

1110207

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
 J. Thomas Rosch**

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Carpenter Technology Corporation is a corporation organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address located at 101 West Bern Street, Reading, Pennsylvania 19601.
2. Respondent Latrobe Specialty Metals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delawa

- D. "Commission" means the Federal Trade Commission.
- E. "Acquirer" means the following:
1. a Person specified by name in this Order to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or
 2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. "Acquisition" means Respondent Carpenter's acquisition of fifty percent (50%) or more of the voting securities of Respondent Latrobe. The Acquisition is contemplated by the Agreement and Plan of Merger, as amended, by and among Latrobe Specialty Metals, Inc., Carpenter Technology Corporation, Hawke Acquisition Corp., HHEP-Latrobe, L.P., and Watermill-Toolrock Partners, L.P. dated as of June 20, 2011, submitted to the Commission, pursuant to which Carpenter plans to acquire 100% of the outstanding voting securities of Latrobe from HHEP-Latrobe, L.P., with the transaction to be structured as the merger of Hawke Acquisition Corp., a wholly-owned subsidiary of Carpenter, with and into Latrobe, with Latrobe as the surviving entity.
- G. "Acquisition Date" means the day on which the Acquisition occurs.
- H. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), specifications(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Specialty Metals Product. The term "Agency" includes, with out limitation, the United States Department of Defense.
- I. "Closing Date" means the date on which Respondent(s) (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Specialty Metal Product Assets and grants the Specialty Metal Product License to an Acquirer pursuant to this Order.
- J. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondent Latrobe that is not in the public domain and that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Specialty Metal Product(s). The term "Confidential Business Information" *excludes* (i) information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws and (ii) information relating to Respondent Latrobe's general business

strategies or practices relating to research, Development, manufacture, marketing or sales of products that does not discuss with particularity the Specialty Metal Product(s).

K. “Contract Manufacture” means:

1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer; and/or
2. to provide, or to cause to be provided, any part of the manufacturing process of a Contract Manufacture Product on behalf of an Acquirer.

L. “Contract Manufacture Product(s)” means all raw materials, inputs, and components of a Specialty Metal Product, and/or any finished goods that are provided for resale as Specialty Metal Products.

M. “Copyrights” means rights to all original works of authorship of any kind directly related to the Specialty Metal Product(s) and any registrations and applications for registrations thereof, including, but not limited to, the following: all such rights with respect to all promotional, marketing and advertising materials, educational and training materials for the sales force, and sales forecasting models; copyrights in all process development data and reports relating to the research and Development of the Specialty Metal Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Specialty Metal Product

assurance/quality control development; statistical analysis and report writing; and conducting experiments and other activities for the purpose of obtaining or achieving any and all Product Approvals and Specifications. “Develop” means to engage in Development.

- P. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the average hourly wage rate for such employee; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Specialty Metal Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Specialty Metal Product.
- Q. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- R. “Employee Information” means the following, for each Specialty Metal Product Core Employee, as and to the extent permitted by the Law:
1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondent Latrobe within ninety (90) days of the execution date of any Remedial Agreement); and
 2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee’s responsibilities related to the relevant Specialty Metal Product;
 - d. the base salary or current ~~yearly~~ ^{hourly} rate held;

2. processes, including without limitation, aging, annealing, bump pressing, cold drawing, cutting, grinding, pickling, quenching, shot blasting, solutionizing, and swaging;
3. standard operating procedures;
4. product designs and design protocols;
5. plans, ideas, and concepts;
6. repair and performance records related to the Specialty Metal Product Equipment for the two (2) year period immediately preceding the Closing Date;
7. records related to the protective workplace safety standards related to the Specialty Metal Product Equipment for the two (2) year period immediately preceding the Closing Date;
8. safety procedures for handling of materials and substances;
9. flow diagrams;
10. quality assurance and control procedures;
11. research records;
12. annual product reviews;
13. manuals and technical information provided to employees, customers, suppliers, agents or licensees including, without limitation, manufacturing, equipment, and engineering manuals and drawings;
14. audits of manufacturing methods for Specialty Metal Products conducted by all of the following:
 - a. applicable United States' Agencies;
 - b. non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications related to the use of metals or metal alloys for applications in the aerospace industry (*e.g.*, National Aerospace and Defense Contractors Accreditation Program, Performance Review Institute, and American Society for Testing Materials);
 - c. direct purchasers of Specialty Metal Products that use the Specialty Metal Products to manufacture products (*e.g.*, aerospace fasteners) for aerospace applications; and

- d. end-users of products for aerospace applications that are made from Specialty Metal Products (*e.g.*, manufacturers of United States’ military aircraft and components, jet aircraft, jet aircraft landing gear, or jet engines);
15. control history;
 16. labeling;
 17. supplier lists;
 18. chemical descriptions and specifications of, all raw materials inputs, components, and ingredients related to the Specialty Metal Products; and
 19. all other information related to the manufacturing process.
- Z. “Marketing and Business Development Employees” means all management-level employees of Respondent Latrobe who directly have participated (irrespective of the portion of working time involved) in the marketing, contracting, pricing or promotion of the Specialty Metal Products to customers within the two (2) year period immediately prior to the Closing Date. These employees include, without limitation, all management-level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, business development, and specialty metal alloy markets for use in Aerospace applications, but *excludes* administrative assistants; *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Specialty Metal Products, “Marketing and Business Development Employees” means the specific individuals identified as “Marketing and Business Development Employees” in such Remedial Agreement.
- AA. “Marketing Materials” means all marketing materials used specifically in the marketing or sale of a Specialty Metal Product(s) prior to and as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, sales call reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchases information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, video masters and other similar materials related to the Specialty Metal Product(s). The term “Marketing Materials” *excludes* documents relating to the Respondents’ general business strategies or practices relating to the marketing or sales of specialty metal alloys, where such documents do not discuss with particularity the Specialty Metal Products.

- BB. “MP35N Product(s)” means an alloy with a nominal chemical composition of 35 percent Nickel, 35 percent Cobalt, 20 percent Chromium, and 10 percent Molybdenum and that meets the following Aerospace Materials Specifications: AMS 5758 (solution heat treated and centerless ground bars); AMS 5844 (solution heat treated and cold drawn bars); AMS 5845 (solution heat treated, cold drawn and aged bars); and/or, AMS 7468 (bolts, screws, forged head, roll threaded after aging).
- CC. “MP 159 Product(s)” means an alloy with a nominal chemical composition of 25.5 percent Nickel, 35.7 percent Cobalt, 19.0 percent Chromium, 9.0 percent Iron, 7.0 percent Molybdenum, 3.0 percent Titanium, 0.6 percent Columbium (Niobium), and 0.2 percent Aluminum and that meets the following Aerospace Materials Specifications: AMS 5841, AMS 5842; and/or AMS 5843.
- DD. “Order Date” means the date on which this Decision and Order becomes final and effective.
- EE. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- FF. “

3. direct purchasers of Specialty Metal Products that use the Specialty Metal Products to manufacture products (*e.g.*, aerospace fasteners) for aerospace applications; and
 4. end-users of products for aerospace applications that are made from Specialty Metal Products (*e.g.*, manufacturers of United States military aircraft and components, jet aircraft, jet aircraft landing gear, or jet engines).
- II. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):
1. that make specific reference to any Specialty Metal Product and pursuant to which any Third Party purchases, or has the option to purchase, any Specialty Metal Product from Respondent Latrobe;
 2. relating to any

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent Latrobe shall assign the Acquirer all such rights under the contract or agreement as are related to the Specialty Metal Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

JJ. “Product Intellectual Property” means all of the following related to each Specialty Metal Product:

1. Patents;
2. Copyrights;
3. Software;
4. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process and in final Specialty Metal Products, protocols, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
5. rights to obtain and file for patents and copyrights and registrations thereof; and
6. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, Product Intellectual Property expressly includes all customer specific product formulations for Specialty Metal Products that are owned, licensed, or in the posst(ow)Tj9ownefonde

registered images or symbols by which either Carpenter or Latrobe can be identified or defined.

LL. “Proposed Acquirer” means an entity proposed by Respondents (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission to become the Acquirer of particular assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by Respondents pursuant to this Order.

MM. “Remedial Agreement(s)” means the following:

1. any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
2. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents rela

Products, “Research and Development Employees” means the specific individuals identified as “Research and Development Employees” in such Remedial Agreement.

OO. “Research and Development Records” means all research and development records relating to Specialty Metal Products including, but not limited to:

1. inventory of research and development records, research history, research efforts, research notebooks, research reports, technical service reports, testing methods, invention disclosures, and know how related to the Specialty Metal Products;
2. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with (i) Agencies and (ii) non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications (e.g., National Aerospace and Defense Contractors Accreditation Program, Performance Review Institute, and American Society for Testing Materials) relating to Product Approval(s) and Specification(s) submitted by, on behalf of, or acquired by, Respondent Latrobe related to the Specialty Metal Products;
3. designs of experiments, and the results of successful and unsuccessful designs as of 0.0000800 Tc0000 TD

immediately prior to the Closing Date, *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Specialty Metal Products, “Sales Employees” means the specific individuals identified as “Sales Employees” in such Remedial Agreement.

- RR. “Software” means computer programs related to the Specialty Metal Product(s), including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Website; *provided, however*, that “Software” does not include software that is readily purchasable or licensable from sources other than the Respondents and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- SS. “Specialty Metal Products” means the MP35N Products and the MP159 Products Developed, in Development, researched, manufactured, marketed or sold by Respondent Latrobe for use in aerospace applications at any time prior to the Acquisition.
- TT. “Specialty Metal Product Assets” means all of Respondent Latrobe’s rights, title and interest in and to all assets related to Respondent Latrobe’s business within the United States of America related to each of the Specialty Metal Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of each Specialty Metal Product, including, without limitation, the following:
1. copies of all Research and Development Records;
 2. at the Acquirer’s option, all Product Assumed Contracts related to the Specialty Metal Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
 3. a list of all customers and/or targeted customers for the Specialty Metal Product(s) and the net sales (in either units or dollars) of the Specialty Metal Products to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Specialty Metal Products on behalf of the High Volume Account and his or her business contact information;
 4. at the Acquirer’s option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date, including, but not limited to, raw materials, supplies, operating materials, work-in-process, and finished goods, and other items of inventory related to the Specialty Metal Product(s);

5. copies of all unfilled customer purchase orders for the Specialty Metal Product(s) as of the Closing Date, to be provided to the Acquirer not later than two (2) days after the Closing Date;
6. at the Acquirer's option, subject to any rights of the customer, all unfilled customer purchase orders for the Specialty Metal Products;
7. the Specialty Metal Product Equipment; and
8. copies of all of the Respondent Latrobe's books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing or to the Specialty Metal Product(s);

provided however, "Specialty Metal Product Assets" excludes (1) documents relating to the Respondent Latrobe's general buy

Divestiture Agreements are attached to this Order and contained in non-public Appendix A.

WW. “Specialty Metal Product Equipment” means all equipment listed as “Purchased Assets” in the “Specialty Metal Product Divestiture Agreements” in Non-Public Appendix A, including, without limitation, draw benches, dies and other ancillary finishing equipment.

XX. “Specialty Metal Product License” means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all of Respondent Latrobe’s rights, title and interest in, the following:

1. all Product Intellectual Property related to the Specialty Metal Product(s);
2. all Product Approvals and Specifications related to the Specialty Metal Product(s);
3. all Manufacturing Technology related to the Specialty Metal Product(s);
4. all Marketing Materials related to the Specialty Metal Product(s); and
5. all Product Development Reports related to the Specialty Metal Product(s);

to the extent legally transferable by license, and, including, without limitation, rights to copies of all of the Respondent Latrobe’s books and records related to the foregoing.

YY. “Specialty Metal Product Releasee(s)” means the Acquirer or any entity controlled by or under common control with the Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of the Acquirer-affiliated entities.

ZZ. “Supply Cost” means a cost not to exceed the manufacturer’s average direct per unit cost in United States dollars of manufacturing the Specialty Metal Product, or raw material or ingredients related to a Specialty Metal Product, for the twelve (12) month period immediately preceding the Acquisition Date. “Supply Cost” shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Specialty Metal Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Specialty Metal Product.

AAA. “Third Party(ies)” means any non-governmental Person other than the following: the Respondent; or, the Acquirer of particular assets or rights pursuant to this Order.

II.

IT IS FURTHER ORDERED that:

- A. Not later than the earlier o

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

C. Respondents shall:

1. deliver the Specialty Metals Product Equipment to the Acquirer in Current Operating Condition; *provided however*, that, subject to the consent of the Acquirer on a piece-by-piece basis, Respondents, at Respondents' own expense, may substitute equipment in Current Operating Condition that:
 - a. is suitable for the same use as the particular piece of Specialty Metals Product Equipment that is the subject of the proposed substitution; and
 - b. meets or exceeds the operational, functional, productive and manufacturing capabilities of the particular piece of the Specialty Metals Product Equipment that is the subject of the proposed substitution; and
2. a lty

4. make representations and warranties to the Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver the Contract Manufacture Products in a timely manner as required by the Remedial Agreement to Contract Manufacture unless Respondents can demonstrate that their failure was entirely beyond the control of Respondents and in no part the result of negligence or willful misconduct by Respondents;
5. during the term of the Remedial Agreement to Contract Manufacture, upon request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture, storage, or transport of the Contract Manufacture Products that are generated or created after the Closing Date;
6. during the term of the Remedial Agreement to Contract Manufacture, maintain manufacturing facilities necessary to manufacture each of the Contract Manufacture Products; and
7. during the term of the Remedial Agreement to Contract Manufacture, provide consultation with knowledgeable employees of Respondents and training, at the request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling the Acquirer to obtain or achieve all Product Approvals and Specifications to manufacture Specialty Metal Products in the same quality achieved by the Respondent Latrobe and in commercial quantities, and in a manner consistent with the relevant customer specifications for Aerospace use, independently of Respondents, and sufficient to satisfy management of the Acquirer that its personnel are adequately trained in the manufacture of Specialty Metal Products.

The foregoing provisions, II.E.1. - 7., shall remain in effect with respect to each Contract Manufacture Product until the earliest of the following dates: (i) the date eighteen (18) months from the date that the Respondent completes delivery of all pieces of the Specialty Metals Product Equipment to the Acquirer in a manner consistent with this Order; or (ii) the date three (3) years from the Order Date.

F. Respondents shall:

1. submit to the Acquirer, at Respondents' expense, copies of all Confidential Business Information;
2. deliver copies of the Confidential Business Information as follows:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delay

- c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness; and
 - 3. pending complete delivery of copies of all Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Specialty Metal Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.
- G. Respondents shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Manufacturing Technology, Product Intellectual Property or Product Trademarks, related to the relevant Specialty Metal Product(s) from the Third Party

and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Specialty Metal Product or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondents shall not make any counteroffer to such a Specialty Metal Product Core Employee who has received a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.I.3. shall not prohibit Respondents from continuing to employ any Specialty Metal Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.

J. Until Respondents complete the divestiture and grant of license required by Paragraph II.A., deliver the Specialty Metals Product Equipment to the Acquirer and provide the Manufacturing Technology to the Acquirer,

1. Respondents shall take such actions as are necessary to:

- a. maintain the full economic viability and marketability of the businesses associated with each Specialty Metal Product;
- b. minimize any risk of loss of competitive potential for such business;
- c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to each Specialty Metal Product;
- d. ensure the Specialty Metal Product Assets are delivered to the Acquirer in a manner without disruption, delay, or impairment of the Product Approval and Specification processes related to the business associated with each Specialty Metal Product;
- e. ensure the completeness of the delivery of the Manufacturing Technology; and

2. Respondents shall not sell, transfer, encumber or otherwise impair the Specialty Metal Product Assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the businesses associated with each Specialty Metal Product.

K. Respondents shall not join, file, prosecute or maintain any suit, in l

1. any Patent owned or licensed by Respondents as of the Acquisition Date that claims a method of making, using, or a composition of matter, relating to a Specialty Metal Product;
2. any Patent owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, e

- O. No provision of this Order shall be interpreted to restrict the Respondents' use of the Manufacturing Technology, Product Intellectual Property, or Confidential Business Information for the purposes of the research, Development, manufacture, marketing or sales of any of Respondents' own products, including MP 35N Products or MP 159 Products.
- P. The purpose of the divestiture of the Specialty Metal Product Assets, the grant of the Specialty Metals Product License, the provision of the Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:
 - 1. to ensure the continued use of the Specialty Metal Product Assets in the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Specialty Metal Products;
 - 2. to provide for the future use of the Specialty Metal Product Assets for the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Specialty Metal Products;
 - 3. to create a viable and effective competitor, who is independent of the Respondents in the research, Development, manufacture, use, import, export, distribution, or sale of each of the respective Specialty Metal Products; and
 - 4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Carpenter, which consent shall not be unreasonably withheld. If Respondent Carpenter has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Carpenter of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to pe

monitor Respondents' compliance with the relevant requirements of the Order in a manne

- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order; *provided, however*, beginning ninety (90) days after Respondent has filed its final report pursuant to Paragraph V.B., and every ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:
1. obtaining or achieved all of the relevant Product Approvals and Specifications necessary to manufacture in commercial quantities, the Specialty Metal Products independently of Respondents; and
 2. securing sources of supply of the raw materials, inputs and components for the Specialty Metal Products from entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate ed all of the relevant Product Approvals and Specifications necessary

- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDE

- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
 4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.
 5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants,

attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the

V.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order is issued, and every sixty (60) days thereafter until Respondents have fully complied with the following:
 - 1. Paragraphs II.A , II.B., II.C., II.D., II.E., II.F., and II.H.; and
 - 2. all of their responsibilities to render transitional services to the Acquirer as provided by this Order and the Remedial Agreement(s);

Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including copies of all written communications to

VII.

IT IS FURTHER ORDERED that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall include in each Remedial Agreement related to each of the Specialty Metal Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondents' obligations to the Acquirer pursuant to this Order.
- D. Respondents shall also include in each Remedial Agreement a representation from the Acquirer that the Acquirer shall use commercially

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

**NON-PUBLIC APPENDIX A
SPECIALTY METAL PRODUCT
DIVESTITURE AGREEMENTS**

[Redacted From the Public Record Version, But Incorporated By Reference]