Purchaser's indebtedness hereunder subject to all the conditions hereof and shall be forthwith payable in cash by the Purchaser to the Company.

(4) The Purchaser undertakes to maintain the equipment in good and substantial repair and condition at its own expense while title to such equipment vests in the Company and to permit the Company at all reasonable times to have access to the equipment and to inspect the state and condition thereof.

(5) Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

The Company shall not be liable for loss, damage, detention, or delay due to war, riots, civil insurrection or acts of the common enemy. Ore, flood, strikes or other labour difficulty, acts of civil or military authority including governmental laws orders, priorities or regulations, acts of the Purchaser, embargo, car shortage wrecks or delay in transportation, inability to obtain necessary labour, materials or manufacturing facilities from usual sources, faulty forgings or castings or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

(6) Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

(7) Unless otherwise agreed in writing by the Company, the equipment shall be set up and erected by the Purchaser at the Purchaser's expense. The Company upon request will provide a competent supervisor to advise and consult during the setting up or starting of the equipment, in accordance with the terms and conditions as the Company ordinarily furnishes such supervisors.

(8) The Company reserves the right to make such changes, in detail or design, construction, arrangement or equipment as shall, in its judgment constitute an improvement over former practices.

(9) The Company warrants that the equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the equipment in operation or eighteen months from the date of shipment, whichever shall first occur. Should any failure to conform to this Warranty be reported in

option, correct such nonconformity, by suitable repair to such equipment, or, to furnish a replacement part F.O.B. point of shipment, provided the Purchaser has stored installed, maintained and operated such equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements or adjustments to the equipment or any costs of labour performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's Warranty. Performance warranties are limited to those specifically stated by the Company. Unless responsibility for meeting such performance warranties are limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided above.

The company makes no other warranty or representation of any kind whatsoever, expressed or implied except that of title, and all implied warranties, including any warranty or merchantability and fitness for a particular purpose provided by law, including the civil code of quebec, are hereby disclaimed.

Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such equipment.

(10) The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract or the equipment and services furnished hereunder in connection with the performance or breach thereof, or from the manufacture, safe, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit or equipment upon which such liability is based.

The Company and its suppliers shall in no event be liable to the Purchaser any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, direct or indirect, special or punitive damages arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the equipment hereunder, whether based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase of replacement power or claims of Purchaser or customers. Purchaser for service interruption whether or not such loss or damage based on contract, warranty, negligence, indemnity, strict liability or otherwise.

(11) The Purchaser acknowledges that the Equipment has been purchased for use in the conduct of its business, that it is familiar with the Equipment, and the specifications pertaining thereto, that its own engineering staff have reviewed and/or participated in preparing such specifications and that consequently purchaser is satisfied that the Equipment is functional for the purposes for which it has been acquired.

(12) This document shall apply to, bind and enure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

(13) The Purchaser hereby waives notice of any transfer or assignment hereof and title to the equipment herein mentioned. Purchaser shall not be entitled to assign its rights hereunder without the prior written consent of the Company.

(14) The order contained herein is taken subject to the approval of an Executive Officer of the Company, and when so approved shall form a binding contract of purchase and sale and shall be deemed to have been made at the head office of the Company.

(15) This document contains all the terms of the contract between the parties and no salesman or agent of the Company is authorized to make any other terms or conditions, verbal or otherwise or in any way to alter the terms or conditions hereof. Purchaser hereby waives, to the full extent allowed by law, the provisions of The Limitations of Civil Rights Act (Saskatchewan), Sections 19 to 24 of the Sales of Goods on Condition Act (British Columbia) and Sections 47, 49 and 50 of the Law of Property Act (Alberta). Any provisions hereof prohibited by the law of any jurisdiction governing the same, shall be deemed to be modified in accordance with such law which shall effectively define the rights of the parties hereto and no other provision hereof shall be affected by such prohibition.

(16) The company shall have the right to enforce one or more remedies provided by these CONDITIONS or by law successively or concurrently and such enforcement shall not operate to estop or prevent the Company from pursuing any further remedy which it may have hereunder or at law and if two or more remedies hereunder shall, according to the applicable law or any jurisdiction, be incompatible it may elect to employ such one or more remedies as are compatible according to such law.

(17) The Purchaser acknowledges the receipt of a copy of this document.

(18) The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language.

Les parties reconnaissent et confirment par les présentes qu'elles ont exigé que les termes et conditions du présent contrat soient rédigés en anglais.

*This is Exhibit "B3" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhore*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhore, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005



# Customer Accounts Payable Report (Actual)

**Customer Name:** HICKMAN EQUIPMENT (1985) LTD  
**Address:** 1269 TOPSAIL ROAD  
 P. O. BOX 820  
 MOUNT PEARL, NF  
 A1N 3C8  
**Interest Rate:** 8.5  
**Effective Date:** 04/20/2001

**Customer #:** C41115  
**Contract #:** 1597  
**Invoice #:** 6759073  
**Model #:** ECM490  
**Serial #:** R14245FF  
**Reference #:**  
**Page #:** 1  
**Date:** 27/Feb/2002

Payment #	Due Date	Interest Rate	Principal Payment	Interest Payment	Total Payment	Principal Total
EP1	2001 Feb 20	0.00 %	0.00	0.00	0.00	220,500.00
EP2	2001 Mar 20	0.00 %	0.00	0.00	0.00	220,500.00
3	2001 Apr 20	0.00 %	0.00	0.00	0.00	220,500.00
	2001 May 20	7.50 %	5,856.87	1,378.13	7,235.00	214,643.13
2	2001 Jun 20	7.25 %	1,296.80	1,296.80	0.00	215,939.93
	2001 Jul 20	7.25 %	13,165.36	1,304.64	14,470.00	202,774.57
	2001 Aug 20	7.00 %	1,182.85	1,182.85	0.00	203,957.42
5	2001 Sep 20	6.75 %	6,087.74	1,147.26	7,235.00	197,869.68
6	2001 Oct 20	6.25 %	6,204.43	1,030.57	7,235.00	191,665.25
	2001 Nov 20	5.50 %	6,356.53	878.47	7,235.00	185,308.72
	2001 Dec 20	5.00 %	6,462.88	772.12	7,235.00	178,845.84
sk 1 *	2002 Jan 20	5.00 %	745.19	745.19	0.00	179,591.03
k 2 *	2002 Feb 20	4.75 %	710.88	710.88	0.00	180,301.91

*This is Exhibit "B4" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhowne*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

Province/Territory : Newfoundland and Labrador  
 Registration Type : PP5A Financing Statement  
 Registration Number : 764969  
 Registration Date/Time : 2001-01-23 / 19:00

Expiry Date : 2006-01-23  
 Your File Number : 45451-CC9

## History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	764969	2001-01-23	19:00	2006-01-23	45451-CC9

## Debtors

Debtor Type : Enterprise  
 Hickman Equipment (1985) Ltd.

1269 Topsail Road  
 Mount Pearl NF Canada A1N 3C8

ADDED

DELETED

764969

## Secured Parties

Ingersoll-Rand Canada Inc.

51 Worcester Road  
 Rexdale ON Canada M9W 4K2

ADDED

DELETED

764969

## Serial Numbered Collateral


## Collateral Type

Serial Number	Description	
Motor Vehicle R11241EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle R11245EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle R11246EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle R11247EH	2000 Ingersoll-Rand ECM590 Hydraulic	764969
Motor Vehicle R14245FF	1998 Ingersoll-Rand ECM490 Hydraulic	764969
Motor Vehicle R14246FF	1998 Ingersoll-Rand ECM490 Hydraulic	764969

ADDED

DELETED

*This is Exhibit "C1" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

Conditions are subject to change without notice and are for cash F.O.B. as specified on invoice. Prices are payable in Canadian funds at par Toronto, except when otherwise specified. Interest charged on overdue accounts at the rate currently in effect at the time the account becomes overdue.

# INGERSOLL-RAND CANADA INC.

8020133  
P.O. 23099

(hereinafter called "the Company")

Inv. 6728421

EASE SHIP TO: Hickman Equipment (1985) Ltd.

c/o Roger Hodges, Wabush, Labrador, Newfoundland (Phone) 1-800-318-6789

VIA: Truck

(PURCHASER TO: Hickman Equipment (1985) Ltd.

(hereinafter called the "Purchaser")

P.O. Box 820, Topsail Rd., Mount Pearl, Newfoundland A1N 3C8  
(address)

Subject to the terms and conditions printed on the front and back of this form, the following equipment:

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
One	ECM590 Hydraulic Drill		\$362,000.00
	Serial No: R11115EF	HST	54,300.00
		TOTAL	\$416,300.00
	AMOUNT PAID ON EXECUTION OF ORDER \$	90,500.00	
	THE BALANCE OWING	\$ 325,800.00	
	TERMS: 10% Down + H.S.T. Floor Plan to Jan. 1, 1999. Finance balance over 48 months at Bank Prime plus 1% on the declining balance with Jan/Feb/March yearly skips.		

Acceptance of this order is subject to the approval of an Executive Officer of the Company, and, when so approved, shall form a binding contract of purchase and sale. The Purchaser authorizes the Company to insert herein or in any copy hereof such further description of the equipment as the company may consider advisable for the Purposes of making the said equipment more easily or readily known or distinguished.

Prov. Sales Tax License No. 23869-9-15

The Above Order is hereby accepted subject to all the terms and conditions set forth on the front and back of this form.

FOR THE PURCHASER, THIS

FOR INGERSOLL-RAND CANADA INC

21st DAY OF May 19 98

BY Don B. Cutler

REPRESENTATIVE

Hickman Equipment (1985) Ltd.  
PURCHASER

APPROVED,  
THIS

**JUN 18 1998**  
DAY OF

19

# CONDITIONS

## IT IS AGREED THAT:

(1) The title and property in the machinery, goods, chattels and merchandise (hereinafter called "the equipment") sold or delivered hereunder, whether or not attached to real or immovable property, shall not pass to the Purchaser until the entire purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company, and if the Purchaser fails to pay the purchase price, or any installment thereof, or any other charge or amount strictly in accordance with the terms hereof, or fails to comply with any condition hereof, or if proceedings in bankruptcy be instituted against the Purchaser, or in the event of the equipment being seized under any distress for rent or under any execution against the Purchaser, or upon any attempt by the Purchaser to sell, dispose of, or remove from its destination or the registration district or province in which its destination is situated, all or any of the said equipment or any part or parts thereof without the consent in writing of the Company previously given, or upon any act of abandonment of the equipment by the Purchaser, then the full balance of the purchase price, together with all other amounts then owing hereunder shall forthwith become due and payable without notice and the Purchaser's right of possession together with all payments made on account of the purchase price, shall immediately be forfeited as liquidated damages, or at the option of the Company as rental for use of the equipment, and the Company shall be at liberty and entitled, without any previous demand, notice or delay, to bring action for the aggregate amount of such balance of the purchase price and other amounts owing hereunder and to enter upon the premises where the equipment may be and to take possession of and, whether or not the said equipment be affixed or attached to real or immovable property remove and upon notice as required by law resell the same by public auction or at a private sale absolutely freed and discharged from all claims of the Purchaser thereto, and the Purchaser shall be liable to the Company for any balance of the purchase price not realized from such sale and shall forthwith pay to the Company all costs and expenses incurred in such taking of possession, removal and resale, and waiving all claims for loss or damage sustained by reason of such entry, removal and resale, shall deliver the equipment to the Company in like condition as when received, ordinary wear and tear only expected.

(2) The taking or discounting by the Company of any note as security for the payment of the price of equipment or any installment thereof shall in no way operate as a merger, novation or payment on account of such indebtedness or so as in any way to alter the conditions hereof or postpone or otherwise affect the installment payments hereunder, provided that payment by the Purchaser of any such note shall discharge the obligation thereby secured.

(3) The Purchaser shall not countermand the order contained herein. The equipment shall from the time of shipment be at the risk of the Purchaser who shall fully insure and keep fully insured the same with loss payable to the Company until payment in full of the purchase price thereof. The Purchaser shall deliver to the Company the policy or policies of insurance forthwith upon the issue thereof, and upon failure to do so within ten days after receipt of the equipment, the Company is hereby authorized to effect such insurance, and the cost of so insuring shall be deemed to be part of the Purchaser's indebtedness hereunder subject to all the conditions hereof and shall be forthwith payable in cash by the Purchaser to the Company.

(4) The Purchaser undertakes to maintain the equipment in good and substantial repair and condition at its own expense while title to such equipment vests in the Company and to permit the Company at all reasonable times to have access to the equipment and to inspect the state and condition thereof.

(5) Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

The Company shall not be liable for loss, damage, detention, or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other labour difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, car shortage wrecks or delay in transportation, inability to obtain necessary labour, materials or manufacturing facilities from usual sources, faulty forgings or castings or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

(6) Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

(7) Unless otherwise agreed in writing by the Company, the equipment shall be set up and erected by the Purchaser at the Purchaser's expense. The Company upon request will provide a competent supervisor to advise and consult during the setting up or starting of the equipment, in accordance with the terms and conditions as the Company ordinarily furnishes such supervisors.

(8) The Company reserves the right to make such changes, in detail or design, construction, arrangement or equipment as shall, in its judgment constitute an improvement over former practices.

(9) The Company warrants that the equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the equipment in operation or eighteen months from the date of shipment, whichever shall first occur. Should any failure to conform to this Warranty be reported in writing to the Company within said period, the

Company shall, as its option, correct such nonconformity, by suitable repair to such equipment or, to furnish a replacement part F.O.B. point of shipment, provided that Purchaser has stored, installed, maintained and operated such equipment in accordance with good industry practices and has complied with special recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements or adjustments to the equipment or any costs of labour performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's Warranty. Performance warranties are limited to those specifically stated by the Company. Unless responsibility for meeting such performance warranties are limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided above.

THE COMPANY MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE PROVIDED BY LAW, INCLUDING THE CIVIL CODE OF QUEBEC, ARE HEREBY DISCLAIMED.

Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to arising out of such equipment.

(10) The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract or the equipment and services furnished hereunder in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of equipment upon which such liability is based.

The Company and its suppliers shall in no event be liable to the Purchaser or successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, direct or indirect, special or punitive damages arising out of this contract or any breach thereof, or any defeat in, or failure of, or malfunction of the equipment hereunder, whether based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase replacement power or claims of Purchaser or customers of Purchaser for service interruption whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

(11) The Purchaser acknowledges that the Equipment has been purchased for use in the conduct of its business, that it is familiar with the Equipment, and its specifications pertaining thereto, that its own engineering staff have reviewed, and/or participated in preparing such specifications and that consequently purchaser is satisfied that the Equipment is functional for the purposes for which it has been acquired.

(12) This document shall apply to, bind and enure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

(13) The Purchaser hereby waives notice of any transfer or assignment hereof and title to the equipment herein mentioned. Purchaser shall not be entitled to assign rights hereunder without the prior written consent of the Company.

(14) The order contained herein is taken subject to the approval of an Executive Officer of the Company, and when so approved shall form a binding contract of purchase and sale and shall be deemed to have been made at the head office of the Company.

(15) This document contains all the terms of the contract between the parties and no salesman or agent of the Company is authorized to make any other terms or conditions, verbal or otherwise or in any way to alter the terms or conditions hereof. Purchaser hereby waives, to the full extent allowed by law, the provisions of the Limitations of Civil Rights Act (Saskatchewan), Sections 19 to 24 of the Sales Goods on Condition Act (British Columbia) and Sections 47, 49 and 50 of the Law of Property Act (Alberta). Any provisions hereof prohibited by the law of any jurisdiction governing the same, shall be deemed to be modified in accordance with such law which shall effectively define the rights of the parties hereto and no other provision hereof shall be affected by such prohibition.

(16) The company shall have the right to enforce one or more remedies provided by these CONDITIONS or by law successively or concurrently and such enforcement shall not operate to estop or prevent the Company from pursuing a further remedy which it may have hereunder or at law and if two or more remedies hereunder shall, according to the applicable law or any jurisdiction, be incompatible, it may elect to employ such one or more remedies as are compatible according to such law.

(17) The Purchaser acknowledges the receipt of a copy of this document.

(18) The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language.

Les parties reconnaissent et confirment par les présentes qu'elles ont exigé que les termes et conditions du présent contrat soient rédigés en anglais.

*This is Exhibit "C2" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhore*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhore, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

## Customer Accounts Payable Report (Actual)

Customer Name: HICKMAN EQUIPMENT (1985) LTD  
 Address: 1269 TOPSAIL ROAD  
 P. O. BOX 820  
 MOUNT PEARL, NF  
 A1N 3C8  
 Interest Rate: 7.75  
 Effective Date: 02/20/1999

Customer #: C41115  
 Contract #: 713  
 Invoice #: 6728421  
 Model #: ECM590  
 Serial #: R11115EF  
 Reference #:  
 Page #: 1  
 Date: 27/Feb/2002

Payment #	Due Date	Interest Rate	Principal Payment	Interest Payment	Total Payment	Principal Total
01	1999 Nov 20	7.25 %	8,907.06	1,614.94	10,522.00	258,392.65
02	1999 Dec 20	7.50 %	8,907.05	1,614.95	10,522.00	249,485.60
sk 1 *	2000 Jan 20	7.50 %	1,559.29-	1,559.29	0.00	251,044.89
sk 2 *	2000 Feb 20	7.50 %	1,569.03-	1,569.03	0.00	252,613.92
*sk 3 *	2000 Mar 20	7.75 %	1,631.46-	1,631.46	0.00	254,245.38
3	2000 Apr 20	8.00 %	8,827.03	1,694.97	10,522.00	245,418.35
7	2000 May 20	8.00 %	8,885.88	1,636.12	10,522.00	236,532.47
08	2000 Jun 20	8.50 %	8,846.56	1,675.44	10,522.00	227,685.91
09	2000 Jul 20	8.50 %	8,909.22	1,612.78	10,522.00	218,776.69
1	2000 Aug 20	8.50 %	8,972.33	1,549.67	10,522.00	209,804.36
11	2000 Sep 20	8.50 %	9,035.89	1,486.11	10,522.00	200,768.47
12	2000 Oct 20	8.50 %	9,099.89	1,422.11	10,522.00	191,668.58
1	2000 Nov 20	8.50 %	9,164.35	1,357.65	10,522.00	182,504.23
1	2000 Dec 20	8.50 %	9,229.26	1,292.74	10,522.00	173,274.97
*sk 4 *	2001 Jan 20	8.50 %	1,227.36-	1,227.36	0.00	174,502.33
*sk 5 *	2001 Feb 20	8.25 %	1,199.70-	1,199.70	0.00	175,702.03
sk 6 *	2001 Mar 20	8.25 %	1,207.95-	1,207.95	0.00	176,909.98
13	2001 Apr 20	7.75 %	1,142.54-	1,142.54	0.00	178,052.52
19	2001 May 20	7.50 %	19,931.17	1,112.83	21,044.00	158,121.35
1	2001 Jun 20	7.25 %	955.32-	955.32	0.00	159,076.67
1	2001 Jul 20	7.25 %	20,082.91	961.09	21,044.00	138,993.76
22	2001 Aug 20	7.00 %	810.80-	810.80	0.00	139,804.56
23	2001 Sep 20	6.75 %	9,735.60	786.40	10,522.00	130,063.96
1	2001 Oct 20	6.25 %	9,844.56	677.44	10,522.00	120,224.40
23	2001 Nov 20	5.50 %	9,970.97	551.03	10,522.00	110,253.43
26	2001 Dec 20	5.00 %	10,062.61	459.39	10,522.00	100,190.82
sk 7 *	2002 Jan 20	5.00 %	417.46-	417.46	0.00	100,608.28
sk 8 *	2002 Feb 20	4.75 %	398.24-	398.24	0.00	101,006.52



*This is Exhibit "C3" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhowne*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

# Registration Details

Province/Territory : Newfoundland and Labrador  
 Registration Type : PPSA Financing Statement  
 Registration Number : 1567557  
 Registration Date/Time : 2002-01-25 / 15:53  
 Expiry Date : 2007-01-25  
 Your File Number : 106031-CC9

## History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	1567557	2002-01-25	15:53	2007-01-25	106031-CC9

### Debtors

ADDED

DELETED

Debtor Type : Enterprise  
 Hickman Equipment (1985) Ltd.

1567557

1269 Topsaid Road  
 Mount Pearl NF Canada A1N 3C8

### Secured Parties

ADDED

DELETED

Ingersoll-Rand Canada Inc.

1567557

51 Worcester Road  
 Rexdale ON Canada M9W 4K2

### Serial Numbered Collateral

ADDED

DELETED

#### Collateral Type

Serial Number	Description
---------------	-------------

Motor Vehicle R11115EF	1998 Ingersoll-Rand ECM590 Hydraulic
---------------------------	--------------------------------------

1567557

*This is Exhibit "D1" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhwa*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhwa, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

Prices are subject to change without notice and are for cash F.O.B. as specified on invoice. Prices are payable in Canadian funds at par Toronto, except otherwise specified. Interest charged on overdue accounts at the rate currently in effect at the time the account becomes overdue.

6751663

S/O 8363499

CONT. # 1185

# INGERSOLL-RAND CANADA INC.

hereinafter called "the Company")

PLEASE SHIP TO : Hickman Equipment (1985) Limited

1269 Topsail Rd, Mount Pearl, Newfoundland, A1N 3C8

IA : Truck

CHARGE TO : Hickman Equipment (1985) Limited P.O. 48105

(hereinafter called the "Purchaser")

P.O. Box 820, Mount Pearl, Newfoundland, A1N 3C8

(address)

Subject to the terms and conditions printed on the front and back of this Form, the following equipment :

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
One	DD110 Standard Equipment Including- Backup Alarm and Lights S/N160180		\$129,111.00
		HST	\$19,366.65
		TOTAL	\$148,477.00
AMOUNT PAID ON EXECUTION OF ORDER \$ 0			
THE BALANCE OWING \$ 129,111.00			
TERMS : HST on invoice. Balance over 36 Months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips.			

Acceptance of this order is subject to the approval of an Executive Officer of the Company, and, when so approved, shall form a binding contract of purchase and sale. The Purchaser authorizes the Company to insert herein or in any copy hereof such further description of the equipment as the Company may consider advisable for the Purposes of making the said equipment more easily or readily known or distinguished.

Prov. Sales Tax License No. 23869-9-15

The Above Order is hereby accepted subject to all the terms and conditions set forth on the front and back of this form.

FOR THE PURCHASER, THIS

31<sup>st</sup> DAY OF MAY 2000

Hickman Equipment (1985) Limited

PURCHASER

FOR INGERSOLL-RAND CANADA INC.

BY Don B. Cutely

REPRESENTATIVE

APPROVED,  
THIS

JUN 07 2000  
DAY OF

19

BY [Signature]

EXECUTIVE OFFICER

(OVER)

# CONDITIONS

## IT IS AGREED THAT:

title and property in the machinery, goods, chattels and merchandise (hereafter called "the equipment") sold or delivered hereunder, whether or not attached to real or immovable property, shall not pass to the Purchaser until the purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company, and if the Purchaser fails to pay the purchase price, or any installment thereof, or any other charge or amount strictly in accordance with the terms hereof, or fails to comply with any condition hereof, or if proceedings in bankruptcy be instituted against the Purchaser, or in the event of the equipment being seized under any distress for rent or under any execution against the Purchaser, or upon any attempt by the Purchaser to sell, dispose of, or remove from its destination or the registration district or province in which its destination is situated, all or any of the said equipment or any part or parts thereof without the consent in writing of the Company previously given, or upon any act of abandonment of the equipment by the Purchaser, then the full balance of the purchase price, together with all other amounts then owing hereunder shall forthwith become due and payable without notice and the Purchaser's right of possession together with all payments made on account of the purchase price, shall immediately be forfeited as liquidated damages, or at the option of the Company as rental for use of the equipment, and the Company shall be at liberty and entitled, without any previous demand, notice or delay, to bring action for the aggregate amount of such balance of the purchase price and other amounts owing hereunder and to enter upon the premises where the equipment may be and to take possession of and, whether or not the said equipment be affixed or attached to real or immovable property remove therefrom upon notice as required by law resell the same by public auction or at a private sale absolutely freed and discharged from all claims of the Purchaser thereto, and the Purchaser shall be liable to the Company for any balance of the purchase price not realized from such sale and shall forthwith pay to the Company all costs and expenses incurred in such taking of possession, removal and resale, and waiving all claims for loss or damage sustained by reason of such entry, removal and resale, shall deliver the equipment to the Company in like condition as when received, ordinary wear and tear only expected.

(2) The taking or discounting by the Company of any note as security for the payment of the price of equipment or any installment thereof shall in no way operate as a novation or payment on account of such indebtedness or so as in any way to alter the conditions hereof or postpone or otherwise affect the installment payments hereunder, provided that payment by the Purchaser of any such note shall discharge the obligation thereby secured.

The Purchaser shall not countermand the order contained herein. The equipment from the time of shipment be at the risk of the Purchaser who shall fully insure and keep fully insured the same with loss payable to the Company until payment in full of the purchase price thereof. The Purchaser shall deliver to the Company the policy or policies of insurance forthwith upon the issue thereof, and upon failure to do so within ten days after receipt of the equipment, the Company is hereby authorized to effect such insurance, and the cost of so insuring shall be deemed to be part of the Purchaser's indebtedness hereunder subject to all the conditions hereof and shall be forthwith payable in cash by the Purchaser to the Company.

(4) The Purchaser undertakes to maintain the equipment in good and substantial repair and condition at its own expense while title to such equipment vests in the Company and to permit the Company at all reasonable times to have access to the equipment and to inspect the state and condition thereof.

(5) Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

The Company shall not be liable for loss, damage, detention, or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other difficulties, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, car shortage, wrecks, delay in transportation, inability to obtain necessary labour, materials or manufacturing facilities from usual sources, faulty forgings or castings or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

(6) Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

(7) Unless otherwise agreed in writing by the Company, the equipment shall be set up and erected by the Purchaser at the Purchaser's expense. The Company upon request will provide a competent supervisor to advise and consult during the setting up starting of the equipment, in accordance with the terms and conditions as the Company ordinarily furnishes such supervisors.

(8) The Company reserves the right to make such changes, in detail or design, construction, arrangement or equipment as shall, in its judgment constitute an improvement over former practices.

(9) The Company warrants that the equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the equipment in operation or eighteen months from the date of shipment, whichever shall first occur. Should any failure to conform to this Warranty be reported in writing to the Company within said period, the Company shall, as its option, correct such nonconformity, by suitable repair to such

equipment or, to furnish a replacement part F.O.B. point of shipment, provided that Purchaser has stored, installed, maintained and operated such equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements or adjustments to the equipment or any costs of labour performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's Warranty. Performance warranties are limited to those specifically stated by the Company. Unless responsibility for meeting such performance warranties are limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided above.

THE COMPANY MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE PROVIDED BY LAW, INCLUDING THE CIVIL CODE OF QUEBEC, ARE HEREBY DISCLAIMED.

Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such equipment.

(10) The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract or the equipment and services furnished hereunder in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of equipment upon which such liability is based.

The Company and its suppliers shall in no event be liable to the Purchaser any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, direct or indirect, special or punitive damages arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the equipment hereunder, whether based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase of replacement power or claims of Purchaser or customers of Purchaser for service interruption whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

(11) The Purchaser acknowledges that 'the Equipment has been purchased' for use in the conduct of its business, that it is familiar with the Equipment, and the specifications pertaining thereto, that its own engineering staff have reviewed and/or participated in preparing such specifications and that consequently purchaser is satisfied that the Equipment is functional for the purposes for which it has been acquired.

(12) This document shall apply to, bind and enure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

(13) The Purchaser hereby waives notice of any transfer or assignment hereof and title to the equipment herein mentioned. Purchaser shall not be entitled to assign its rights hereunder without the prior written consent of the Company.

(14) The order contained herein is taken subject to the approval of an Executive Officer of the Company, and when so approved shall form a binding contract of purchase and sale and shall be deemed to have been made at the head office of the Company.

(15) This document contains all the terms of the contract between the parties and no salesman or agent of the Company is authorized to make any other terms or conditions, verbal or otherwise or in any way to alter the terms or conditions hereof. Purchaser hereby waives, to the full extent allowed by law, the provisions of The Limitations of Civil Rights Act (Saskatchewan), Sections 19 to 24 of the Sales of Goods on Condition Act (British Columbia) and Sections 47, 49 and 50 of the Law of Property Act (Alberta). Any provisions hereof prohibited by the law of any jurisdiction governing the same, shall be deemed to be modified in accordance with such law which shall effectively define the rights of the parties hereto and no other provision hereof shall be affected by such prohibition.

(16) The company shall have the right to enforce one or more remedies provided by these CONDITIONS or by law successively or concurrently and such enforcement shall not operate to estop or prevent the Company from pursuing any further remedy which it may have hereunder or at law and if two or more remedies hereunder shall, according to the applicable law or any jurisdiction, be incompatible it may elect to employ such one or more remedies as are compatible according to such law.

(17) The Purchaser acknowledges the receipt of a copy of this document.

(18) The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language. Les parties reconnaissent et confirment par les présentes qu'elles ont exigé que les termes et conditions du présent contrat soient rédigés en anglais.

*This is Exhibit "D2" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhewal*.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhewal, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

## Customer Accounts Payable Report (Actual)

Customer Name: HICKMAN EQUIPMENT (1985) LTD  
 Address: 1269 TOPSAIL ROAD  
 P. O. BOX 820  
 MOUNT PEARL, NF  
 A1N 3C8  
 Interest Rate: 8  
 Effective Date: 05/20/2000

Customer #: C41115  
 Contract #: 1185  
 Invoice #: 6751663  
 Model #: DD110  
 Serial #: 160180  
 Reference #:  
 Page #: 1  
 Date: 27/Feb/2002

Payment #	Due Date	Interest Rate	Principal Payment	Interest Payment	Total Payment	Principal Total
1	2000 Jun 20	8.50 %	4,467.46	914.54	5,382.00	124,643.54
2	2000 Jul 20	8.50 %	4,499.11	882.89	5,382.00	120,144.43
3	2000 Aug 20	8.50 %	4,530.98	851.02	5,382.00	115,613.45
4	2000 Sep 20	8.50 %	4,563.07	818.93	5,382.00	111,050.38
5	2000 Oct 20	8.50 %	4,595.39	786.61	5,382.00	106,454.99
6	2000 Nov 20	8.50 %	4,627.94	754.06	5,382.00	101,827.05
7	2000 Dec 20	8.50 %	4,660.73	721.27	5,382.00	97,166.32
sk 1 *	2001 Jan 20	8.50 %	688.26-	688.26	0.00	97,854.58
sk 2 *	2001 Feb 20	8.25 %	672.75-	672.75	0.00	98,527.33
sk 3 *	2001 Mar 20	8.25 %	677.38-	677.38	0.00	99,204.71
8	2001 Apr 20	7.75 %	640.70-	640.70	0.00	99,845.41
9	2001 May 20	7.50 %	10,139.97	624.03	10,764.00	89,705.44
10	2001 Jun 20	7.25 %	541.97-	541.97	0.00	90,247.41
11	2001 Jul 20	7.25 %	10,218.76	545.24	10,764.00	80,028.65
12	2001 Aug 20	7.00 %	466.83-	466.83	0.00	80,495.48
13	2001 Sep 20	6.75 %	4,929.21	452.79	5,382.00	75,566.27
14	2001 Oct 20	6.25 %	4,988.43	393.57	5,382.00	70,577.84
15	2001 Nov 20	5.50 %	5,058.52	323.48	5,382.00	65,519.32
16	2001 Dec 20	5.00 %	5,109.00	273.00	5,382.00	60,410.32
sk 4 *	2002 Jan 20	5.00 %	251.71-	251.71	0.00	60,662.03
sk 5 *	2002 Feb 20	4.75 %	240.12-	240.12	0.00	60,902.15

*This is Exhibit "D3" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhwa*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhwa, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005



# Registration Details

Province/Territory : Newfoundland and Labrador  
 Registration Type : PPSA Financing Statement  
 Registration Number : 334706  
 Registration Date/Time : 2000-06-07 / 20:08  
 Expiry Date : 2004-06-07  
 Your File Number : 20041-CC9

## History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	334706	2000-06-07	20:08	2004-06-07	20041-CC9


Debtors	ADDED	DELETED
Debtor Type : Enterprise Hickman Equipment (1985) Ltd 1269 Topsail Road Mount Pearl NF Canada A1N 3C8	334706	

Secured Parties	ADDED	DELETED

Ingersoll-Rand Canada Inc. 51 Worcester Road Rexdale ON Canada M9W 4K2	334706
--	--------

Serial Numbered Collateral	ADDED	DELETED
Collateral Type Serial Number Description		
Motor Vehicle 160180 1999 Ingersoll-Rand PD110 Compactor	334706	

*This is Exhibit "E1" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

Quotations are subject to change without notice and are for cash F.O.B. as specified on invoice. Prices are payable in Canadian funds at par Toronto, except when otherwise specified. Interest charged on overdue accounts at the rate currently in effect at the time the account becomes overdue.

TO :

**INGERSOLL-RAND CANADA INC.** 6752319

(hereinafter called "the Company")

PLEASE SHIP TO : Hickman Equipment (1985) Limited

1269 Topsail Rd, Mount Pearl, Newfoundland, A1N 3C8

VIA : Truck

& CHARGE TO : Hickman Equipment (1985) Limited P.O. 55108

(hereinafter called the "Purchaser")

P.O. Box 820, Mount Pearl, Newfoundland, A1N 3C8

(address)

subject to the terms and conditions printed on the front and back of this Form, the following equipment :

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
One	SD100DA Standard Equipment <i>COMPACTOR</i> <i>S/N 163713</i>		\$128,000.00
		HST	\$19,200.00
		TOTAL	\$147,200.00
AMOUNT PAID ON EXECUTION OF ORDER \$ 12,800.00			
THE BALANCE OWING \$ 115,200.00			
TERMS : 10% Down. HST on invoice. Six (6) month Floor Plan. Balance over 36 Months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips.			

Acceptance of this order is subject to the approval of an Executive Officer of the Company, and, when so approved, shall form a binding contract of purchase and sale. The Purchaser authorizes the Company to insert herein or in any copy hereof such further description of the equipment as the Company may consider advisable for the Purposes of making the said equipment more easily or readily known or distinguished.

Prov. Sales Tax License No. 23869-9-15

The Above Order is hereby accepted subject to all the terms and conditions set forth on the front and back of this form.

FOR THE PURCHASER, THIS

FOR INGERSOLL-RAND CANADA INC.

20 DAY OF JUNE 2000

BY Don B. Cuthbert  
REPRESENTATIVE

Hickman Equipment (1985) Limited

PURCHASER

APPROVED,  
THIS

**JUN 28 2000**  
DAY OF

19

BY

# CONDITIONS

## IT IS AGREED THAT:

1. The title and property in the machinery, goods, chattels and merchandise hereinafter called "the equipment") sold or delivered hereunder, whether or not real or immovable property, shall not pass to the Purchaser until the entire purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company, and if the Purchaser fails to pay the purchase price, or any installment thereof, or any other charge or amount strictly in accordance with the terms hereof, or fails to comply with any condition hereof, or if proceedings in bankruptcy be instituted against the Purchaser, or in the event of the equipment being seized under any distress for rent or under any execution against the Purchaser, or upon any attempt by the Purchaser to sell, dispose of, or remove from its destination or the registration district or province in which its destination is situated, all or any of the said equipment or any part or parts thereof without the consent in writing of the Company previously given, or upon any act of abandonment of the equipment by the Purchaser, then the full balance of the purchase price, together with all other amounts then owing hereunder shall forthwith become due and payable without notice and the Purchaser's right of possession together with all payments made on account of the purchase price shall immediately be forfeited as liquidated damages, or at the option of the Company as rental for use of the equipment, and the Company shall be at liberty and entitled, without any previous demand, notice or delay, to bring action for the aggregate amount of such balance of the purchase price and other amounts owing hereunder and to enter upon the premises where the equipment may be and to take possession of and, whether or not the said equipment be affixed or attached to real or immovable property remove therefrom upon notice as required by law resell the same by public auction or at a private sale absolutely freed and discharged from all claims of the Purchaser thereto, and the Purchaser shall be liable to the Company for any balance of the purchase price not realized from such sale and shall forthwith pay to the Company all costs and expenses incurred in such taking of possession, removal and resale, and waiving all claims for loss or damage sustained by reason of such entry, removal and resale, shall deliver the equipment to the Company in like condition as when received, ordinary wear and tear only expected.

(2) The taking or discounting by the Company of any note as security for the payment of the price of equipment or any installment thereof shall in no way operate as a novation, or payment on account of such indebtedness or so as in any way to alter the conditions hereof or postpone or otherwise affect the installment payments hereunder, provided that payment by the Purchaser of any such note shall discharge the obligation thereby secured.

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(5) Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

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(6) Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

(7) Unless otherwise agreed in writing by the Company, the equipment shall be set up and erected by the Purchaser at the Purchaser's expense. The Company upon request will provide a competent supervisor to advise and consult during the setting up and starting of the equipment, in accordance with the terms and conditions as the Company ordinarily furnishes such supervisors.

(8) The Company reserves the right to make such changes, in detail or design, construction, arrangement or equipment as shall, in its judgment constitute an improvement over former practices.

(9) The Company warrants that the equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the equipment in operation or eighteen months from the date of shipment, whichever shall first occur. Should any failure to conform to the Warranty be reported in writing to the Company within said period, the Company shall, at its option, correct such nonconformity, by suitable repair to such

equipment or, to furnish a replacement part F.O.B. point of shipment, provided that Purchaser has stored, installed, maintained and operated such equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements or adjustments to the equipment or any costs of labour performed by the Purchaser or others without the Company's prior written approval.

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Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such equipment.

(10) The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract or the equipment and services furnished hereunder in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of equipment upon which such liability is based.

The Company and its suppliers shall in no event be liable to the Purchaser any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, direct or indirect, special or punitive damages arising out of this contract or any breach thereof, or any defeat in, or failure of, or malfunction of the equipment hereunder, whether based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase of replacement power or claims of Purchaser or customers of Purchaser for service interruption whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

(11) The Purchaser acknowledges that the Equipment has been purchased for use in the conduct of its business, that it is familiar with the Equipment, and the specifications pertaining thereto, that its own engineering staff have reviewed and/or participated in preparing such specifications and that consequently purchaser is satisfied that the Equipment is functional for the purposes for which it has been acquired.

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(14) The order contained herein is taken subject to the approval of an Executive Officer of the Company, and when so approved shall form a binding contract of purchase and sale and shall be deemed to have been made at the head office of the Company.

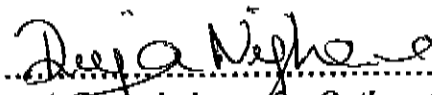
(15) This document contains all the terms of the contract between the parties and no salesman or agent of the Company is authorized to make any other terms or conditions, verbal or otherwise or in any way to alter the terms or conditions hereof. Purchaser hereby waives, to the full extent allowed by law, the provisions of the Limitations of Civil Rights Act (Saskatchewan), Sections 19 to 24 of the Sales of Goods on Condition Act (British Columbia) and Sections 47, 49 and 50 of the Law of Property Act (Alberta). Any provisions hereof prohibited by the law of any jurisdiction governing the same, shall be deemed to be modified in accordance with such law which shall effectively define the rights of the parties hereto and no other provision hereof shall be affected by such prohibition.

(16) The Company shall have the right to enforce one or more remedies provided by these CONDITIONS or by law successively or concurrently and such enforcement shall not operate to estop or prevent the Company from pursuing any further remedy which it may have hereunder or at law and if two or more remedies hereunder shall, according to the applicable law or any jurisdiction, be incompatible it may elect to employ such one or more remedies as are compatible according to such law.

(17) The Purchaser acknowledges the receipt of a copy of this document.

(18) The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language. Les parties reconnaissent et confirment par les présentes qu'elles ont exigé que les termes et conditions du présent contrat soient rédigés en anglais.

*This is Exhibit "E2" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

## Customer Accounts Payable Report (Actual)

Customer Name: HICKMAN EQUIPMENT (1985) LTD  
 Address: 1269 TOPSAIL ROAD  
 P. O. BOX 820  
 MOUNT PEARL, NF  
 A1N 3C8  
 Interest Rate: 8.5  
 Effective Date: 12/20/2000

Customer #: C41115  
 Contract #: 1190  
 Invoice #: 6752319  
 Model #: SD100DA  
 Serial #: 163713  
 Reference #:  
 Page #: 1  
 Date: 27/Feb/2002

Payment #	Due Date	Interest Rate	Principal Payment	Interest Payment	Total Payment	Principal Total
FP1	2000 Jul 20	0.00 %	0.00	0.00	0.00	115,200.00
FP2	2000 Aug 20	0.00 %	0.00	0.00	0.00	115,200.00
P3	2000 Sep 20	0.00 %	0.00	0.00	0.00	115,200.00
FP4	2000 Oct 20	0.00 %	0.00	0.00	0.00	115,200.00
FP5	2000 Nov 20	0.00 %	0.00	0.00	0.00	115,200.00
FP6	2000 Dec 20	0.00 %	0.00	0.00	0.00	116,016.00
*sk 1 *	2001 Jan 20	8.50 %	816.00-	816.00	0.00	116,813.61
*sk 2 *	2001 Feb 20	8.25 %	797.61-	797.61	0.00	117,616.70
*sk 3 *	2001 Mar 20	8.25 %	803.09-	803.09	0.00	118,376.31
1	2001 Apr 20	7.75 %	759.61-	759.61	0.00	111,380.16
2	2001 May 20	7.50 %	6,996.15	739.85	7,736.00	112,053.08
3	2001 Jun 20	7.25 %	672.92-	672.92	0.00	104,994.07
4	2001 Jul 20	7.25 %	7,059.01	676.99	7,736.00	105,606.54
5	2001 Aug 20	7.00 %	612.47-	612.47	0.00	102,332.58
6	2001 Sep 20	6.75 %	3,273.96	594.04	3,868.00	98,997.56
7	2001 Oct 20	6.25 %	3,335.02	532.98	3,868.00	95,583.30
8	2001 Nov 20	5.50 %	3,414.26	453.74	3,868.00	92,113.56
9	2001 Dec 20	5.00 %	3,469.74	398.26	3,868.00	92,497.37
*sk 4 *	2002 Jan 20	5.00 %	383.81-	383.81	0.00	92,863.51
*sk 5 *	2002 Feb 20	4.75 %	366.14-	366.14	0.00	

*This is Exhibit "E3" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhowne*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
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Expires June 20, 2005

# Registration Details

Province/Territory : Newfoundland and Labrador  
 Registration Type : PPSA Financing Statement  
 Registration Number : 390278  
 Registration Date/Time : 2000-06-28 / 19:28  
 Expiry Date : 2005-06-28  
 Your File Number : 23244-CC9

## History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	390278	2000-06-28	19:28	2005-06-28	23244-CC9

Debtors	ADDED	DELETED
Debtor Type : Enterprise	390278	
Hickman Equipment (1985) Ltd		
1269 Topsail Road		
Mount Pearl NF Canada A1N 3C8		

Secured Parties	ADDED	DELETED
Ingersoll-Rand Canada Inc.	390278	
51 Worcester Road		
Rexdale ON Canada M9W 4K2		

Serial Numbered Collateral	ADDED	DELETED
Collateral Type		
Serial Number		
Description		

Motor Vehicle	1999 Ingersoll-Rand SD100DA Compactor	390278
163713		



*This is Exhibit "F1" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhowne*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

Quotations are subject to change without notice and are for cash F.O.B. as specified on invoice. Prices are payable in Canadian funds at par Toronto, except when otherwise specified. Interest charged on overdue accounts at the rate currently in effect at the time the account becomes overdue.

TO :

# INGERSOLL-RAND CANADA INC.

8026428  
6720978

(hereinafter called "the Company")

PLEASE SHIP TO : Hickman Equipment (1985) Limited

15 Bailey Street, Grand Falls, Newfoundland, A2A 2J9

VIA : Truck

CHARGE TO : Hickman Equipment (1985) Limited P.O. 59152

(hereinafter called the "Purchaser")

P.O. Box 820, Mount Pearl, Newfoundland, A1N 3C8

(address)

subject to the terms and conditions printed on the front and back of this Form, the following equipment :

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
One	SD110D Standard Equipment C/W Cab/AC/Heat  S/N: 167316	132,000  HST  TOTAL	135,000.00 19,800 151,800 \$155,250.00
AMOUNT PAID ON EXECUTION OF ORDER \$ 13,500.00			
THE BALANCE OWING \$ 121,500.00			
TERMS : 10% Down. HST on invoice. Six (6) month Floor Plan. Balance over 48 Months at bank prime plus 1% on the declining balance with Jan/Feb and March yearly skips.			

Acceptance of this order is subject to the approval of an Executive Officer of the Company, and, when so approved, shall form a binding contract of purchase and sale. The Purchaser authorizes the Company to insert herein or in any copy hereof such further description of the equipment as the Company may consider advisable for the Purposes of making the said equipment more easily or readily known or distinguished.

Prov. Sales Tax License No. 23869-9-15

The Above Order is hereby accepted subject to all the terms and conditions set forth on the front and back of this form.

FOR THE PURCHASER, THIS

FOR INGERSOLL-RAND CANADA INC.

27<sup>th</sup> DAY OF March 2000

BY Don B. Bentley  
REPRESENTATIVE

Hickman Equipment (1985) Limited

PURCHASER

APPROVED,  
THIS

DAY OF

MAR 30 2001

BY

BY

# CONDITIONS

## IT IS AGREED THAT:

(1) The title and property in the machinery, goods, chattels and merchandise (hereinafter called "the equipment") sold or delivered hereunder, whether or not attached to real or immovable property, shall not pass to the Purchaser until the entire purchase price, interest thereon and all other amounts owing hereunder, shall have been fully paid in cash to the Company, and if the Purchaser fails to pay the purchase price, or any installment thereof, or any other charge or amount strictly in accordance with the terms hereof, or fails to comply with any condition hereof, or if proceedings in bankruptcy be instituted against the Purchaser, or in the event of the equipment being seized under any distress for rent or under any execution against the Purchaser, or upon any attempt by the Purchaser to sell, dispose of, or remove from its destination or the registration district or province in which its destination is situated, all or any of the said equipment or any part or parts thereof without the consent in writing of the Company previously given, or upon any act of abandonment of the equipment by the Purchaser, then the full balance of the purchase price, together with all other amounts then owing hereunder shall forthwith become due and payable without notice and the Purchaser's right of possession together with all payments made on account of the purchase price, shall immediately be forfeited as liquidated damages, or at the option of the Company as rental for use of the equipment, and the Company shall be at liberty and entitled, without any previous demand, notice or delay, to bring action for the aggregate amount of such balance of the purchase price and other amounts owing hereunder and to enter upon the premises where the equipment may be and to take possession of and, whether or not the said equipment be affixed or attached to real or immovable property remove and upon notice as required by law resell the same by public auction or at a private sale absolutely freed and discharged from all claims of the Purchaser thereto, and the Purchaser shall be liable to the Company for any balance of the purchase price not realized from such sale and shall forthwith pay to the Company all costs and expenses incurred in such taking of possession, removal and resale, and waiving all claims for loss or damage sustained by reason of such entry, removal and resale, shall deliver the equipment to the Company in like condition as when received, ordinary wear and tear only expected.

(2) The taking or discounting by the Company of any note as security for the payment of the price of equipment or any installment thereof shall in no way operate as a merger, novation or payment on account of such indebtedness or so as in any way to alter the conditions hereof or postpone or otherwise affect the installment payments hereunder, provided that payment by the Purchaser of any such note shall discharge the obligation thereby secured.

(3) The Purchaser shall not countermand the order contained herein. The equipment shall from the time of shipment be at the risk of the Purchaser who shall fully insure and keep fully insured the same with loss payable to the Company until payment in full of the purchase price thereof. The Purchaser shall deliver to the Company the policy or policies of insurance forthwith upon the issue thereof, and upon failure to do so within ten days after receipt of the equipment, the Company is hereby authorized to effect such insurance, and the cost of so insuring shall be deemed to be part of the Purchaser's indebtedness hereunder subject to all the conditions hereof and shall be forthwith payable in cash by the Purchaser to the Company.

(4) The Purchaser undertakes to maintain the equipment in good and substantial repair and condition at its own expense while title to such equipment vests in the Company and to permit the Company at all reasonable times to have access to the equipment and to inspect the state and condition thereof.

(5) Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

The Company shall not be liable for loss, damage, detention, or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other labour difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, car shortage wrecks or delay in transportation, inability to obtain necessary labour, materials or manufacturing facilities from usual sources, faulty forgings or castings or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

(6) Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

(7) Unless otherwise agreed in writing by the Company, the equipment shall be set up and erected by the Purchaser at the Purchaser's expense. The Company upon request will provide a competent supervisor to advise and consult during the setting up or starting of the equipment, in accordance with the terms and conditions as the Company ordinarily furnishes such supervisors.

(8) The Company reserves the right to make such changes, in detail or design, construction, arrangement or equipment as shall, in its judgment constitute an improvement over former practices.

(9) The Company warrants that the equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the equipment in operation or eighteen months from the date of shipment, whichever shall

option, correct such nonconformity, by suitable repair to such equipment or, to furnish a replacement part F.O.B. point of shipment, provided the Purchaser has stored installed, maintained and operated such equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. The Company shall not be liable for any repairs, replacements or adjustments to the equipment or any costs of labour performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's Warranty. Performance warranties are limited to those specifically stated by the Company. Unless responsibility for meeting such performance warranties are limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided above.

The company makes no other warranty or representation of any kind whatsoever, expressed or implied except that of title, and all implied warranties, including any warranty of merchantability and fitness for a particular purpose provided by law, including the civil code of Quebec, are hereby disclaimed.

Correction by the Company of nonconformities whether patent or latent in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such equipment.

(10) The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract or the equipment and services furnished hereunder in connection with the performance or breach thereof, or from the manufacture, safe, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of equipment upon which such liability is based.

The Company and its suppliers shall in no event be liable to the Purchaser any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, direct or indirect, special or punitive damages arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the equipment hereunder, whether based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase of replacement power or claims of Purchaser or customers. Purchaser for service interruption whether or not such loss or damage based on contract, warranty, negligence, indemnity, strict liability or otherwise.

(11) The Purchaser acknowledges that the Equipment has been purchased for use in the conduct of its business, that it is familiar with the Equipment, and the specifications pertaining thereto, that its own engineering staff have reviewed and/or participated in preparing such specifications and that consequently purchaser is satisfied that the Equipment is functional for the purposes for which it has been acquired.

(12) This document shall apply to, bind and enure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

(13) The Purchaser hereby waives notice of any transfer or assignment hereof and title to the equipment herein mentioned. Purchaser shall not be entitled to assign its rights hereunder without the prior written consent of the Company.

(14) The order contained herein is taken subject to the approval of an Executive Officer of the Company, and when so approved shall form a binding contract of purchase and sale and shall be deemed to have been made at the head of ice of the Company.

(15) This document contains all the terms of the contract between the parties and no salesman or agent of the Company is authorized to make any other terms or conditions, verbal or otherwise or in any way to alter the terms or conditions hereof. Purchaser hereby waives, to the full extent allowed by law, the provisions of The Limitations of Civil Rights Act (Saskatchewan), Sections 19 to 24 of the Sales of Goods on Condition Act (British Columbia) and Sections 47, 49 and 50 of the Law of Property Act (Alberta). Any provisions hereof prohibited by the law of any jurisdiction governing the same, shall be deemed to be modified in accordance with such law which shall effectively define the rights of the parties hereto and no other provision hereof shall be affected by such prohibition.


(16) The company shall have the right to enforce one or more remedies provided by these CONDITIONS or by law successively or concurrently and such enforcement shall not operate to estop or prevent the Company from pursuing any further remedy which it may have hereunder or at law and if two or more remedies hereunder shall, according to the applicable law or any jurisdiction, be incompatible it may elect to employ such one or more remedies as are compatible according to such law.

(17) The Purchaser acknowledges the receipt of a copy of this document.

(18) The parties hereby acknowledge and confirm that they have required that the contract governed by these terms and conditions be drawn in the English language.

Les parties reconnaissent et confirment par les presentes qu'elles ont exigé que les termes et conditions du present contrat soient rédigés en anglais.

*This is Exhibit "F2" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhowne, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

# Customer Accounts Payable Report (Actual)

Customer Name: HICKMAN EQUIPMENT (1985) LTD  
 Address: 1269 TOPSAIL ROAD  
 P. O. BOX 820  
 MOUNT PEARL, NF  
 A1N 3C8  
 Interest Rate: 8.25  
 Effective Date: 10/20/2001

Customer #: C41115  
 Contract #: 1640  
 Invoice #: 6720978  
 Model #: SD110D  
 Serial #: 167316  
 Reference #:  
 Page #: 1  
 Date: 27/Feb/2002

Payment #	Due Date	Interest Rate	Principal Payment	Interest Payment	Total Payment	Principal Total
FP1	2001 Apr 20	0.00 %	0.00	0.00	0.00	118,800.00
FP2	2001 May 20	0.00 %	0.00	0.00	0.00	118,800.00
FP3	2001 Jun 20	0.00 %	0.00	0.00	0.00	118,800.00
FP4	2001 Jul 20	0.00 %	0.00	0.00	0.00	118,800.00
FP5	2001 Aug 20	0.00 %	0.00	0.00	0.00	118,800.00
FP6	2001 Sep 20	0.00 %	0.00	0.00	0.00	118,800.00
FP7	2001 Oct 20	0.00 %	0.00	0.00	0.00	118,800.00
1	2001 Nov 20	5.50 %	544.50-	544.50	0.00	119,344.50
2	2001 Dec 20	5.00 %	3,442.73	497.27	3,940.00	115,901.77
sk 1 *	2002 Jan 20	5.00 %	482.92-	482.92	0.00	116,384.69
sk 2 *	2002 Feb 20	4.75 %	460.69-	460.69	0.00	116,845.38

*This is Exhibit "F3" referred to in  
the Affidavit of AGAKO NOUCH  
sworn before me this 16<sup>th</sup> day of  
January, 2003*

*Diya Nijhwa*  
.....  
*A Commissioner for Oaths, etc.*

Diya Sneholata Nijhwa, a Commissioner, etc.,  
Province of Ontario,  
while a student-at-law.  
Expires June 20, 2005

2002-02-15  
13:29

Atlantic PPRS  
Search Results Report

/AAAA0011T  
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HEAVY DUTY JOHN DEERE EQUIPMENT

Registration Details

Province/Territory : Newfoundland and Labrador  
Registration Type : PPSA Financing Statement  
Registration Number : 872754  
Registration Date/Time : 2001-03-30 / 19:05  
Expiry Date : 2006-03-30  
Your File Number : 51630-CC9

History of Registration Activity

Activity	Number	Date	Time	Expiry Date	Your File Number
Original	872754	2001-03-30	19:05	2006-03-30	51630-CC9

Debtors	ADDED	DELETED
Debtor Type : Enterprise Hickman Equipment (1985) Ltd 1269 Topsail Road West Mount Pearl NF Canada A1N 3C8	872754	

Secured Parties	ADDED	DELETED
Ingersoll-Rand Canada Inc. 51 Worcester Road Rexdale ON Canada M9W 4K2	872754	

Serial Numbered Collateral	ADDED	DELETED
Collateral Type		
Serial Number	Description	
Motor Vehicle	2001 Ingersoll-Rand SD110D COMPACTOR	872754
167316		
Motor Vehicle	2001 Ingersoll-Rand PF5510 Forklift	872754
55103033		