

## SETTLEMENT AGREEMENT

### **I. PARTIES**

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the Defense Logistics Agency ("DLA") and the United States Attorney's Office for the Eastern District of Pennsylvania (collectively the "United States") and TW Metals, Inc., through their authorized representatives.

### **II. PREAMBLE**

As a preamble to this Agreement, the parties agree to the following:

A. Whereas TW Metals is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located in Exton, Pennsylvania.

B. Whereas TW Metals sold certain items of metal and specialty metal (collectively "the metal") to the Department of Defense ("DoD") that did not conform to domestic source restrictions, as defined herein. In some instances, the metal was sold directly to the DoD pursuant to contracts entered into with DoD's Defense Supply Center Philadelphia ("DSCP"). In other instances, TW Metals sold the metal to entities that were under contract with the DoD to provide systems and other equipment, or were subcontractors to these prime government contractors.

C. Whereas TW Metals, on January 31, 2005, made a voluntary disclosure (Voluntary Disclosure No. 451) to the DoD Voluntary Disclosure office stating that it may have provided metal to the DoD or its contractors and subcontractors that did not conform to various domestic preference statutory requirements and subsequently supplemented this initial disclosure with additional disclosures of possibly non-conforming metal.

D. Whereas the United States is considering possible violations of the Civil False Claims Act, 31 U.S.C. §§ 3729-3733, as well as other potential statutory violations and common law claims for the Covered Conduct as described herein;

E. Whereas TW Metals expressly denies that the sales of the metal that did not conform to domestic source restrictions created claims and causes of action against TW Metals predicated upon the Civil False Claims Act, as amended, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud and Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, the Contract Disputes Act, 41 U.S.C. §§ 601-13; the Truth in Negotiations Act, 10 U.S.C. § 2306a; any other civil fraud statute; or under common law, for refund of overpayments, damages and forfeitures arising out of claims submitted.

F. Whereas, the United States and TW Metals mutually desire to settle and resolve any possible violation of the statutes or causes of action listed above.

NOW, THEREFORE, in reliance upon the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement and the resolution of all potential claims for civil conduct arising from said investigation (except as stated below), and for good and valuable consideration, receipt of which is by each acknowledged, the parties agree as follows:

### **III. TERMS AND CONDITIONS**

#### **1. DEFINITIONS.**

1.1. "Covered conduct" means TW Metals' failure to comply with domestic source restrictions in the following contracts: Contract Nos. SPO500-01-D-0172, SPO500-01-D-BPO3, SPO500-05-D-0146 and any other contract, subcontract, purchase order, or agreement (collectively the

"Contracts"), whether that Contract was direct with the federal government or indirect with a prime contractor or higher tier subcontractor who sold to the federal government insofar as that Contract was investigated and examined in connection with TW Metals' Voluntary Disclosure 451.

1.2. "Domestic source restrictions" includes the restrictions of the Berry Amendment, however incorporated (e.g., DFARS 252.225-7014 and Alternate I), the Buy American Act, however incorporated (e.g., FAR 52.225-1 -- Buy American Act-Supplies, DFARS 252.225-7001 Buy American Act and Balance of Payments Program), or the Trade Agreements Act, however incorporated (e.g., FAR 52.225-5 Trade Agreements, DFARS 252.225-7021 Trade Agreements) and any attempt to flow the provisions of these statutes or clauses down to TW Metals.

2. This Settlement Agreement does not constitute an admission of liability or fault by TW Metals or its employees as to any of the allegations raised by the United States or otherwise and it may not be used as evidence of liability in any other proceeding, excepting a proceeding to enforce the terms of this Settlement Agreement. The United States and TW Metals further agree and stipulate that it is the purpose of this Settlement Agreement to bring the matters described under Covered Conduct to a final and conclusive resolution.

3. The following shall constitute full and adequate consideration for the undertakings of the parties herein: TW Metals agrees to pay the United States two hundred fifteen thousand dollars and no cents (\$215,000.00) (the "Settlement Amount"), by or before March 15, 2008, by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of Pennsylvania. The Parties further agree that this Agreement will be signed by all Parties.

4. The Settlement Amount is in payment of all civil monetary claims the United States has or may have against TW Metals for the Covered Conduct, including but not limited to civil causes of action under the Civil False Claims Act, 31 U.S.C. §§3729-3733; the Contract Disputes Act, 41 U.S.C. §§ 601-13; the Truth in Negotiations Act, 10 U.S.C. § 2306a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud.

5. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of TW Metals set forth in this Agreement, conditioned upon TW Metals making payment in full of the Settlement Amount, the United States (on behalf of itself, its officer, agents, agencies, and departments) agrees to release TW Metals from any civil monetary claim the United States has or may have against TW Metals for the Covered Conduct, including but not limited to a cause of action under the Civil False Claims Act, 31 U.S.C. §§ 3729-3733; the Contract Disputes Act, 41 U.S.C. §§ 601-13; the Truth in Negotiations Act, 10 U.S.C. § 2306a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud.

6. Notwithstanding any term of this Agreement, the United States does not release, and specifically reserves the right to assert the following claims, as to which TW Metals, its current and former officers, directors, employees, affiliates, successors and assigns, reserve the right to assert all defenses:

- (A) Any claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (B) Any criminal liability;
- (C) Any liability to the United States (or its agencies) for any conduct outside of the

definition of Covered Conduct provided in paragraph III(1);

(D) Any express or implied warranty claims or other claims for defective or deficient products or services provided by Defendant; and

(E) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents, shareholders of Defendant, who are convicted, or who enter into a criminal plea related to the Covered Conduct.

7. It is expressly understood that this Settlement Agreement has no bearing on the rights and obligations of either party with respect to potential administrative suspension and debarment issues.

8. TW Metals fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expense of every kind and however denominated) which TW Metals has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. The parties agree that no representation contained in this Agreement, nor the fact of the parties entered into this Agreement or complied with, shall constitute an admission or be utilized as such by any party except to prove and enforce the terms of this Agreement.

10. This Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of and shall bind assigns, successors-in-interest, or transferees of the parties hereto.

11. Each of the signatories to this Agreement represents that he or she has the full power and authority to enter into this Agreement.

12. This writing constitutes the entire agreement of the signatories with respect to the subject

matter of this Agreement and may not be modified, amended or terminated except by a written agreement signed by the parties specifically referring to this Agreement.

13. All parties consent to the public disclosure of this Settlement Agreement, and information about this Settlement Agreement may be made available to the public upon request.

14. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

In Witness Whereof, the parties, through their duly authorized representatives, hereunder set their hands.

ON BEHALF OF THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN  
United States Attorney



VIRGINIA GIBSON  
Assistant United States Attorney  
Chief, Civil Division

Date: 2.28.08



COLIN M. CHERICO  
Assistant United States Attorney

Date: 2/28/08

By: \_\_\_\_\_  
SUSAN CHADICK  
DEFENSE LOGISTICS AGENCY

Date: \_\_\_\_\_

ON BEHALF OF TW METALS, INC.

By:  \_\_\_\_\_

KIRK E. MOORE  
Vice President Finance, Chief Financial Officer

Date: 3/16/08

U.S. DEPT. OF JUSTICE  
US ATTORNEY E.D. OF PA  
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ON BEHALF OF THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN  
United States Attorney

\_\_\_\_\_  
VIRGINIA GIBSON  
Assistant United States Attorney  
Chief, Civil Division

Date: \_\_\_\_\_

\_\_\_\_\_  
COLIN M. CHERICO  
Assistant United States Attorney

Date: \_\_\_\_\_

By:   
SUSAN CHADICK  
DEFENSE LOGISTICS AGENCY

Date: 2/29/2008

ON BEHALF OF TW METALS, INC.

By: \_\_\_\_\_  
KIRK E. MOORE  
Vice President Finance, Chief Financial Officer

Date: \_\_\_\_\_