

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Metric Equipment Sales, Inc.  
3486 Investment Blvd.  
Hayward, California 94545

*Attn: Robert Parker  
Chief Financial Officer*

Dear Mr. Parker:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Metric Equipment Sales, Inc. ("Metric") of Hayward, California has committed 31 violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act").<sup>2</sup> Specifically, BIS charges that Metric committed the following violations:

**Charges 1-10            15 C.F.R. § 764.2(a) - Exporting Items Without the Required  
Department of Commerce Licenses**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on ten occasions between on or about January 9, 2001 and on or about December 21, 2001, Metric engaged in conduct prohibited by the Regulations by exporting oscilloscopes ("oscilloscopes"), items subject to the Regulations and classified under export control

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2004). The violations charged occurred in 2001. The Regulations governing the violations at issue are found in the 2001 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 Fed. Reg. 48763 (August 10, 2004)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)).

classification number (“ECCN”) 3A292,<sup>3</sup> to Israel without obtaining the Department of Commerce (“DOC”) licenses required by Section 742.3 of the Regulations. In so doing, Metric committed ten violations of Section 764.2(a) of the Regulations.

**Charges 11-20            15 C.F.R. § 764.2(e) - Transfer of Items With Knowledge That a Violation of the Regulations Would Occur**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 10 occasions between on or about January 9, 2001 and on or about December 21, 2001, Metric transferred the oscilloscopes from the United States to an end-user in Israel with knowledge that violations of the Regulations would occur. Metric knew or had reason to know that export of the oscilloscopes to Israel required a license and Metric transferred the oscilloscopes knowing that the required DOC export licenses would not be obtained. In so doing, Metric committed 10 violations of Section 764.2(e) of the Regulations.

**Charge 21                15 C.F.R. § 764.2(g) - False Statement on Shipper’s Export Declaration Concerning Authority to Export**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on or about January 9, 2001, Metric made a false statement to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed a Shipper’s Export Declaration with the U.S. Government, an export control document as defined in Part 772 of the Regulations, for exports of two oscilloscopes classified under ECCN 3A292 to Israel that represented that the oscilloscopes were authorized for export pursuant to a DOC export license. This representation was false because the referenced DOC export license did not authorize the export of the items in question. In so doing, Metric committed one violation of Section 764.2(g) of the Regulations.

**Charges 22-30            15 C.F.R. § 764.2(g) - False Statements on Shipper’s Export Declarations Concerning Authority to Export**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on nine occasions between on or about January 15, 2001 and on or about December 21, 2001, Metric made false statements to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed Shipper’s Export Declarations with the U.S. Government for exports of oscilloscopes classified under ECCN 3A292 to Israel that represented the oscilloscopes qualified for export from the United

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<sup>3</sup> The term “ECCN” refers to an Export Control Classification Number. *See* Supp. 1 to 15 C.F.R. Part 774.

States as NLR (“No License Required”). These representations were false because, pursuant to Section 742.3 of the Regulations, licenses were required to export these items to Israel. In so doing, Metric committed nine violations of Section 764.2(g) of the Regulations.

**Charge 31                    15 C.F.R. § 764.2(g) - False Statement on Shipper’s Export Declaration Concerning Authority to Export**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on or about March 20, 2001, Metric made a false statement to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed a Shipper’s Export Declaration for the export of a sampling head classified as EAR99<sup>4</sup> to Israel that falsely represented that the sampling head was authorized for export pursuant to a DOC export license. This representation was false because the referenced DOC export license did not authorize the export of the item in question. In so doing, Metric committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Metric is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>5</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Metric fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Metric defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Metric. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter.

Metric is further notified that it is entitled to an agency hearing on the record if Metric files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Metric is also entitled to be

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<sup>4</sup> EAR99 refers to items subject to the Regulations but not specifically listed on the Commerce Control List. *See* Supp. 1 to 15 C.F.R. Part 774.

<sup>5</sup> *See* 15 C.F.R. § 6.4(a)(2).

represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Metric have a proposal to settle this case, Metric or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Metric's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street, Baltimore, Maryland 21202-4022

In addition, a copy of Metric's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Philip Ankel, Esq.  
Room H-3839  
United States Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Philip Ankel is the attorney representing BIS in this case. Any communications that Metric may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Rick Shimon  
Acting Director  
Office of Export Enforcement

Attachment: Schedule A

**SCHEDULE A**  
***METRIC EQUIPMENT SALES, INC.***

Charges	Date of Export (on or about)	Item	ECCN	Destination	Invoice No.
1,11,21	January 9, 2001	2 Oscilloscopes	3A292	Israel	001920
2,12,22	January 15, 2001	1 Oscilloscope	3A292	Israel	001928
3,13,23	January 26, 2001	1 Oscilloscope	3A292	Israel	001952
4,14,24	February 1, 2001	2 Oscilloscopes	3A292	Israel	001954
5,15,25	February 2, 2001	1 Oscilloscope	3A292	Israel	001962
6,16,26	March 1, 2001	1 Oscilloscope	3A292	Israel	002014
7,17,27	March 8, 2001	1 Oscilloscope	3A292	Israel	002032
31	March 20, 2001	1 Sampling Head	EAR99	Israel	002051
8,18,28	August 6, 2001	1 Oscilloscope	3A292	Israel	002256
9,19,29	October 19, 2001	1 Oscilloscope	3A292	Israel	002366
10,20,30	December 21, 2001	1 Oscilloscope	3A292	Israel	002437

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

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In the Matter of: )  
 )  
Metric Equipment Sales, Inc. )  
3486 Investment Blvd. )  
Hayward, California 94545 )  
 )  
Respondent. )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Metric Equipment Sales, Inc. (“Metric”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup>

WHEREAS, BIS has notified Metric of its intention to initiate an administrative proceeding against Metric, pursuant to the Act and the Regulations;

<sup>1</sup> The violations charged occurred in 2001. The Regulations governing the violations at issue are found in the 2001 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)).

WHEREAS, BIS has issued a proposed charging letter to Metric that alleged that Metric committed 31 violations of the Regulations, specifically:

1. *10 Violations of 15 C.F.R. § 764.2(a) - Exporting Items Without the Required Department of Commerce Licenses:* On ten occasions between on or about January 9, 2001 and on or about December 21, 2001, Metric engaged in conduct prohibited by the Regulations by exporting oscilloscopes (“oscilloscopes”), items subject to the Regulations and classified under export control classification number (“ECCN”) 3A292,<sup>3</sup> to Israel without obtaining the Department of Commerce (“DOC”) licenses required by Section 742.3 of the Regulations.
2. *10 Violations of 15 C.F.R. § 764.2(e) - Transfer of Items With Knowledge That a Violation of the Regulations Would Occur:* On 10 occasions between on or about January 9, 2001 and on or about December 21, 2001, Metric transferred the oscilloscopes from the United States to an end-user in Israel with knowledge that violations of the Regulations would occur. Metric knew or had reason to know that export of the oscilloscopes to Israel required a license and Metric transferred the oscilloscopes knowing that the required DOC export licenses would not be obtained.
3. *One Violation of 15 C.F.R. § 764.2(g) - False Statement on Shipper’s Export Declaration Concerning Authority to Export:* On or about January 9, 2001, Metric

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<sup>3</sup> The term “ECCN” refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. Part 774.

made a false statement to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed a Shipper's Export Declaration with the U.S. Government, an export control document as defined in Part 772 of the Regulations, for exports of two oscilloscopes to Israel that represented that the oscilloscopes were authorized for export pursuant to a DOC export license. This representation was false because the referenced export license did not authorize the export of the items in question.

4. *Nine Violations of 15 C.F.R. § 764.2(g) - False Statements on Shipper's Export Declarations Concerning Authority to Export:* On nine occasions between on or about January 15, 2001 and on or about December 21, 2001, Metric made false statements to the U.S. Government in connection with effecting exports subject to the Regulations. Specifically, Metric filed or caused to be filed Shipper's Export Declarations with the U.S. Government for exports of oscilloscopes classified under ECCN 3A292 to Israel that represented the oscilloscopes qualified for export from the United States as NLR ("No License Required"). These representations were false because, pursuant to Section 742.3 of the Regulations, licenses were required to export these items to Israel.
5. *One Violation of 15 C.F.R. § 764.2(g) - False Statement on Shipper's Export Declaration Concerning Authority to Export:* On or about March 20, 2001, Metric made a false statement to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed a



Shipper's Export Declaration for the export of a sampling head classified as EAR99<sup>4</sup> to Israel that falsely represented that the sampling head was authorized for export pursuant to a DOC export license. This representation was false because the referenced DOC export license did not authorize the export of the item in question.

WHEREAS, Metric has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Metric fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, Metric enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Metric states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Metric neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Metric wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Metric agrees to be bound by the Order, if entered;

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<sup>4</sup>. EAR99 refers to items subject to the Regulations but not specifically listed on the Commerce Control List. *See* Supp. 1 to 15 C.F.R. Part 774.

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Metric, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Metric in complete settlement of the violations of the Regulations relating to the transactions detailed in the proposed charging letter:
  - a. Metric shall be assessed a civil penalty in the amount of \$150,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
  - b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Metric. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Metric's export or reexport privileges for a period of one year from the date of imposition of the penalty.
  - c. Metric shall perform an audit of its internal compliance program not less than 12 months from the date of entry of the Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS web site at: <http://www.bis.doc.gov/exportmanagementsystems/default.htm> which is incorporated by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 96 North Third Street, San Jose CA 95112, not later than 12 months from the date of the entry of the Order.

- d. For a period five years from the date of entry of the Order, Metric, its successors or assigns, and, when acting for or on behalf of Metric, its officers, representatives, agents, or employees (“Denied Person”) may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:
- i. Applying for, obtaining, or using any license, License Exception, or export control document;
  - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
  - iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.
- d. BIS agrees that, as authorized by Section 766.18 (c) of the Regulations, the five year denial period set forth in paragraph 2.d. shall be suspended in its entirety for a period of one year from the entry of the appropriate Order, and shall thereafter be waived, provided that during the period of suspension, Metric has committed no violation of the Act or any regulation, order or license issued thereunder, and,

provided further that Metric has made timely payment of the \$150,000 civil penalty assessed pursuant to this Agreement and the Order.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Metric hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$150,000 civil penalty, BIS will not initiate any further administrative proceeding against Metric in connection with any violation of the Act or the Regulations arising out of the transactions detailed in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if

entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY,  
U.S. DEPARTMENT OF COMMERCE

METRIC EQUIPMENT SALES, INC.

  
Acting Director  
Office of Export Enforcement

  
Robert Parker  
Chief Financial Officer

Date: 3/23/05

Date: 2/17/05

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of: )  
 )  
Metric Equipment Sales, Inc. )  
3486 Investment Blvd. )  
Hayward, California 94545 )  
 )  
Respondent. )  
 )

ORDER RELATING TO METRIC EQUIPMENT SALES, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Metric Equipment Sales, Inc. (“Metric”) of its intention to initiate an administrative proceeding against Metric pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> by issuing a proposed charging letter to Metric that alleged that Metric committed 31 violations of the Regulations. Specifically, the charges are:

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<sup>1</sup> The violations charged occurred in 2001. The Regulations governing the violations at issue are found in the 2001 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)).

1. *10 Violations of 15 C.F.R. § 764.2(a) - Exporting Items Without the Required Department of Commerce Licenses:* On ten occasions between on or about January 9, 2001 and on or about December 21, 2001, Metric engaged in conduct prohibited by the Regulations by exporting oscilloscopes (“oscilloscopes”), items subject to the Regulations and classified under export control classification number (“ECCN”) 3A292,<sup>3</sup> to Israel without obtaining the Department of Commerce (“DOC”) licenses required by Section 742.3 of the Regulations.
2. *10 Violations of 15 C.F.R. § 764.2(e) - Transfer of Items With Knowledge That a Violation of the Regulations Would Occur:* On 10 occasions between on or about January 9, 2001 and on or about December 21, 2001, Metric transferred the oscilloscopes from the United States to an end-user in Israel with knowledge that violations of the Regulations would occur. Metric knew or had reason to know that export of the oscilloscopes to Israel required a license and Metric transferred the oscilloscopes knowing that the required DOC export licenses would not be obtained.
3. *One Violation of 15 C.F.R. § 764.2(g) - False Statement on Shipper’s Export Declaration Concerning Authority to Export:* On or about January 9, 2001, Metric made a false statement to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed a

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<sup>3</sup> The term “ECCN” refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. Part 774.

Shipper's Export Declaration with the U.S. Government, an export control document as defined in Part 772 of the Regulations, for exports of two oscilloscopes to Israel that represented that the oscilloscopes were authorized for export pursuant to a DOC export license. This representation was false because the referenced DOC export license did not authorize the export of the items in question.

4. *Nine Violations of 15 C.F.R. § 764.2(g) - False Statements on Shipper's Export Declarations Concerning Authority to Export:* On nine occasions between on or about January 15, 2001 and on or about December 21, 2001, Metric made false statements to the U.S. Government in connection with effecting exports subject to the Regulations. Specifically, Metric filed or caused to be filed Shipper's Export Declarations with the U.S. Government for exports of oscilloscopes classified under ECCN 3A292 to Israel that represented the oscilloscopes qualified for export from the United States as NLR ("No License Required"). These representations were false because, pursuant to Section 742.3 of the Regulations, licenses were required to export these items to Israel.
5. *One Violation of 15 C.F.R. § 764.2(g) - False Statement on Shipper's Export Declaration Concerning Authority to Export:* On or about March 20, 2001, Metric made a false statement to the U.S. Government in connection with effecting an export subject to the Regulations. Specifically, Metric filed or caused to be filed a Shipper's Export Declaration for the export of a sampling head classified as



EAR99<sup>4</sup> to Israel that falsely represented that the sampling head was authorized for export pursuant to a DOC export license. This representation was false because the referenced DOC export license did not authorize the export of the item in question.

WHEREAS, BIS and Metric have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$150,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Metric will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license

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<sup>4</sup>. EAR99 refers to items subject to the Regulations but not specifically listed on the Commerce Control List. *See* Supp. 1 to 15 C.F.R. Part 774.

exception, permission, or privilege granted, or to be granted, to Metric. Accordingly, if Metric should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Metric's export privileges for a period of one year from the date of entry of this Order.

FOURTH, Metric shall perform an audit of its internal compliance program not less than 12 months from the date of entry of the Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS web site at: <http://www.bis.doc.gov/exportmanagementsystems/default.htm> which is incorporated by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 96 North Third Street, San Jose CA 95112, not later than one year from the date of entry of this Order

FIFTH, for a period five years from the date of entry of the Order, Metric Equipment Sales, Inc., 3486 Investment Blvd., Hayward, California 94545, its successors or assigns, and when acting for or on behalf of Metric, its officers, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or

otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SIXTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or

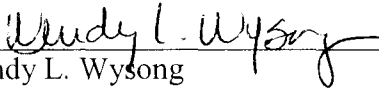
controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

SEVENTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Metric by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

EIGHTH, that, as authorized by Section 766.18 (c) of the Regulations, the denial period set forth above shall be suspended in its entirety for one year from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, Metric has committed no violation of the Act or any regulation, order or license issued thereunder.

NINTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

  
Wendy L. Wyson  
Acting Assistant Secretary of  
Commerce for Export Enforcement

Entered this 24th day of March 2005