

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	Asset Purchase Agreement

**CONVEYING PARTY DATA**

Name	Execution Date
Metallic Technology, Inc.	05/01/2005

**RECEIVING PARTY DATA**

<b>Name:</b>	Teck Cominco Metals Ltd.
<b>Street Address:</b>	2380 Speakman Drive
<b>City:</b>	Mississauga, Ontario
<b>State/Country:</b>	CANADA
<b>Postal Code:</b>	L5K 1B4

**PROPERTY NUMBERS Total: 22**

Property Type	Number
Application Number:	10424539
Application Number:	10424571
Application Number:	10660469
Application Number:	10661087
Patent Number:	5952117
Patent Number:	6153328
Patent Number:	6162555
Patent Number:	6296958
Patent Number:	6432292
Patent Number:	6522955
Patent Number:	6679280
Patent Number:	6689711
Patent Number:	6706433
Patent Number:	6746790
Patent Number:	6764588

CH \$880.00 10424539

Patent Number:	6764785
Patent Number:	6787260
Patent Number:	6841276
Patent Number:	6873157
Patent Number:	6911274
Patent Number:	6942105
Patent Number:	6945266

**CORRESPONDENCE DATA**

Fax Number: (714)427-7799  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
Phone: 714-427-7083  
Email: cneu@swlaw.com  
Correspondent Name: Sean D. Burdick, SNELL & WILMER LLP  
Address Line 1: 600 Anton Boulevard  
Address Line 2: Suite 1400  
Address Line 4: Costa Mesa, CALIFORNIA 92626

ATTORNEY DOCKET NUMBER:	50534-0001
NAME OF SUBMITTER:	Sean D. Burdick

**Total Attachments: 21**  
source=Teck Cominco Metals Asset Purchase Agreement#page1.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page2.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page3.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page4.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page5.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page6.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page7.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page8.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page9.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page10.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page11.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page12.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page13.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page14.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page15.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page16.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page17.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page18.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page19.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page20.tif  
source=Teck Cominco Metals Asset Purchase Agreement#page21.tif

## ASSET PURCHASE AGREEMENT

This Agreement made effective as of the 1<sup>st</sup> day of May, 2005;

Between: **METALLIC TECHNOLOGY, INC.**, a corporation duly incorporated under the laws of the State of California and having a place of business at 50 California Street, Suite 840, San Francisco, California

("Vendor")

And: **TECK COMINCO METALS LTD.**, a corporation duly incorporated under the laws of Canada and having a place of business at 2380 Speakman Drive, Mississauga, Ontario L5K 1B4

("Purchaser")

### WHEREAS:

- A. WHEREAS, on or about June 22, 2004, Metallic Power, Inc., a corporation organized under the laws of the State of Delaware and having a place of business at 2320 Camino Vide Roble, Carlsbad, California ("Metallic Power"), granted a first priority security interest (the June 22, 2004 Security Agreement") in and to certain assets to Nth Power Technologies Fund II, L.P., Micro-Generation Technology Fund, LLC, Utech Climate Challenge Fund, L.P., Perseus 2000, LLC, Cinergy Ventures II, LLC, Teck Cominco Metals Ltd., New Juno LP, Josh Lampl and Thomas Page (collectively, the "Secured Parties"), which security interest was duly perfected in accordance with applicable law;
- B. WHEREAS in addition to the security interested granted to the Secured Parties, on or about June 22, 2004 and September 9, 2004, Metallic Power granted a security interest in and to certain assets to The Beacon Group Energy Investment Fund II, L.P., MP Investments, Inc., Jeffrey A. Colborn, Aliya Ferouz-Colborn, Scott Purcell, The Purcell Family Trust, Caisse, De Depot Et Placement Du Quebec, Norsk Hydro Technology Ventures AS, Teck Cominco Metals, Ltd., Jeffrey Wolking and Stephen Des Jardins (collectively, the "Additional Parties");
- C. WHEREAS, under the terms of the June 22, 2004 Security Agreement, the Secured Parties held a perfected, first priority security interest in and to the Purchased Assets (as defined below);
- D. WHEREAS, on or about September 24, 2004, the Secured Parties demanded that Metallic Power surrender the collateral identified in the June 22, 2004 Security Agreement, including without limitation the Purchased Assets.

- E. WHEREAS, prior to the Effective Date, the Secured Parties took possession of all of the right, title and interest in and to the Purchased Assets, all pursuant to the June 22, 2004 Security Agreement;
- F. WHEREAS, prior to the Effective Date (defined below), the Secured Parties transferred all right, title and interest in the Purchased Assets including without limitation all: (1) income, royalties, damages, claims and recoveries for past, present or future infringement; and (2) all rights to sue for past, present or future infringement to Vendor;
- G. WHEREAS, on or about June 15, 2005, the Additional Parties released their security interests in Metallic Power's collateral, including without limitation the Purchased Assets; and
- H. WHEREAS, Vendor wishes to sell, and Purchaser wishes to purchase, the Purchased Assets, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment of the Deposit (hereinafter defined) by the Purchaser to the Vendor and in consideration of the terms and conditions and the mutual covenants hereinafter set forth, and the other good and valuable consideration the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement unless expressly stated to the contrary:

- (a) **"Agreement"** means this binding Asset Purchase Agreement, together with any and all exhibits, schedules or attachments hereto
- (b) **"Closing Date"** shall mean November 21, 2005 or such other date as the parties may agree to, and **"Closing"** means the closing of this transaction;
- (c) **"Dollar"** and **"\$"** as used herein means United States dollars;
- (d) **"Effective Date"** shall mean May 1, 2005 at 12:01 am Mountain Standard Time;
- (e) **"Equipment"** shall mean any and all of those items listed in Schedule "C" to this Agreement which are in the possession of the Vendor on the Effective Date.
- (f) **"Intellectual Property"** means all designs, drawings, technical information, trade secrets, proprietary or confidential information, inventions (whether or not patentable), procedures, know-how, models and data, including without limitation the Patents listed in Schedule "A" attached hereto, (collectively, the "Intellectual Property").
- (g) **"Parties"** mean the parties to the Agreement.
- (h) **"Patents"** means those patents set out in the attached Schedule "A" including

- (a) all letters patent of the United States or any other country, all registrations and recordings thereof and all applications for letters patent of the United States or any other country, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, divisions, continuations, renewals, continuations-in-part or extensions thereof; (c) all petty patents, divisionals and patents of addition; (d) all patents to issue in any such applications; (e) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to patents, including, without limitation, damages, claims and recoveries for past, present or future infringement; and (f) rights to sue for past, present and future infringement of any patent, as of the Effective Date.
- (i) **"Personal Property"** – means all personal property of the Vendor in its possession on the Effective Date relating to the Intellectual Property, including the Personal Property listed in Schedule "B" attached hereto, other than the Equipment, wherever located, whether tangible or intangible, and whether now owned or hereafter acquired, existing, leased or consigned by or to the Vendor.
- (j) **"Purchase Price"** means the purchase price payable by the Purchaser to the Vendor for the Purchased Assets as set forth in Article 4 hereof.
- (k) **"Purchased Assets"** means and includes the Equipment, Intellectual Property, Personal Property and all accessions to, substitutions and replacements thereof.
- (l) **"Purchaser"** means Teck Cominco Metals Ltd., together with its parents, subsidiaries, predecessors, successors, affiliates, divisions, assigns and present and former directors, officers, shareholders, partners, principals, agents, employees, representatives, attorneys, indemnitors and insurers.
- (m) **"Vendor"** means Metallic Technology, Inc. together with its parents, subsidiaries, predecessors, successors, affiliates, divisions, assigns and present and former directors, officers, shareholders, partners, principals, agents, employees, representatives, attorneys, indemnitors, insurers and the Secured Parties.

### Interpretations

Unless the context otherwise requires the following provisions shall govern the interpretation of this Agreement.

- (a) the term "this Agreement", "hereof" "hereunder", "herein" and similar expressions refer to this Agreement taken as a whole including any agreement or instrument in writing that amends or is supplementary to this Agreement;
- (b) words importing the singular number or masculine gender only shall include the plural number or the feminine gender and vice versa; and

- (c) the division of this Agreement into Sections, paragraphs and other subdivisions and the insertion of headings are for the convenience of reference only and shall not affect the construction or the interpretation hereof.

**1.3 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the law of the State of Washington, without any application of any provisions relating to conflict or choice of laws. The parties further agree to attorn to the jurisdiction of the Courts of the State of Washington and agree to waive the right to a jury trial.

**1.4 Schedules**

The following Schedules are attached to and shall be deemed to form part of this Agreement:

- Schedule "A" – Patents
- Schedule "B" - Personal Property
- Schedule "C" - Equipment
- Schedule "D" – Confirmatory Patent Assignment

**2. PURCHASED ASSETS**

**2.1 Purchased Assets**

On the Closing Date, the Vendor shall sell, transfer and assign to the Purchaser and the Purchaser shall purchase and acquire from the Vendor all Vendor's right, title and interest in the Purchased Assets.

**3. TRANSFER OF PURCHASED ASSETS**

**3.1 Transfer**

- (a) The Purchased Assets shall be transferred by the Vendor to the Purchaser on the Closing Date, free and clear of all liens, charges, mortgages, encumbrances and any other third party rights, claims or interests whatsoever.
- (b) The Purchaser is entitled to the permanent quiet possession and enjoyment of the Purchased Assets. Without limiting the foregoing, the Purchaser is entitled to: use, manufacture, sell, and lease the Purchased Assets, or any component thereof and to develop, publish, reproduce, distribute, export, adapt, alter, replace, reverse engineer, compile, translate, rent, transfer, communicate, assign, or otherwise deal in any manner with all or part of the Purchased Assets.

**3.2 Risk**

The Purchased Assets shall be and remain at the risk of the Vendor until closing. Immediately following the closing the Purchased Assets shall be at the sole risk of the Purchaser.

**4. PURCHASE PRICE AND ADJUSTMENT****4.1 Purchase Price**

- (a) The Purchase Price shall be \$150,000 (one hundred fifty thousand dollars), together with all patent related expenses and fees, including without limitation maintenance fees, issue fees and the like, incurred on or after May 16, 2005, and further including all storage fees incurred by Vendor on or after July 1, 2005, for items designated in Schedule C. The Purchase Price shall be paid by wire transfer to Cantor Colburn LLP, 55 Griffin Road South, Bloomfield, Connecticut 06002, United States of America, attorneys for the Vendor, on or before the Closing Date, to be held by them in trust, subject to the terms of this Agreement.
- (b) On the Closing Date, the Purchaser shall attend at MTI's storage facility to take possession of the items referred to in Schedules B and C and upon completion, shall notify its attorney.
- (c) The Purchaser's attorney shall notify the Vendor's attorney to authorize the Purchase Price to be paid to the Vendor.

**5. DEBTS, LIABILITIES OR OBLIGATIONS****5.1 Debts of Vendor**

- (a) The Vendor shall pay promptly all of the current and contingent liabilities, debts, obligations, liens, charges, mortgages, encumbrances, claims and actions respecting the Purchased Assets.
- (b) The Purchaser does not assume and shall not be liable for any debts, obligations, commitments, liabilities of, claims, demands or actions against the Vendor, whether absolute, accrued or contingent, arising prior to and as at the Effective Date, whether or not asserted prior to such date and whether arising out of or in any way connected with the Purchased Assets or otherwise.

**5.2 Consents**

Notwithstanding the foregoing, if any of the contracts or any other property or rights to be assigned or transferred to the Purchaser hereunder are not assignable or transferable either by virtue of the provisions thereof or under applicable law without the consent of some party or parties, the Vendor shall at the request of the Purchaser with respect to particular required consents use their best efforts to obtain such consents, both before and after the Closing Date, and until such consents shall be obtained, the Vendor shall, to the extent permitted by law, hold the same in trust for the Purchaser.

**6. CONDITIONS****6.1 Purchaser's Conditions**

The obligations of the Purchaser to close the transactions contemplated by this Agreement shall be subject to the performance or fulfillment on or before the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and provisions of this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been duly complied with and performed;
- (b) the representations and warranties of the Vendor contained in Article 7 shall be true and correct on the Closing Date;
- (c) the agreements and documents provided herein to be executed and delivered by the Vendor shall be executed and delivered on or prior to the Closing Date;
- (d) the Vendor shall obtain and register absolute discharges of all mortgages, liens, charges, encumbrances, claims, debts, assignments, actions and dues of any kind registered against or in anyway charging the Purchased Assets and shall deliver the Purchased Assets on the Closing Date free and clear of any and all mortgages, liens, charges, encumbrances, claims, debts, assignments, actions and dues of any kind;
- (e) the completion by the Purchaser, to its satisfaction, acting in its sole and unfettered discretion, on or before the Closing Date, of its due diligence review to be completed by the Purchaser and its legal, scientific and accounting advisors, which review may include, but not be limited to the review of the agreements, licenses, designs and methodologies relating to the Purchased Assets;
- (f) all necessary corporate action shall be taken by the shareholders and directors of the Vendor to approve, ratify, confirm and adopt this Agreement and to authorize the execution and delivery of all documents required herein and the performance of all acts and all transactions on the part of the Vendor to be done or performed hereunder;
- (g) Vendor shall have delivered to the Purchaser, prior to the Closing Date, and in a form satisfactory to the Purchaser the Confirmatory Patent Assignment in respect of the Patent Assets, together with a declaration as set out in attached Schedule "D".

**6.2 Benefit**

The provisions of Section 6.1 are for the exclusive benefit of the Purchaser and the Purchaser shall have the sole and exclusive right at any time prior to the Closing Date by written notice to the Vendor to waive the performance of any condition or representation in its favour therein contained or any part thereof. If any one or more of the aforementioned conditions has not been satisfied or waived on or before the Closing Date then the Purchaser may cancel this Agreement by written notice to the Vendor at any time prior to the time therein provided in which case these presents shall be null and void for all purposes.



**6.3 Vendor's Conditions**

The obligations of the Vendor to close the transactions contemplated by this Agreement shall be subject to the performance or fulfillment on or before the Closing Date of the following conditions precedent:

- (a) all of the terms, covenants and provisions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been duly complied with and performed;
- (b) the representations and warranties of the Purchaser contained in Article 7 shall be true and correct on the Closing Date;
- (c) the Purchaser shall have paid Vendor's attorneys the Purchase Price, all pursuant to Section 4 of this Agreement.
- (d) the agreements and documents provide herein to be executed and delivered by the Purchaser shall be executed and delivered on or prior to the Closing Date; and
- (e) all necessary corporate action shall be taken by the Purchaser to approve, ratify, confirm, and adopt this Agreement and to authorize the execution and delivery of all documents required herein and the performance of all acts and all transactions on the part of the Vendor to be done or performed hereunder.

**6.4 Benefit**

The provisions of Section 6.3 are for the exclusive benefit of the Vendor and the Vendor shall have the sole and exclusive right at anytime prior to the Closing Date by written notice to the Purchaser to waive the performance of any condition or representation in its favour therein contained or any part thereof. If any one or more of the aforementioned conditions has not been satisfied or waived on or before the Closing Date, then the Vendor may cancel this Agreement by written notice to the Purchaser at any time prior to the time therein provided in which case these presents shall be null and void for all purposes.

**7. REPRESENTATION AND WARRANTIES****7.1 Representations and Warranties of Vendor**

The Vendor warrants and represents to the Purchaser (and the Purchaser relies on such representations and warranties in entering into this Agreement) that:

*General:*

- (a) the Vendor is and shall be as at the Closing Date, a corporation duly incorporated and organized and validly subsisting under the laws of the state of California and the Vendor has the corporate power, capacity and authority to own its property and the Purchased Assets;

- (b) the Vendor has the good right, full power and absolute authority both at law and in equity to enter into this Agreement and to convey title to the Purchased Assets to the Purchaser free and clear of all liens, claims and encumbrances of whatever nature or kind;
- (c) the execution of this Agreement and the consummation of the transactions contemplated herein have been duly authorized and approved by the Vendor and no other corporate proceedings on the part of the Vendor are necessary to approve or adopt this Agreement or to approve the consummation of the transactions contemplated herein;
- (d) the execution and delivery of this Agreement, and the consummation of the transactions provided for herein, and the fulfillment of the terms hereof, will not result in a breach of any of the terms and provisions of, or constitute a default under or conflict with, any agreement, indenture or other instrument to which the Vendor is a party or by which it is bound, the Articles of Incorporation, By-laws, Unanimous Shareholder Agreement or other constating documents of the Vendor or any judgment, decree, order or award of any court, governmental body or arbitrator or any law, rule or regulation applicable to Vendor,
- (e) this Agreement has been duly and validly executed and delivered by the Vendor and constitutes a valid and binding agreement of the Vendor enforceable in accordance with its terms;
- (f) the Vendor is and on the Closing Date shall be a resident of the United States of America for all purposes arising from the *Income Tax Act* (U.S.A.).
- (g) Upon Vendor's information and belief, all schedules provided pursuant to this agreement are true and complete. Vendor has delivered to Purchaser copies of all documents referred to (or which in any material way relate to the matters set forth) in such schedules that are in Vendor's possession. All such schedules shall be updated as of the close of business on the day before the Closing Date to reflect changes during the period between the date hereof and the Closing Date, and as so updated shall be true, accurate and complete as of the Closing Date as to all matters therein listed, described or disclosed. Copies of such updated schedules shall be delivered to Purchaser at or before the Closing, together with copies of all additional documents referred to (or which in any material way relate to the matters set forth) therein once updated and delivered such schedules shall be deemed a part of this agreement and each schedule to which any reference in this agreement pertains shall be true and complete;
- (h) Upon Vendor's information and belief, no representation or warranty by Vendor herein contained, and no statement made in any schedule hereto or certificate furnished in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits to state any material fact necessary to make the statements contained therein not misleading;

*Purchased Assets:*

- (i) the Vendor is not in breach of any laws, rules or regulations and is duly licensed, registered or qualified in each jurisdiction in which it carries on its business, to enable the

- Purchased Assets to be owned and utilized by the Vendor, and all such licenses, registrations and qualifications are valid and subsisting and in good standing;
- (j) the Vendor has provided on, or before, the Closing Date to the Purchaser all documents, contracts and information whatsoever pertaining to the Purchased Assets which are in the Vendor's possession in whatever form, whether human or machine readable, and in whatever media).
  - (k) no royalty or other fee, except as disclosed herein, is required to be paid by the Vendor to any other entity with respect to the Purchased Assets;
  - (l) Notwithstanding any representations or understandings to the contrary, the Purchased Assets are conveyed "As Is", "Where Is" and "With All Faults". Vendor specifically disclaims all warranties, including without limitation any and all warranties relating to merchantability, non-infringement and fitness for a particular purpose.
  - (m) Prior to taking possession of the Purchased Assets from Metallic Power, the Secured Parties held valid, perfected, first priority security interests in the Purchased Assets;
  - (n) The Secured Parties' repossession of the Purchased Assets and the subsequent transfer of the Purchased Assets to Vendor fully complied with, and is currently complying with, all applicable laws, regulations, codes and ordinances, and neither Vendor nor any of the Secured Parties have received from any entity any notice, statement, order or complaint alleging that Vendor or any of the Secured Parties have violated any applicable laws, regulations, codes or ordinances, with regard to the Purchased Assets;
  - (o) Vendor and the Secured Parties shall provide Purchaser with all documentation and cooperation needed to perfect the chain of title transferring the Purchased Assets from Metallic Power to Vendor and to record such transfer with the United States Patent and Trademark Office or other relevant governmental authorities;

*Patent, Copyright & Trade-mark:*

- (p) no copyright registrations have been issued to, licensed to, or acquired by Vendor, and Vendor has not applied for any copyright or trademarks in respect of the Purchased Assets;
- (q) Schedule "A" contains a true and complete schedule of, and fully identifies and describes all patents foreclosed upon by the Secured Parties and transferred to Vendor that are being conveyed to Purchaser.

*Development:*

- (r) Upon Vendor's information and belief, all persons who either alone or in concert with others, developed, invented, discovered, derived, programmed, designed, modified, corrected or maintained any or all of the Purchased Assets including employees or former employees of Metallic Power and independent contractors or former independent

contractors of Metallic Power, have all executed valid and binding written assignments for the Purchased Assets.

**7.2 Representations and Warranties of Purchaser**

The Purchaser warrants and represents to the Vendor (and the Vendor relies on such representations and warranties in entering into this Agreement) that:

- (a) the Purchaser is and shall be as at the Closing Date, a corporation duly incorporated and organized and validly subsisting under the laws of Canada and the Purchaser has the corporate power, capacity, and authority to purchase the Purchased Assets;
- (b) all necessary corporate action has been taken by the Purchaser to authorize the execution, performance and delivery by the Purchaser of this Agreement and all other agreements and instruments contemplated herein constitute and shall constitute legal, valid and binding obligations of the Purchaser enforceable in accordance with their terms;
- (c) the execution and delivery of this Agreement, and the consummation of the transactions provided herein, and the fulfillment of the terms hereof, will not result in a breach of any of the terms and provisions of, or constitute a default under or conflict with, any agreement, indenture or other instrument to which the Purchaser is a party or by which it is bound, the Articles of Incorporation, By laws, Unanimous Shareholders Agreement or other constating document of the Purchaser or any judgment, decree, order or award of any court, governmental body or arbitrator or any law, rule or regulation applicable to the Purchaser.

**7.4 Survival**

The undertakings, covenants, representations and warranties and the indemnities set forth herein shall survive the Closing hereof and shall continue in full force and effect for the benefit of the Vendor or Purchaser, respectively.

**8. COVENANTS**

**8.1 Covenants**

The Vendor shall forthwith make available to the Purchaser and its directors, auditors and legal counsel all title documents, title insurance contracts, abstracts of title, deeds, leases, certificates of patents, contracts and agreements and other documents in their possession or under their control relating to any of the Purchased Assets, and the Vendor shall forthwith make available to the Purchaser and its directors, auditors and legal counsel for examination all documents, information and data relating to the Purchased Assets.

**8.2 Information**

The Vendor shall, at the reasonable request of the Purchaser, and at Purchaser's expense, from time to time after the Closing Date provide to the Purchaser such information relating to the Purchased

Assets, whether or not evidenced by any written documents, as it may have and as may be desired by the Purchaser in connection with the Purchased Assets.

8.3 Referral

In the event that the Vendor receives any inquiries from third parties requesting information in respect of any of the Equipment, the Vendor shall (without fee, consideration or other remuneration) refer all such inquiries to the Purchaser and disclose to the interested third party the fact that the Purchaser has acquired the Purchased Assets.

9. CLOSING

9.1 Closing

The Closing shall take place by way of exchange of documents under appropriate trust conditions between the Purchaser's solicitors and Vendor's solicitors or in such other manner as mutually agreed upon by the Parties.

10. GENERAL PROVISIONS

10.1 Further Assurances

The parties to this Agreement shall execute all such further and other deeds and documents promptly and when required and shall and do perform, or cause to be done or performed, all such acts as shall be reasonably necessary to ensure the purchase and sale of the Purchased Assets is duly completed in accordance with the terms hereof.

10.2 Notices

Any tender, notices, documents or money shall be delivered to the Purchaser at:

Teck Cominco Metals Ltd.  
Product Technology Centre  
2380 Speakman Drive  
Mississauga, Ontario  
L5K 1B4

and

Teck Cominco Metals Ltd.  
Box 1000  
25 Aldridge Avenue  
Trail, B.C.  
V1R 4L8

Attention: Paul Kolisnyk  
Fax: (905) 822-2882

Attention: Christine Deynaka  
Fax: (250) 364-4272

and to the Vendor at:

Metallic Technology Inc.  
50 California Street  
Suite 840  
San Francisco, CA 94111

and

Cantor Colburn LLP  
55 Griffin Road South  
Bloomfield, Connecticut  
06002

Attention: Wendie O'Dwyer  
Fax: (413) 983-9984

Attention: Daniel Bruso  
Fax: (860) 286-2929

All notices and documents shall be either telecopied or personally delivered. Any notice or document personally delivered shall be deemed received up on delivery. Any notice or telecopied document shall be deemed received upon transmission thereof.

10.3 **Amendment**

No amendment or variation of the terms, conditions, warranties, covenants, agreements and undertakings set forth herein shall be of any force or effect unless in writing and agreed to by the parties hereto.

10.4 **Enurement and Assignment**

This Agreement shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors, assigns, heirs, executors, and administrators as the case may be. Neither party may assign this Agreement without the prior written consent of the other party.

10.5 **Time of Essence**

Time shall in all respects be of the essence hereof.

10.6 **Costs**

Each of the parties to this Agreement shall be responsible for the payment of all its own costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered pursuant to this Agreement and in otherwise performing the transactions contemplated by this Agreement.

10.7 **Entire Agreement**

This Agreement contains the entire understanding between the Parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations and agreements and all oral or written understandings, if any.


10.8 **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original and which counterparts together shall constitute one and the same agreement of the Parties hereto.

IN WITNESS WHEREOF the Parties have executed this Agreement the day, month and year first written above.

METALLIC TECHNOLOGY, INC.

TECK COMINCO METALS LTD.

  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

All notices and documents shall be either telecopied or personally delivered. Any notice or document personally delivered shall be deemed received up on delivery. Any notice or telecopied document shall be deemed received upon transmission thereof.

10.3 **Amendment**

No amendment or variation of the terms, conditions, warranties, covenants, agreements and undertakings set forth herein shall be of any force or effect unless in writing and agreed to by the parties hereto.

10.4 **Enurement and Assignment**

This Agreement shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors, assigns, heirs, executors, and administrators as the case may be. Neither party may assign this Agreement without the prior written consent of the other party.

10.5 **Time of Essence**

Time shall in all respects be of the essence hereof.

10.6 **Costs**

Each of the parties to this Agreement shall be responsible for the payment of all its own costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered pursuant to this Agreement and in otherwise performing the transactions contemplated by this Agreement.

10.7 **Entire Agreement**

This Agreement contains the entire understanding between the Parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations and agreements and all oral or written understandings, if any.

10.8 **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original and which counterparts together shall constitute one and the same agreement of the Parties hereto.

IN WITNESS WHEREOF the Parties have executed this Agreement the day, month and year first written above.

METALLIC TECHNOLOGY, INC.

TECK COMINCO METALS LTD.

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

*Paul Kolisnyk* Paul  
Kolisnyk

**SCHEDULE "A"**

**PATENTS**

Title	Country Code	Application No.	Filing Date	Patent No.	Issued Date
Method and Apparatus for Refueling an Electrochemical Power Source	CN	ZL971991669	10/1/1997	ZL97199166.9	12/31/2003
Method and Apparatus for Refueling an Electrochemical Power Source	EP	947021	10/1/1997	947021	12/19/2001
Method and Apparatus for Refueling an Electrochemical Power Source	DE	947021		947021	
Method and Apparatus for Refueling an Electrochemical Power Source	FR	947021		947021	
Method and Apparatus for Refueling an Electrochemical Power Source	GB	947021		947021	
Method and Apparatus for Refueling an Electrochemical Power Source	MX	993844	10/1/1997		
Method and Apparatus for Refueling an Electrochemical Power Source	PCT	PCT/US97/18371	10/1/1997		
Method and Apparatus for Refueling an Electrochemical Power Source	DE	979108966	10/1/1997	947021	12/19/2001
Method and Apparatus for Refueling an Electrochemical Power Source	FR	97918966	10/1/1997	947021	12/19/2001
Method and Apparatus for Refueling an Electrochemical Power Source	US	08/861,513	5/22/1997	5,952,117	9/14/1999
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	PCT	PCT/US00/31914	11/21/2000		
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	US	09/449,176	11/24/1999	6,153,328	11/28/2000
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	CA	2392518	11/21/2000		



System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	EP	980597.9		11/21/2000		
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	HK	3105910.3		11/21/2000		
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	JP	2001-540860		11/21/2000		
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	KR	7006466/2002		11/21/2000		
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	MX	PA/a/2002/005247		11/21/2000		
System and Method for Preventing the Formation of Dendrites in a Metal/Air Fuel Cell, Battery or Metal Recovery Apparatus	ZA	2002/4864	ZA200204864	11/21/2000		10/29/2003
Refuelable Electrochemical Power Source Capable of Being Maintained in a Substantially Constant Full Condition and Method of Using the Same	PCT	PCT/US01/06102		2/27/2001		
Refuelable Electrochemical Power Source Capable of Being Maintained in a Substantially Constant Full Condition and Method of Using the Same	CN	1809194.6		2/27/2001		
Refuelable Electrochemical Power Source Capable of Being Maintained in a Substantially Constant Full Condition and Method of Using the Same	EP	1920150.8		2/27/2001		
Refuelable Electrochemical Power Source Capable of Being Maintained in a Substantially Constant Full Condition and Method of Using the Same	HK	31094832		2/27/2001		
Refuelable Electrochemical Power Source Capable of Being Maintained in a Substantially Constant Full Condition and Method of Using the Same	US	09/521,392		3/8/2000	6,296,958	10/2/2001

Refuelable Electrochemical Power Source Capable of Being Maintained in a Substantially Constant Full Condition and Method of Using the Same	US	09/969,370	10/1/2001	6,706,433	3/16/2004
Particle Feeding Apparatus for Electrochemical Power Source and Method of Making Same	PCT	PCT/US00/19192	7/14/2000		
Particle Feeding Apparatus for Electrochemical Power Source and Method of Making Same	HK	2108773.4	7/14/2000		
Particle Feeding Apparatus for Electrochemical Power Source and Method of Making Same	JP	2001-510936	7/14/2000		
Particle Feeding Apparatus for Electrochemical Power Source and Method of Making Same	KR	7000599/2002	1/15/2002		
Particle Feeding Apparatus for Electrochemical Power Source and Method of Making Same	MIX	PA/a/2002/005247	7/14/2000		
Particle Feeding Apparatus for Electrochemical Power Source and Method of Making Same	US	09/353,422	7/15/1999	6,162,555	12/19/2000
Electrolyzer and Method of Using the Same	PCT	PCT/US01/09132	3/23/2001		
Method of Electrodepositing Metal on Electrically Conducting Particles	US	09/573,438	5/16/2000	6,432,292	8/13/2002
System and Method for Power Management	PCT	PCT/US01/23207	7/24/2001		
System and Method for Power Management	TW	90118646	7/31/2001	NI-165407	3/5/2003
System and Method for Power Management	US	09/627,742	7/28/2000	6,522,955	2/18/2003
System and Method for Power Management	JP	2002515539	7/24/2001		
Recirculating Anode	US	10/060,965	10/19/2001		
Method of Production of Metal Particles Through Electrolysis	US	10/424,571	4/24/2003		
Power System Including Heat Removal Unit for Providing Backup Power to One or More Loads	US	09/930,557	8/15/2001	6,746,790	6/8/2004
Integrated Fuel Cell and Electrochemical Power System Employing Same	US	10/044,147	1/11/2002		
Methods of Producing Oxygen Reduction Catalyst Self-Controlling Fuel Cell Power System	US	09/973,490	10/9/2001	6,689,711	2/10/2004
Methods of Using Fuel Cell System Configured to Provide Power to One or More Loads	US	10/661,409	9/12/2003		
Manifold For Fuel Cell System	US	10/058,231	10/19/2001	6,764,785	7/20/2004
	US	10/072,856	10/19/2001	6,679,280	1/20/2004

Manifold For Fuel Cell System	US	10/274,457	10/18/2002		
Fuel Cell System	US	10/066,544	10/19/2001	6,911,274	6/28/2005
Method of and System for Determining the Remaining Energy in a Metal Fuel Cell	US	10/117,705	4/4/2002	6,873,157	3/29/2005
Method of and System for Cooling a Backup Power System	US	10/085,477	2/26/2002	6,841,275	1/11/2005
Method of and System for Flushing One or More Cells in a Particle-Based Electrochemical Power Source in Standby Mode	US	10/150,655	5/17/2002	6,764,588	7/20/2004
Discrete Particle Electrolyzer Cathode and Method of Making Same	US	10/424,539	4/24/2003		
Controlled Concentration Electrolysis System	US	10/660,469	9/10/2003		
Method for Operating a Metal Particle Electrolyzer	US	10/660,450	9/10/2003		
Failure Tolerant Parallel Power Source Configuration	US	10/658,673	9/8/2003		
Gas Diffusion Electrodes	US	10/288,392	11/5/2002		
Gas Diffusion Electrodes	PCT	PCT/US03/33892	10/24/2003		
Fuel Cell Electrode Assembly	US	10/364,768	2/11/2003		
Improved Electrolyte-Particulate Cell Anode	US	10/353,636	1/29/2003		
Improved Electrolyte-Particulate Cell Anode	PCT	PCT/US03/28836	9/12/2003		
Self-Contained Fuel Cell	US	10/385,147	3/10/2003		
Combined Fuel Cell And Battery	US	10/437,481	5/14/2003		
Fuel For A Regenerative Zinc Fuel Cell (Provisional)	US	60/410,569	9/12/2002		
Improved Fuel For A Zinc-Based Fuel Cell And Regeneration Thereof	US	10/660,942	9/12/2003		
Improved Fuel For A Zinc-Based Fuel Cell And Regeneration Thereof	PCT	PCT/US03/28997	9/12/2003		
Method And Apparatus For Venting Hydrogen From Tank Headspace (Provisional)	US	60/462,462	4/11/2003		

Method And Apparatus To Prevent Accumulation Of Hydrogen Atmosphere Within Fuel Cell Enclosures Utilizing Continuous Dilution With Ambient Air Via A Reliable Means (Provisional)	US	60/462,366	4/11/2003	
Method And Apparatus To Create An Integral Overpressure Relief Device In Low Pressure Fuel Cell Fuel Tanks And Fuel Handling Components (Provisional)	US	60/462,460	4/11/2003	
Fuel-Cell Based Power Source Having Internal Series Redundancy	US	10/141,631	5/7/2002	
Apparatus And Method For Monitoring Individual Cells In A Fuel-Cell Based Electrical Power Source	US	10/117,784	4/4/2002	
Current Feeder For A Bipolar Cell Stack (Provisional)	US	60/410,562	9/12/2002	
Current Feeders For Electrochemical Cell Stacks	US	10/660,947	9/12/2003	
Current Feeders For Electrochemical Cell Stacks	PCT	PCT/US03/28735	9/12/2003	
Method Of Producing A Bipolar Plate For A Fuel Cell (Provisional)	US	60/410,558	9/12/2002	
Fluidized Bed Particle Delivery System (Provisional)	US	60/410,468	9/12/2002	
Methods And Devices For Controlling Flow And Particle Fluidization In A Fuel Cell	US	10/661,087	9/12/2003	
Methods And Devices For Controlling Flow And Particle Fluidization In A Fuel Cell	PCT	PCT/US03/29220	9/12/2003	
Down Jet Feeding Mechanism (Provisional)	US	60/410,389	9/12/2002	
Method Of Controlling Flow And Particle Fluidization In A Metal-Air Fuel Cell (Provisional)	US	60/410,467	9/12/2002	
Hydrogen Management System For A Zinc Regenerative Fuel Cell (Provisional)	US	60/410,581	9/12/2003	
Hydrogen Management System For A Fuel Cell	US	10/660,840	9/12/2003	
Hydrogen Management System For A Fuel Cell	PCT	PCT/US03/28996	9/12/2003	
Device For Reducing Abrasive Wear Of Cathode In A Metal Air Cell (Provisional)	US	60/410,357	9/12/2002	

Paste Metal Air Fuel Cell For Reactive Metals (Provisional)	US	60/601926	8/16/2004		
Metal Fuel Cell System for Providing Backup Power to One of More Loads	US	09/930,394	8/15/2001		
Polymer Composites, Electrodes, and Systems Thereof	US	10/050,901			
In-Line Filtration for a Particle-based Electrochemical Power Systems	US	10/150,745	5/17/2002	6,942,105	9/13/05

**SCHEDULE "B"**

**PERSONAL PROPERTY**

Includes but is not limited to:

<b>Item</b>	<b>Location*</b>	<b>TCML tag#</b>
Patents fire cabinet	[1723671]	19
Patents fire cabinet	[1723673]	20
Patents fire cabinet	[1723674]	21
Lab/Eng notebooks	[1723631]	23
File cabinet with process files	[1723666]	18

\* The Location is the ID # for the items used by the storage operator, Cor-O-Van, located at 12373 Kerran St., Poway, Ca.

One server that consolidate the files in computers and servers.

**SCHEDULE "C"**

**EQUIPMENT**

<b>Item</b>	<b>Location*</b>	<b>TCML tag#</b>
Marconi fuel cell unit	[1723668]	22
24 fuel cells stacks	[1723655]	23
Marconi Switch Interface and Control System	Kainos Energy	17

Any other items deemed to be a part of IP that are in the storage place but were not seen during inspection are included in the offer.

\*The Location is the ID # for the items used by the storage operator, Cor-O-Van, located at 12373 Kerran St., Poway, Ca.