

# BRUSH ENGINEERED MATERIALS INC

## FORM 8-K (Unscheduled Material Events)

Filed 2/7/2005 For Period Ending 2/1/2005

Address	17876 ST. CLAIR AVE. CLEVELAND, Ohio 44110
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CIK	0001104657
Industry	Metal Mining
Sector	Basic Materials
Fiscal Year	12/31

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

February 1, 2005

Brush Engineered Materials Inc.

\_\_\_\_\_  
(Exact name of registrant as specified in its charter)

Ohio

001-15885

34-1919973

\_\_\_\_\_  
(State or other jurisdiction  
of incorporation)

\_\_\_\_\_  
(Commission  
File Number)

\_\_\_\_\_  
(I.R.S. Employer  
Identification No.)

17876 St. Clair Avenue, Cleveland, Ohio

44110

\_\_\_\_\_  
(Address of principal executive offices)

\_\_\_\_\_  
(Zip Code)

Registrant's telephone number, including area code:

216-486-4200

Not Applicable

\_\_\_\_\_  
Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## [Top of the Form](#)

### **Item 1.01. Entry into a Material Definitive Agreement.**

On February 1, 2005, the Organization and Compensation Committee (the "Committee") of the Board of Directors of Brush Engineered Materials Inc. (the "Company") took the following actions:

#### **ANNUAL PERFORMANCE COMPENSATION**

##### **Incentives for 2004**

The Company's 2004 Management Performance Compensation Plan (the "MPC Plan") provides for annual, single-sum cash payments that are based on achieving pre-established financial objectives and qualitative performance factors. The financial objectives established by the Committee for 2004 were based on operating profit improvement and reduction in working capital. Qualitative factors included performance against certain strategic measures that reflected individual's contributions for the year. The Committee approved payments under the 2004 MPC Plan to the Chief Executive Officer and the other executive officers as follows:

Gordon D. Harnett, CEO--\$738,524

Daniel A. Skoch, Senior VP Administration--\$255,293

John D. Grampa, VP Finance and CFO--\$237,476

Richard J. Hipple, President of Alloy Products, Brush Wellman Inc.--\$190,766

The 2004 MPC Plan is being filed as Exhibit 10.1 to this Form 8-K and is incorporated herein by reference.

##### **Incentive Criteria for 2005**

The Committee also established the financial objectives that will apply under the 2005 MPC Plan. The financial objectives will be operating profit and reduction in working capital. Qualitative factors will again relate primarily to individual's contributions for the year. The 2005 MPC Plan is being filed as Exhibit 10.2 to this Form 8-K and is incorporated herein by reference.

#### **LONG-TERM INCENTIVES**

##### **Long-Term Cash Incentive Payouts for 2003-2004**

In early 2003 the Committee established a two-year cash incentive plan (the "LTI Plan") with management objectives based on cumulative operating profit with a performance period from January 1, 2003 through December 31, 2004. The financial opportunity varied according to the level of a participant's organizational responsibility. The Chief Executive Officer could attain 75% of his base pay as in effect on January 1, 2003, for achieving the targeted objective, and 112.5% for exceeding the maximum objective. The other executive officers had a lesser opportunity ranging from 40% to 50% at target and 60% to 75% at maximum. The 2003-2004 financial measure for the LTI Plan was cumulative operating profit over the plan performance period. The Committee approved payments under the LTI Plan to the named executive officers for the 2003-2004 performance period as follows:

Gordon D. Harnett, CEO--\$658,125

Daniel A. Skoch, Senior VP Administration--\$193,500

John D. Grampa, VP Finance and CFO--\$180,000

Richard J. Hipple, President of Alloy Products, Brush Wellman Inc.--\$80,040

The LTI Plan is being filed as Exhibit 10.3 to this Form 8-K and is incorporated herein by reference.

##### **Long-Term Performance Share Incentive Plan for 2005-2007**

The Committee established a three-year performance share incentive plan (the "2005 LTI Plan") with a performance period from January 1, 2005 through December 31, 2007. The financial opportunity varied according to the level of a participant's organizational responsibility. The Chief Executive Officer could attain 100% of his base pay as in effect on January 1, 2005, for achieving the targeted objective, and 150% for exceeding the maximum objective. The other executive officers had a lesser opportunity ranging from 45% to 60% at target and 67.5% to 90% at maximum. The 2005-2007 financial measure for the 2005 LTI Plan is cumulative operating profit over the plan performance period. The Performance Shares provide for payment of the cash value of the number of Common Shares of the Company stated in the award if the specified financial targets are met.

The number of performance shares at target will be determined on February 8, 2005 based on the following:

Gordon D. Harnett, CEO--\$623,700 (base pay) x 100%

Daniel A. Skoch, Senior VP Administration--\$280,000 (base pay) x 60%

John D. Grampa, VP Finance and CFO--\$280,000 (base pay) x 60%

Richard J. Hipple, President of Alloy Products, Brush Wellman Inc.--\$245,200 (base pay) x 45%

The 1995 Stock Incentive Plan was amended to add operating profit to the list of Management Objectives. Amendment No. 2 is being filed as

Exhibit 10.4 and the 2005 LTI Plan is being filed as Exhibit 10.5 to this 8-K and are incorporated herein by reference.

#### Stock Option Grants

The Committee also awarded options to purchase Common Shares of the Company under the Company's 1995 Stock Incentive Plan (as amended, the "Incentive Plan") to the Chief Executive Officer and the other named executive officers as follows:

Gordon D. Harnett, CEO--55,000 shares

Daniel A. Skoch, Senior VP Administration--15,000 shares

John D. Grampa, VP Finance and CFO--15,000 shares

Richard J. Hipple, President of Alloy Products, Brush Wellman Inc.--10,000 shares

The effective date of the option grant will be February 8, 2005, and the exercise price will be the average of the high and low prices reported on that date. The Committee changed the form of option agreement to be used for these awards to reduce the vesting period from the 6-month period used in 2003 to 140 days. The Committee also provided for an extended post-retirement exercise period for the options granted to Mr. Harnett since he will reach retirement age during the 10-year term of the options. His options provide for exercisability throughout the 10-year option term, assuming employment through normal retirement. Mr. Harnett is currently 62 years old.

The Incentive Plan, and Amendment No. 1 thereto, were filed by Brush Wellman, Inc. as Exhibit A to its Proxy Statement dated March 16, 1998 and as Exhibit 4b to Post-Effective Amendment No. 1 to the Company's Form S-8 Registration Statement No. 333-63357, respectively. The forms of Nonqualified Stock Option Agreements to be used for Mr. Harnett and the other named executive officers are being filed as Exhibits 10.6 and 10.7, respectively, to this Form 8-K and is incorporated herein by reference.

#### SPECIAL AWARD

In 2002 the Company discontinued its Supplemental Retirement Benefit Plan for the Chief Executive Officer as well as a few other participants in exchange for amounts paid in settlement of the Company's obligation. As a result, their retirement benefit is limited to the amount provided by the qualified pension plan. At its February 1, 2005 meeting, as reported in prior years proxy statements, the Committee exercised its discretion to authorize a special award in lieu of a supplemental plan to the Chief Executive Officer in the amount of \$597,425.

Messrs. Skoch and Grampa had received similar awards in the amounts of \$85,531 and 41,195, respectively, payable on January 3, 2005.

#### **Item 9.01. Financial Statements and Exhibits.**

10.1 2004 Management Performance Compensation Plan

10.2 2005 Management Performance Compensation Plan

10.3 2003-2004 Long-Term Incentive Plan

10.4 Amendment No. 2, dated as of February 1, 2005, to the 1995 Stock Incentive Plan

10.5 2005-2007 Long-Term Incentive Plan

10.6 Form of Nonqualified Stock Option Agreement for Mr. Harnett

10.7 Form of Nonqualified Stock Option Agreement for Messrs. Grampa, Skoch and Hipple

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Brush Engineered Materials Inc.

*February 7, 2005*

*By: /s/ Michael C. Hasychak*

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*Name: Michael C. Hasychak*

*Title: Vice President, Treasurer and Secretary*

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## Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1	2004 Management Performance Compensation Plan
10.2	2005 Management Performance Compensation Plan
10.3	2003-2004 Long-Term Incentive Plan
10.4	Amendment No. 2, dated as of February 1, 2005 to the 1995 Stock Incentive Plan
10.5	2005-2007 Long-Term Incentive Plan
10.6	Form of Nonqualified Stock Option Agreement for Mr. Harnett
10.7	Form of Nonqualified Stock Option Agreement for Messrs. Grampa, Skoch and Hipple

**Exhibit 10.1**

**BRUSH ENGINEERED MATERIALS INC. and SUBSIDIARIES  
MANAGEMENT PERFORMANCE COMPENSATION PLAN  
2004 PLAN YEAR**

(as adopted February 3, 2004)

**I. INTRODUCTION**

The Management Performance Compensation Plan (“the Plan”) provides incentive compensation to eligible employees based principally on annual financial performance. Plan awards have a significant portion based on Company and/or Business Unit performance (“financial performance”), and, a component, which recognizes individual and combined contributions toward personal/team objectives (“Personal/Team Performance”).

**II. DEFINITIONS****Plan Year:**

The fiscal year for which the Company’s Business Unit performance, and any Plan awards are calculated.

**Business Unit Performance:**

The Plan has designated the following Business Units/Subsidiaries for 2004:

- Corporate
- Alloy
- Be Products
- TMI
- WAM
- Electronic Products

Each business unit has defined financial performance measures, which have in turn been approved by Senior Management. These measures are expressed as a Minimum, Target and Maximum. Plan Awards include a “Financial Performance Component” based on the Business Unit performance.

**Personal/Team Performance:**

An assessment is made of an individual’s achievements and his/her contributions to work/project teams during the Plan Year. This assessment is expressed as a percentage of base compensation. The “Personal/Team Performance” component is distinct from the “Financial Performance” component.

**Operating Profit (“OP”):**

Profit or loss, before interest and taxes, and for domestic and international operations. Operating Profit will include any special write-off or accounting charge and accrued performance or incentive compensation.

**Working Capital:**

This is a monthly calculation based on Business Unit/Subsidiary worldwide accounts receivable and FIFO inventory divided by annualized worldwide sales (current month plus prior two months annualized). The result being working capital as a percent of

sales. At the end of the year we will take the average of the twelve monthly, annualized sales numbers and twelve working capital numbers (A/R and inventory) and calculate a percent to sales based on the averages for the twelve periods. This twelve-month average is the basis for the incentive metric for working capital management.

**Base Compensation:**

The participant’s annual base salary in effect on September 30 of the Plan Year.

**III. PARTICIPATION**

At the beginning of the Plan Year, the Operations Team will identify exempt, salaried employees whose responsibilities affect progress on critical issues facing the Company. Those individuals selected by the Operations Team will be notified of their participation in the Plan, their performance compensation grade and performance compensation opportunity (e.g., applicable Business Unit designation).

Following the beginning of the Plan Year, the Operations Team may admit new hires or individuals who are promoted or assigned additional and significant responsibilities. The Operations Team may also alter performance compensation grade assignments to reflect changed responsibilities of participants during the Plan Year.

An employee who replaces or otherwise assumes the job functions or role of an employee, does not automatically assume the plan participation that had applied to the prior incumbent. Rather, participation by the new or replacing employee must be individually considered and approved.

Employees who are designated as participants before April 1 of the Plan year are eligible for full participation. Participants who are newly employed on or after April 1 and before July 1 are eligible for half of any award available for Personal/Team and Financial (Business Unit and/or Company) performance.

Participants who transfer from the Exempt Salaried Performance Compensation Plan to the Management Performance Compensation Plan on or after April 1 and before July 1 are eligible for full participation in the Personal/Team performance component and for half participation in the Financial (Business Unit and/or Company) performance component. Their eligibility under the Exempt Salaried Performance Compensation Plan ceases for the Plan Year.

Changes in performance compensation grade assignments will result in prorated participation in awards.

The eligibility of employees hired or with changed job responsibilities after June 30 will not be considered until a possible, subsequent Plan Year.

Normally, employees who are participants in any other incentive, commission or performance compensation plan are not eligible. The Operations Team may consider prorated participation under special circumstances.

With two exceptions, participants must be employed on the last day of the Plan Year in order to be eligible for any performance compensation award. For a participant who becomes eligible for and who elects a severance option under the Chronic Beryllium Disease Policy as amended, any award under the Plan will be prorated to the beginning of the month after the employee exercises the severance option. The second exception pertains to retirement under a Company pension plan, in which case, any award will be prorated to the beginning of the month following the employee’s retirement date.

Eligible employees who have been on a leave of absence in excess of 13 weeks during the plan year will have their award reduced on a pro-rata basis to reflect their actual contribution.

**IV. PERFORMANCE COMPENSATION OPPORTUNITY FOR FINANCIAL PERFORMANCE**

The Organization and Compensation Committee of the Board of Directors will establish Minimum, Target and Maximum levels for each financial measurement.

Participants will be assigned to a specific Business Unit/Subsidiary by the Operations Team, for performance compensation opportunity for Financial performance.

Below is a summary of the performance compensation opportunity for the Plan Year.

Grade	Financial Component	Personal Team
D	16%	0-8%
E	10%	0-8%

Opportunity for participants in Grade M and C will be individualized as determined by the Organization and Compensation Committee or Senior Management.

The “Financial Performance” component of awards (Business Unit, Company, sub-unit, and/or other measurement), will begin once the Minimum level has been attained for that measure. Performance, which reaches or exceeds the Maximum value of the measure, will result in awards at 200 percent of Target opportunity. Award amounts for levels of achievement between Minimum and Target and between Target and Maximum will be prorated according to the level of achievement.

Financial awards will be prorated for transfers between units (Business Unit and/or Company) according to the length of service by months in each unit during the Plan Year.

#### **V. PERFORMANCE COMPENSATION OPPORTUNITY for PERSONAL/TEAM PERFORMANCE**

Business Units have defined a “threshold” as the level of business performance, which must be achieved, in order to make available a bonus opportunity to recognize the Personal/Team performance.

No awards for Personal/Team performance will be paid if the established Threshold is not met. For the 2004 plan year, a threshold is applicable.

The “total pool” for Personal/Team performance of participants in grades C, D, and E would typically equal up to eight (8) percent of the base compensation of participants. The Operations Team will decide allocation of the pool among eligible participants based on their performance throughout the plan year towards achieving established goals and objectives.

Participants in grade M and C will be eligible for a Personal/Team award as directed by the Organization and Compensation Committee of the Board or Senior Management.

#### **VI. PAYMENT**

Distribution of any performance compensation awards under the Plan to participants will be no later than March 15 of the year following the Plan Year.

#### **VIII. GENERAL PROVISIONS**

The Operations Team has authority to make administrative decisions in the interests of the Plan.

The Board of Directors, through its Organization and Compensation Committee, shall have final and conclusive authority for interpretation, application, and possible modification of this Plan or established targets. The Board of Directors reserves the right to amend or terminate the Plan at any time. Subject to the preceding sentences, any determination by the Company’s independent accountants shall be final and conclusive as it relates to the calculation of financial results.

This Plan is not a contract of employment.

**Exhibit 10.2**

### **BRUSH ENGINEERED MATERIALS INC. and SUBSIDIARIES MANAGEMENT PERFORMANCE COMPENSATION PLAN 2005 PLAN YEAR**

(as adopted February 1, 2005)

#### **I. INTRODUCTION**

The Management Performance Compensation Plan (“the Plan”) provides incentive compensation to eligible employees based principally on annual financial performance. Plan awards have a significant portion based on Company and/or Business Unit performance (“financial performance”), and, a component, which recognizes individual and combined contributions toward personal/team objectives (“Personal/Team Performance”).

#### **II. DEFINITIONS**

##### **Plan Year:**

The fiscal year for which the Company’s Business Unit performance, and any Plan awards are calculated.

##### **Business Unit Performance:**

The Plan has designated the following Business Units/Subsidiaries for 2005:



Corporate  
Alloy  
Be Products  
TMI  
WAM  
Electronic Products

Each business unit has defined financial performance measures, which have in turn been approved by the Organization and Compensation Committee of the Board and/or Senior Management. These measures are expressed as a Minimum, Target and Maximum. Plan Awards include a “Financial Performance Component” based on the Business Unit performance.

**Personal/Team Performance:**

An assessment is made of an individual’s achievements and his/her contributions to work/project teams during the Plan Year. This assessment is expressed as a percentage of base compensation. The “Personal/Team Performance” component is distinct from the “Financial Performance” component.

**Operating Profit (“OP”):**

Profit or loss, before interest and taxes, and for domestic and international operations. Operating Profit will include any special write-off or accounting charge and accrued performance or incentive compensation.

**Working Capital:**

This is a monthly calculation based on Business Unit/Subsidiary worldwide accounts receivable and FIFO inventory divided by annualized worldwide sales (current month plus prior two months annualized). The result being working capital as a percent of sales. At the end of the year we will take the average of the twelve monthly, annualized sales numbers and twelve working capital numbers (A/R and inventory) and calculate a percent to sales based on the averages for the twelve periods. This twelve-month average is the basis for the incentive metric for working capital management.

**Base Compensation:**

The participant’s annual base salary in effect on September 30 of the Plan Year.

**III. PARTICIPATION**

At the beginning of the Plan Year, the Operations Team will identify exempt, salaried employees whose responsibilities affect progress on critical issues facing the Company. Those individuals selected by the Operations Team will be notified of their participation in the Plan, their performance compensation grade and performance compensation opportunity (e.g., applicable Business Unit designation).

Following the beginning of the Plan Year, the Operations Team may admit new hires or individuals who are promoted or assigned additional and significant responsibilities. The Operations Team may also alter performance compensation grade assignments to reflect changed responsibilities of participants during the Plan Year.

An employee who replaces or otherwise assumes the job functions or role of an employee, does not automatically assume the plan participation that had applied to the prior incumbent. Rather, participation by the new or replacing employee must be individually considered and approved.

Employees who are designated as participants before April 1 of the Plan year are eligible for full participation. Participants who are newly employed on or after April 1 and before July 1 are eligible for half of any award available for Personal/Team and Financial (Business Unit and/or Company) performance.

Participants who transfer from the Exempt Salaried Performance Compensation Plan to the Management Performance Compensation Plan on or after April 1 and before July 1 are eligible for full participation in the Personal/Team performance component and for half participation in the Financial (Business Unit and/or Company) performance component. Their eligibility under the Exempt Salaried Performance Compensation Plan ceases for the Plan Year.

Changes in performance compensation grade assignments will result in prorated participation in awards.

The eligibility of employees hired or with changed job responsibilities after June 30 will not be considered until a possible, subsequent Plan Year.

Normally, employees who are participants in any other incentive, commission or performance compensation plan are not eligible.

The Operations Team may consider prorated participation under special circumstances.

With two exceptions, participants must be employed on the last day of the Plan Year in order to be eligible for any performance compensation award. For a participant who becomes eligible for and who elects a severance option under the Chronic Beryllium Disease Policy as amended, any award under the Plan will be prorated to the beginning of the month after the employee exercises the severance option. The second exception pertains to retirement under a Company pension plan, in which case, any award will be prorated to the beginning of the month following the employee’s retirement date.

Eligible employees who have been on a leave of absence in excess of 13 weeks during the plan year will have their award reduced on a pro-rata basis to reflect their actual contribution.

**IV. PERFORMANCE COMPENSATION OPPORTUNITY FOR FINANCIAL PERFORMANCE**

The Organization and Compensation Committee of the Board of Directors will establish Minimum, Target and Maximum levels for each financial measurement.

Participants will be assigned to a specific Business Unit/Subsidiary by the Operations Team, for performance compensation opportunity for Financial performance.

Below is a summary of the performance compensation opportunity for the Plan Year.

Grade	Financial Component	Personal Team
C and D	20%	0-14%
E	10%	0-14%

Opportunity for participants in Grades A and B will be individualized as determined by the Organization and Compensation Committee or Senior Management.

The “Financial Performance” component of awards (Business Unit, Company, sub-unit, and/or other measurement), will begin once the Minimum level has been attained for that measure. Performance, which reaches or exceeds the Maximum value of the measure, will result in awards at 200 percent of Target opportunity. Award amounts for levels of achievement between Minimum and Target and between Target and Maximum will be prorated according to the level of achievement.

Financial awards will be prorated for transfers between units (Business Unit and/or Company) according to the length of service by months in each unit during the Plan Year.

**V. PERFORMANCE COMPENSATION OPPORTUNITY for PERSONAL/TEAM PERFORMANCE**

Business Units have defined a “threshold” as the level of business performance, which must be achieved, in order to make available a bonus opportunity to recognize the Personal/Team performance.

No awards for Personal/Team performance will be paid if the established Threshold is not met. For the 2005 plan year, a threshold is applicable.

The “total pool” for Personal/Team performance of participants would typically average ten (10) percent of the base compensation of participants. The Operations Team will decide allocation of the pool among eligible participants based on their performance throughout the plan year towards achieving established goals and objectives.

Participants in Grades A and B will be eligible for a Personal/Team award as directed by the Organization and Compensation Committee of the Board.

**VI. PAYMENT**

Distribution of any performance compensation awards under the Plan to participants will be no later than March 15 of the year following the Plan Year.

**VIII. GENERAL PROVISIONS**

The Operations Team has authority to make administrative decisions in the interests of the Plan.

The Board of Directors, through its Organization and Compensation Committee, shall have final and conclusive authority for interpretation, application, and possible modification of this Plan or established targets. The Board of Directors reserves the right to amend or terminate the Plan at any time. Subject to the preceding sentences, any determination by the Company’s independent

accountants shall be final and conclusive as it relates to the calculation of financial results.

This Plan is not a contract of employment.

## **Exhibit 10.3**

### **Brush Engineered Materials Inc. and Subsidiaries**

#### **Long-Term Incentive Plan (LTIP)**

**Performance Period January 1, 2003  
through December 31, 2004**

## **I. Introduction**

The Long-Term Incentive Plan (LTIP) provides incentive compensation to eligible employees based primarily on financial performance over multi-year periods.

## **II. Definitions**

Performance Period : January 1, 2003 through December 31, 2004.

Business Unit Performance : The Plan has designated the following Business Units for the Performance Period:

Corporate  
Alloy  
Be Products

TMI

WAM

Each business unit has defined financial measures which have been approved by the Organization and Compensation Committee of the Board of Directors. These measures are expressed as a threshold, target and maximum.

Base Compensation : The participant's annual base salary in effect at the start of the Performance Period.

## **III. Participation**

Participants include those individuals who are approved by the Organization and Compensation Committee of the Board to participate.

Following the beginning of the Performance Period, new hires or individuals who are promoted with significant additional responsibilities prior to July 1, 2003, may be eligible for participation. Such participation must be confirmed by the Organization and Compensation Committee of the Board. The eligibility of employees hired after June 30, 2003, will not be considered until the subsequent Performance Period.

Participants must be employed on the last day of the Performance Period in order to be eligible for an award. If a participant retires under a Company pension plan, any award will be prorated based on time employed during the Performance Period.

Should a participant die or become permanently disabled or should there occur a Parent Company Change in Control, the participant (or their spouse or estate) shall receive full payment of the award for the entire Performance Period at the Target level.

#### **IV. Performance Award Opportunity**

The Organization and Compensation Committee of the Board of Directors will establish Threshold, Target and Maximum financial target levels for corporate and each business unit.

The award opportunity for each eligible participant will be approved by either the Organization and Compensation Committee or Senior Management.

For the entire Performance Period 2003 through 2004, the target opportunity will be a single (1x) opportunity for Corporate and all business units.

Awards will commence once the Threshold level has been attained. 100% of the opportunity will be awarded at Target and 150% will be awarded at Maximum. Award amounts for levels of achievement between Threshold and Target and between Target and Maximum will be prorated according to the approved target schedule.

LTIP targets have been established on the basis of cumulative operating profit. The targets are attached hereto as Exhibit A.

Awards will be prorated for transfers between business units and/or corporate during the Performance Period, assuming grade level remains the same. Such proration will be determined by the length of service in each unit during the Performance Period.

#### **V. Payment**

This is a cash plan and, as such, payouts will be made in cash to participants no later than March 15 of the year following the Performance Period.

#### **VI. General Provisions**

The Board of Directors, through its Organization and Compensation Committee, shall have final and conclusive authority for interpretation, application and possible modification of this Plan or its established targets. The Board of Directors reserves the right to amend or terminate the Plan at any time.

This plan is not a contract of employment.

**Exhibit 10.4**

#### **AMENDMENT NO. 2**

#### **TO**

#### **BRUSH ENGINEERED MATERIALS INC.**

#### **1995 STOCK INCENTIVE PLAN**

#### **(AS AMENDED MARCH 3, 1998)**

#### **Recitals**

WHEREAS, Brush Engineered Materials Inc. (the "Company") has adopted the Brush Engineered Materials Inc. 1995 Stock incentive Plan (As Amended March 3, 1998) (the "Plan").

WHEREAS, the Company now desires to amend the Plan further to add operating profit to the list of Management Objectives ("Amendment No. 2"); and

WHEREAS, the Board of Directors of the Company has approved this Amendment No. 1.

### **Amendment**

NOW, THEREFORE, the Plan is hereby amended by this Amendment No. 1, effective as of February 1, 2005, as follows:

1. The enumerated list in the definition of "Management Objectives" in Section 2 of the Plan is amended to read as follows:

(i) return on invested capital;

(ii) return on equity;

(iii) return on operating assets;

(iv) earnings per share;

(v) market value per share; and/or

(vi) operating profit.

2. Except as amended by Amendment No. 1, the Plan shall remain in full force and effect.

**Exhibit 10.5**

## **Brush Engineered Materials Inc. and Subsidiaries**

### **Long-Term Incentive Plan (LTIP)**

**Performance Period January 1, 2005  
through December 31, 2007**

#### **I. Introduction**

The Long-Term Incentive Plan (LTIP) provides incentive compensation to eligible employees based primarily on financial performance over multi-year periods.

#### **II. Definitions**

Performance Period : January 1, 2005 through December 31, 2007.

Business Unit Performance : The Plan has designated the following Business Units for the Performance Period:

Corporate  
Alloy  
Be Products

TMI

WAM

Each business unit has defined financial measures which have been approved by the Organization and Compensation Committee of the Board of Directors. These measures are expressed as a threshold, target and maximum.

Base Compensation : The participant's annual base salary in effect at the start of the Performance Period.

#### **III. Participation**

Participants include those individuals who are approved by the Organization and Compensation Committee of the Board to participate.

Following the beginning of the Performance Period, new hires or individuals who are promoted with significant additional responsibilities prior to July 1, 2005, may be eligible for participation. Such participation must be confirmed by the Organization and Compensation Committee of the Board. The eligibility of employees hired after June 30, 2005, will not be considered until the subsequent Performance Period.

Participants must be employed on the last day of the Performance Period in order to be eligible for an award. If a participant retires under a Company pension plan, any award will be prorated based on time employed during the Performance Period.

Should a participant die or become permanently disabled or should there occur a Parent Company Change in Control, the participant (or their spouse or estate) shall receive full payment of the award for the entire Performance Period at the Target level.

#### **IV. Performance Award Opportunity**

The Organization and Compensation Committee of the Board of Directors will establish Threshold, Target and Maximum financial target levels for corporate and each business unit.

The award opportunity for each eligible participant will be approved by either the Organization and Compensation Committee or Senior Management.

For the entire Performance Period 2005 through 2007, the target opportunity will be a single (1x) opportunity for Corporate and all business units.

Awards will commence once the Threshold level has been attained. 100% of the opportunity will be awarded at Target and 150% will be awarded at Maximum. Award amounts for levels of achievement between Threshold and Target and between Target and Maximum will be prorated according to the approved target schedule.

LTIP targets have been established on the basis of cumulative operating profit. The targets are attached hereto as Exhibit A.

Awards will be prorated for transfers between business units and/or corporate during the Performance Period, assuming grade level remains the same. Such proration will be determined by the length of service in each unit during the Performance Period.

#### **V. Payment**

This is a performance share plan and, as such, payouts will be made in performance shares to participants no later than March 15 of the year following the Performance Period.

#### **VI. General Provisions**

The Board of Directors, through its Organization and Compensation Committee, shall have final and conclusive authority for interpretation, application and possible modification of this Plan or its established targets. The Board of Directors reserves the right to amend or terminate the Plan at any time.

This plan is not a contract of employment.

## BRUSH ENGINEERED MATERIALS INC.

Nonqualified Stock Option Agreement

WHEREAS, Gordon D. Harnett (hereinafter called the "Optionee") is Chairman, President and CEO of Brush Engineered Materials Inc. (hereinafter called the "Company"); and

WHEREAS, the execution of a Stock Option Agreement in the form hereof has been duly authorized by a resolution of the Organization and Compensation Committee (the "Committee") of the Board of Directors (the "Board") of the Company duly adopted on **February 1, 2005** and incorporated herein by reference.

NOW THEREFORE, the Company, pursuant to the Company's 1995 Stock Incentive Plan (As amended March 3, 1998) and as further amended by Amendment No. 1 thereto (the "Plan"), hereby grants to the Optionee, effective **February 8, 2005** (the "Date of Grant") an option to purchase \_\_\_ shares of Common Stock without par value of the Company, at the price of \$ \_\_\_ per share ("option price"), and agrees to cause certificates for any shares purchased hereunder to be delivered to the Optionee upon receipt of the purchase price, all subject, however, to the terms and conditions of the Plan and the terms and conditions hereinafter set forth. The option price shall be payable (i) in cash, (ii) by the transfer to the Company by the Optionee of nonforfeitable, unrestricted shares of Common Stock of the Company held by the Optionee for more than one year and having a fair market value at the time of exercise of this option equal to the total option price of the shares of Common Stock which are the subject of such exercise, or (iii) by a combination of such methods of payment.

1. This option (unless terminated as hereinafter provided) shall be exercisable in full after the Optionee shall have been in the continuous employ of the Company or any subsidiary for 140 days from the Date of Grant. For the purpose of this Agreement, leaves of absence approved by the Board for illness, military or governmental service, or other cause, shall be considered as employment. To the extent exercisable, this option may be exercised in whole or in part from time to time.

Notwithstanding the preceding paragraph:

(A) This option shall become immediately exercisable in full if the Optionee should die while in the employ of the Company or any subsidiary; and

(B) This option shall become immediately exercisable in full if the Optionee's employment with the Company terminates under circumstances determined by the Board to be for the convenience of the Company and the Committee approves the acceleration of the right to exercise the option under such circumstances.

2. This option shall terminate on the earliest of the following dates:

(A) 190 days after the Optionee ceases to be an employee of the Company or a subsidiary, unless he ceases to be such employee by reason of retirement under a retirement plan of the Company or a subsidiary at or after the earliest voluntary retirement age provided for in such retirement plan or retirement at an earlier age with the consent of the Board of Directors, by reason of death or in a manner described in clause (B) or (E) below;

(B) One year after the Optionee ceases to be an employee of the Company or a subsidiary if the Optionee is disabled within the meaning of Section 105(d)(4) of the Internal Revenue Code;

(C) One year after the death of the Optionee, if the Optionee dies while an employee of the Company or a subsidiary or within the period specified in (A) or (B) above which is applicable to the Optionee;

(D) Ten years from the Date of Grant; and

(E) Immediately if the Optionee engages in any Detrimental Activity (as hereinafter defined).

Nothing contained in this option shall limit whatever right the Company or a subsidiary might otherwise have to terminate the employment of the Optionee.

3. If the Optionee, either during employment by the Company or a subsidiary or within one year after termination of such employment, shall engage in any Detrimental Activity, and the Board shall so find, the Optionee shall:

(A) Return to the Company, in exchange for payment by the Company of the Option Price paid therefor, all shares of Common Stock that the Optionee has not disposed of that were purchased pursuant to this Agreement, and

(B) With respect to any shares of Common Stock that the Optionee has disposed of that were purchased pursuant to this Agreement, pay to the Company in cash the difference between:

(i) The option price paid therefor by the Optionee pursuant to this Agreement, and

(ii) The closing price of the shares of Common Stock on the New York Stock Exchange on the date of such purchase (or on the last trading day prior to such purchase, if there was no trading on the purchase date).

To the extent that such amounts are not paid to the Company, the Company may, to the extent permitted by law, set off the amounts so payable to it against any amounts that may be owing from time to time by the Company or a subsidiary to the Optionee, whether as wages, deferred compensation or vacation pay or in the form of any other benefit or for any other reason.

4. For purposes of this Agreement, the term “Detrimental Activity” shall include:

(A) (i) Engaging in any activity in violation of the Section entitled “Competitive Activity; Confidentiality; Nonsolicitation” in the Severance Agreement between the Company and the Optionee, if such agreement is in effect at the date hereof, or in violation of any corresponding provision in any other agreement between the Company and the Optionee in effect on the date hereof providing for the payment of severance compensation; or

(ii) If no such severance agreement is in effect or if a severance agreement does not contain a section corresponding to “Competitive Activity; Confidentiality; Nonsolicitation” as of the date hereof:

a. Competitive Activity During Employment. Competing with the Company anywhere within the United States during the term of the Optionee’s employment, including, without limitation:

(1) entering into or engaging in any business which competes with the business of the Company;

(2) soliciting customers, business, patronage or orders for, or selling, any products or services in competition with, or for any business that competes with, the business of the Company;

(3) diverting, enticing or otherwise taking away any customers, business, patronage or orders of the Company or attempting to do so; or

(4) promoting or assisting, financially or otherwise, any person, firm, association, partnership, corporation or other entity engaged in any business which competes with the business of the Company.

b. Following Termination. For a period of one year following the Optionee’s termination date:



(1) entering into or engaging in any business which competes with the Company's business within the Restricted Territory (as hereinafter defined);

(2) soliciting customers, business, patronage or orders for, or selling, any products or services in competition with, or for any business, wherever located, that competes with, the Company's business within the Restricted Territory;

(3) diverting, enticing or otherwise taking away any customers, business, patronage or orders of the Company within the Restricted Territory, or attempting to do so; or

(4) promoting or assisting, financially or otherwise, any person, firm, association, partnership, corporation or other entity engaged in any business which competes with the Company's business within the Restricted Territory.

For the purposes of Sections 4(A)(ii)(a) and (b) above, inclusive, but without limitation thereof, the Optionee will be in violation thereof if the Optionee engages in any or all of the activities set forth therein directly as an individual on the Optionee's own account, or indirectly as a partner, joint venturer, employee, agent, salesperson, consultant, officer and/or director of any firm, association, partnership, corporation or other entity, or as a stockholder of any corporation in which the Optionee or the Optionee's spouse, child or parent owns, directly or indirectly, individually or in the aggregate, more than five percent (5%) of the outstanding stock.

c. "The Company." For the purposes of this Section 4(A)(ii), the "Company" shall include any and all direct and indirect subsidiaries, parents, and affiliated, or related companies of the Company for which the Optionee worked or had responsibility at the time of termination of the Optionee's employment and at any time during the two year period prior to such termination.

d. "The Company's Business." For the purposes of this Section 4 inclusive, the Company's business is defined to be the manufacture, marketing and sale of high performance engineered materials serving global telecommunications, computer, automotive electronics, industrial components and optical media markets, as further described in any and all manufacturing, marketing and sales manuals and materials of the Company as the same may be altered, amended, supplemented or otherwise changed from time to time, or of any other products or services substantially similar to or readily substitutable for any such described products and services.

e. "Restricted Territory." For the purposes of Section 4(A)(ii)(b), the Restricted Territory shall be defined as and limited to:

(1) the geographic area(s) within a one hundred mile radius of any and all Company location(s) in, to, or for which the Optionee worked, to which the Optionee was assigned or had any responsibility (either direct or supervisory) at the time of termination of the Optionee's employment and at any time during the two-year period prior to such termination; and

(2) all of the specific customer accounts, whether within or outside of the geographic area described in (1) above, with which the Optionee had any contact or for which the Optionee had any responsibility (either direct or supervisory) at the time of termination of the Optionee's employment and at any time during the two-year period prior to such termination.

f. Extension. If it shall be judicially determined that the Optionee has violated any of the Optionee's obligations under Section 4(A)(ii)(b), then the period applicable to each obligation that the Optionee shall have been determined to have violated shall automatically be extended by a period of time equal in length to the period during which such violation(s) occurred.

(B) Non-Solicitation. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include directly or indirectly at any time soliciting or inducing or attempting to solicit or induce any employee(s), sales representative(s), agent(s) or consultant(s) of the Company and/or of its parents, or its other subsidiaries

or affiliated or related companies to terminate their employment, representation or other association with the Company and/or its parent or its other subsidiary or affiliated or related companies.

(C) Further Covenants. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include:

(i) directly or indirectly, at any time during or after the Optionee's employment with the Company, disclosing, furnishing, disseminating, making available or, except in the course of performing the Optionee's duties of employment, using any trade secrets or confidential business and technical information of the Company or its customers or vendors, including without limitation as to when or how the Optionee may have acquired such information. Such confidential information shall include, without limitation, the Company's unique selling, manufacturing and servicing methods and business techniques, training, service and business manuals, promotional materials, training courses and other training and instructional materials, vendor and product information, customer and prospective customer lists, other customer and prospective customer information and other business information. The Optionee specifically acknowledges that all such confidential information, whether reduced to writing, maintained on any form of electronic media, or maintained in the Optionee's mind or memory and whether compiled by the Company, and/or the Optionee, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made by the Company to maintain the secrecy of such information, that such information is the sole property of the Company and that any retention and use of such information by the Optionee during the Optionee's employment with the Company (except in the course of performing the Optionee's duties and obligations to the Company) or after the termination of the Optionee's employment shall constitute a misappropriation of the Company's trade secrets.

(ii) Upon termination of the Optionee's employment with the Company, for any reason, the Optionee's failure to return to the Company, in good condition, all property of the Company, including without limitation, the originals and all copies of any materials which contain, reflect, summarize, describe, analyze or refer or relate to any items of information listed in Section 4(C)(i) of this Agreement.

(D) Discoveries and Inventions. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include the failure or refusal of the Optionee to assign to the Company, its successors, assigns or nominees, all of the Optionee's rights to any discoveries, inventions and improvements, whether patentable or not, made, conceived or suggested, either solely or jointly with others, by the Optionee while in the Company's employ, whether in the course of the Optionee's employment with the use of the Company's time, material or facilities or that is in any way within or related to the existing or contemplated scope of the Company's business. Any discovery, invention or improvement relating to any subject matter with which the Company was concerned during the Optionee's employment and made, conceived or suggested by the Optionee, either solely or jointly with others, within one year following termination of the Optionee's employment under this Agreement or any successor agreements shall be irrebuttably presumed to have been so made, conceived or suggested in the course of such employment with the use of the Company's time, materials or facilities. Upon request by the Company with respect to any such discoveries, inventions or improvements, the Optionee will execute and deliver to the Company, at any time during or after the Optionee's employment, all appropriate documents for use in applying for, obtaining and maintaining such domestic and foreign patents as the Company may desire, and all proper assignments therefor, when so requested, at the expense of the Company, but without further or additional consideration.

(E) Work Made For Hire. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include violation of the Company's rights in any or all work papers, reports, documentation, drawings, photographs, negatives, tapes and masters therefor, prototypes and other materials (hereinafter, "items"), including without limitation, any and all such items generated and maintained on any form of electronic media, generated by Optionee during the Optionee's employment with the Company. The Optionee acknowledges that, to the extent permitted by law, all such items shall be considered a "work made for hire" and that ownership of any and all copyrights in any and all such items shall belong to the Company. The item will recognize the Company as the copyright owner, will contain all proper copyright notices, e.g., "(creation date) [Company Name], All Rights Reserved," and will be in condition to be registered or otherwise placed in

compliance with registration or other statutory requirements throughout the world.

(F) Termination for Cause. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include activity that results in termination for Cause. For the purposes of this Section, “Cause” shall mean that, the Optionee shall have:

(i) been convicted of a criminal violation involving fraud, embezzlement, theft or violation of federal antitrust statutes or federal securities laws in connection with his duties or in the course of his employment with the Company or any affiliate of the Company;

(ii) committed intentional wrongful damage to property of the Company or any affiliate of the Company;  
or

(iii) committed intentional wrongful disclosure of secret processes or confidential information of the Company or any affiliate of the Company;

and any such act shall have been demonstrably and materially harmful to the Company.

(G) Other Injurious Conduct. Detrimental Activity shall also include any other conduct or act determined to be injurious, detrimental or prejudicial to any significant interest of the Company or any subsidiary unless the Optionee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company.

(H) Reasonableness. The Optionee acknowledges that the Optionee’s obligations under this Section 4 are reasonable in the context of the nature of the Company’s business and the competitive injuries likely to be sustained by the Company if the Optionee were to violate such obligations. The Optionee further acknowledges that this Agreement is made in consideration of, and is adequately supported by the agreement of the Company to perform its obligations under this Agreement and by other consideration, which the Optionee acknowledges constitutes good, valuable and sufficient consideration.

5. This option is not transferable by the Optionee otherwise than by will or the laws of descent and distribution, and is exercisable, during the lifetime of the Optionee, only by him or, in the case of his legal incapacity, only by his guardian or legal representative.

6. This option shall not be exercisable if such exercise would involve a violation of any applicable state securities law, and the Company hereby agrees to make reasonable efforts to comply with any applicable state securities law. If the Ohio Securities Act shall be applicable to this option, it shall not be exercisable unless under said Act at the time of exercise the shares of Common Stock or other securities purchasable hereunder are exempt, are the subject matter of an exempt transaction, are registered by description or by qualification, or at such time are the subject matter of a transaction which has been registered by description.

7. This option shall not be exercisable if at the time of exercise such exercise would require registration under the Securities Act of 1933, as amended, or any similar federal securities law then in effect, of the shares of Common Stock or other securities to be purchased hereunder and such registration shall not then be effective. The Company hereby agrees to make reasonable efforts to effect any such required registration.

8. The Committee shall make such adjustments in the option price and in the number or kind of shares of Common Stock or other securities covered by this option as such Committee in its sole discretion, exercised in good faith, may determine is equitably required to prevent dilution or enlargement of the rights of the Optionee that otherwise would result from (a) any stock dividend, stock split, combination of shares, recapitalization or other change in the capital structure of the Company, or (b) any merger, consolidation, spin-off, reorganization, partial or complete liquidation or other distribution of assets, or issuance of warrants or other rights to purchase securities, or (c) any other corporate transaction or event having an effect similar to any of the foregoing. In the event of any such transaction or event, the Committee may provide in substitution for this option such alternative consideration as it may in good faith determine to be equitable under the circumstances and may require in connection therewith the surrender of this option so replaced. No adjustment provided for in this Paragraph 8 shall require the Company to sell any fractional share.

9. The term “subsidiary” as used in this Agreement means any corporation, partnership, joint venture, unincorporated association or other entity in which the Company has a direct or indirect ownership or other equity interest. For purposes of this Agreement, the continuous employ of the Optionee with the Company or a subsidiary shall not be deemed interrupted, and the Optionee shall not be deemed to have ceased to be an employee of the Company and its subsidiaries.

10. This option is intended to be a nonqualified stock option, and will not be treated as an “incentive stock option” as that letter term is defined in Section 422 of the Internal Revenue Code.

11. This Agreement shall be governed by and construed with the internal substantive laws of the State of Ohio, without giving effect to any principle of law that would result in the application of the law of any other jurisdiction.

The undersigned Optionee hereby accepts the options granted pursuant to this Nonqualified Stock Option Agreement on the terms and conditions set forth herein.

Dated:

Optionee

Executed in the name of and on behalf of the Company at Cleveland, Ohio as of this 8th day of February, 2005.

BRUSH ENGINEERED MATERIALS INC.

By

Michael C. Hasychak

Vice President, Treasurer and Secretary

**Exhibit 10.7**

(2005)

Form J

Cash or Stock

BRUSH ENGINEERED MATERIALS INC.

Nonqualified Stock Option Agreement

WHEREAS, \_\_\_(hereinafter called the “Optionee”) is \_\_\_of Brush Engineered Materials Inc. (hereinafter called the “Company”); and

WHEREAS, the execution of a Stock Option Agreement in the form hereof has been duly authorized by a resolution of the Organization and Compensation Committee (the “Committee”) of the Board of Directors (the “Board”) of the Company duly adopted on **February 1, 2005** and incorporated herein by reference.

NOW THEREFORE, the Company, pursuant to the Company’s 1995 Stock Incentive Plan (As amended March 3, 1998), as amended (the “Plan”), hereby grants to the Optionee, effective **February 8, 2005** (the “Date of Grant”) an option to purchase \_\_\_ shares of Common Stock without par value of the Company, at the price of \$ \_\_\_per share (“option price”), and agrees to cause certificates for any shares purchased hereunder to be delivered to the Optionee upon receipt of the purchase price, all subject, however, to the terms and conditions of the Plan and the terms and conditions hereinafter set forth. The option price shall be payable (i) in cash, (ii) by the transfer to the Company by

the Optionee of nonforfeitable, unrestricted shares of Common Stock of the Company held by the Optionee for more than one year and having a fair market value at the time of exercise of this option equal to the total option price of the shares of Common Stock which are the subject of such exercise, or (iii) by a combination of such methods of payment.

1. This option (unless terminated as hereinafter provided) shall be exercisable in full after the Optionee shall have been in the continuous employ of the Company or any subsidiary for 140 days from the Date of Grant. For the purpose of this Agreement, leaves of absence approved by the Board for illness, military or governmental service, or other cause, shall be considered as employment. To the extent exercisable, this option may be exercised in whole or in part from time to time.

Notwithstanding the preceding paragraph:

(A) This option shall become immediately exercisable in full if (i) the Optionee should retire under a retirement plan of the Company or any subsidiary at or after the earliest voluntary retirement age provided in such retirement plan or should retire at an earlier age with the consent of the Board; or (ii) the Optionee should die while in the employ of the Company or any subsidiary; and

(B) This option shall become immediately exercisable in full if the Optionee's employment with the Company terminates under circumstances determined by the Board to be for the convenience of the Company and the Committee approves the acceleration of the right to exercise the option under such circumstances.

2. This option shall terminate on the earliest of the following dates:

(A) 190 days after the Optionee ceases to be an employee of the Company or a subsidiary, unless he ceases to be such employee by reason of death or in a manner described in clause (B), (C) or (F) below;

(B) One year after the Optionee ceases to be an employee of the Company or a subsidiary if the Optionee is disabled within the meaning of Section 105(d)(4) of the Internal Revenue Code;

(C) Three years after the Optionee ceases to be an employee of the Company or a subsidiary by reason of retirement under a retirement plan of the Company or a subsidiary at or after the earliest voluntary retirement age provided for in such retirement plan or retirement at an earlier age with the consent of the Board of Directors;

(D) One year after the death of the Optionee, if the Optionee dies while an employee of the Company or a subsidiary or within the period specified in (A) or (B) above which is applicable to the Optionee;

(E) Ten years from the Date of Grant; and

(F) Immediately if the Optionee engages in any Detrimental Activity (as hereinafter defined).

Nothing contained in this option shall limit whatever right the Company or a subsidiary might otherwise have to terminate the employment of the Optionee.

3. If the Optionee, either during employment by the Company or a subsidiary or within one year after termination of such employment, shall engage in any Detrimental Activity, and the Board shall so find, the Optionee shall:

(A) Return to the Company, in exchange for payment by the Company of the Option Price paid therefor, all shares of Common Stock that the Optionee has not disposed of that were purchased pursuant to this Agreement, and

(B) With respect to any shares of Common Stock that the Optionee has disposed of that were purchased pursuant to this Agreement, pay to the Company in cash the difference between:

(i) The option price paid therefor by the Optionee pursuant to this Agreement, and

(ii) The closing price of the shares of Common Stock on the New York Stock Exchange on the date of such purchase (or on the last trading day prior to such purchase, if there was no trading on the purchase date).

To the extent that such amounts are not paid to the Company, the Company may, to the extent permitted by law, set off the amounts so payable to it against any amounts that may be owing from time to time by the Company or a subsidiary to the Optionee, whether as wages, deferred compensation or vacation pay or in the form of any other benefit or for any other reason.

4. For purposes of this Agreement, the term “Detrimental Activity” shall include:

(A) (i) Engaging in any activity in violation of the Section entitled “Competitive Activity; Confidentiality; Nonsolicitation” in the Severance Agreement between the Company and the Optionee, if such agreement is in effect at the date hereof, or in violation of any corresponding provision in any other agreement between the Company and the Optionee in effect on the date hereof providing for the payment of severance compensation; or

(ii) If no such severance agreement is in effect or if a severance agreement does not contain a section corresponding to “Competitive Activity; Confidentiality; Nonsolicitation” as of the date hereof:

a. Competitive Activity During Employment. Competing with the Company anywhere within the United States during the term of the Optionee’s employment, including, without limitation:

(1) entering into or engaging in any business which competes with the business of the Company;

(2) soliciting customers, business, patronage or orders for, or selling, any products or services in competition with, or for any business that competes with, the business of the Company;

(3) diverting, enticing or otherwise taking away any customers, business, patronage or orders of the Company or attempting to do so; or

(4) promoting or assisting, financially or otherwise, any person, firm, association, partnership, corporation or other entity engaged in any business which competes with the business of the Company.

b. Following Termination. For a period of one year following the Optionee’s termination date:

(1) entering into or engaging in any business which competes with the Company’s business within the Restricted Territory (as hereinafter defined);

(2) soliciting customers, business, patronage or orders for, or selling, any products or services in competition with, or for any business, wherever located, that competes with, the Company’s business within the Restricted Territory;

(3) diverting, enticing or otherwise taking away any customers, business, patronage or orders of the Company within the Restricted Territory, or attempting to do so; or

(4) promoting or assisting, financially or otherwise, any person, firm, association, partnership, corporation or other entity engaged in any business which competes with the Company’s business within the Restricted Territory.

For the purposes of Sections 4(A)(ii)(a) and (b) above, inclusive, but without limitation thereof, the Optionee will be in violation thereof if the Optionee engages in any or all of the activities set

forth therein directly as an individual on the Optionee's own account, or indirectly as a partner, joint venturer, employee, agent, salesperson, consultant, officer and/or director of any firm, association, partnership, corporation or other entity, or as a stockholder of any corporation in which the Optionee or the Optionee's spouse, child or parent owns, directly or indirectly, individually or in the aggregate, more than five percent (5%) of the outstanding stock.

c. "The Company." For the purposes of this Section 4(A)(ii), the "Company" shall include any and all direct and indirect subsidiaries, parents, and affiliated, or related companies of the Company for which the Optionee worked or had responsibility at the time of termination of the Optionee's employment and at any time during the two year period prior to such termination.

d. "The Company's Business." For the purposes of this Section 4 inclusive, the Company's business is defined to be the manufacture, marketing and sale of high performance engineered materials serving global telecommunications, computer, automotive electronics, industrial components and optical media markets, as further described in any and all manufacturing, marketing and sales manuals and materials of the Company as the same may be altered, amended, supplemented or otherwise changed from time to time, or of any other products or services substantially similar to or readily substitutable for any such described products and services.

e. "Restricted Territory." For the purposes of Section 4(A)(ii)(b), the Restricted Territory shall be defined as and limited to:

(1) the geographic area(s) within a one hundred mile radius of any and all Company location(s) in, to, or for which the Optionee worked, to which the Optionee was assigned or had any responsibility (either direct or supervisory) at the time of termination of the Optionee's employment and at any time during the two-year period prior to such termination; and

(2) all of the specific customer accounts, whether within or outside of the geographic area described in (1) above, with which the Optionee had any contact or for which the Optionee had any responsibility (either direct or supervisory) at the time of termination of the Optionee's employment and at any time during the two-year period prior to such termination.

f. Extension. If it shall be judicially determined that the Optionee has violated any of the Optionee's obligations under Section 4(A)(ii)(b), then the period applicable to each obligation that the Optionee shall have been determined to have violated shall automatically be extended by a period of time equal in length to the period during which such violation(s) occurred.

(B) Non-Solicitation. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include directly or indirectly at any time soliciting or inducing or attempting to solicit or induce any employee(s), sales representative(s), agent(s) or consultant(s) of the Company and/or of its parents, or its other subsidiaries or affiliated or related companies to terminate their employment, representation or other association with the Company and/or its parent or its other subsidiary or affiliated or related companies.

(C) Further Covenants. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include:

(i) directly or indirectly, at any time during or after the Optionee's employment with the Company, disclosing, furnishing, disseminating, making available or, except in the course of performing the Optionee's duties of employment, using any trade secrets or confidential business and technical information of the Company or its customers or vendors, including without limitation as to when or how the Optionee may have acquired such information. Such confidential information shall include, without limitation, the Company's unique selling, manufacturing and servicing methods and business techniques, training, service and business manuals, promotional materials, training courses and other training and instructional materials, vendor and product information, customer and prospective customer lists, other customer and prospective customer information and other business information. The Optionee specifically acknowledges that all such confidential information, whether reduced to writing, maintained

on any form of electronic media, or maintained in the Optionee's mind or memory and whether compiled by the Company, and/or the Optionee, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made by the Company to maintain the secrecy of such information, that such information is the sole property of the Company and that any retention and use of such information by the Optionee during the Optionee's employment with the Company (except in the course of performing the Optionee's duties and obligations to the Company) or after the termination of the Optionee's employment shall constitute a misappropriation of the Company's trade secrets.

(ii) Upon termination of the Optionee's employment with the Company, for any reason, the Optionee's failure to return to the Company, in good condition, all property of the Company, including without limitation, the originals and all copies of any materials which contain, reflect, summarize, describe, analyze or refer or relate to any items of information listed in Section 4(C)(i) of this Agreement.

(D) Discoveries and Inventions. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include the failure or refusal of the Optionee to assign to the Company, its successors, assigns or nominees, all of the Optionee's rights to any discoveries, inventions and improvements, whether patentable or not, made, conceived or suggested, either solely or jointly with others, by the Optionee while in the Company's employ, whether in the course of the Optionee's employment with the use of the Company's time, material or facilities or that is in any way within or related to the existing or contemplated scope of the Company's business. Any discovery, invention or improvement relating to any subject matter with which the Company was concerned during the Optionee's employment and made, conceived or suggested by the Optionee, either solely or jointly with others, within one year following termination of the Optionee's employment under this Agreement or any successor agreements shall be irrebuttably presumed to have been so made, conceived or suggested in the course of such employment with the use of the Company's time, materials or facilities. Upon request by the Company with respect to any such discoveries, inventions or improvements, the Optionee will execute and deliver to the Company, at any time during or after the Optionee's employment, all appropriate documents for use in applying for, obtaining and maintaining such domestic and foreign patents as the Company may desire, and all proper assignments therefor, when so requested, at the expense of the Company, but without further or additional consideration.

(E) Work Made For Hire. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include violation of the Company's rights in any or all work papers, reports, documentation, drawings, photographs, negatives, tapes and masters therefor, prototypes and other materials (hereinafter, "items"), including without limitation, any and all such items generated and maintained on any form of electronic media, generated by Optionee during the Optionee's employment with the Company. The Optionee acknowledges that, to the extent permitted by law, all such items shall be considered a "work made for hire" and that ownership of any and all copyrights in any and all such items shall belong to the Company. The item will recognize the Company as the copyright owner, will contain all proper copyright notices, e.g., "(creation date) [Company Name], All Rights Reserved," and will be in condition to be registered or otherwise placed in compliance with registration or other statutory requirements throughout the world.

(F) Termination for Cause. Except as otherwise provided in Section 4(A)(i), Detrimental Activity shall also include activity that results in termination for Cause. For the purposes of this Section, "Cause" shall mean that, the Optionee shall have:

(i) been convicted of a criminal violation involving fraud, embezzlement, theft or violation of federal antitrust statutes or federal securities laws in connection with his duties or in the course of his employment with the Company or any affiliate of the Company;

(ii) committed intentional wrongful damage to property of the Company or any affiliate of the Company;  
or

(iii) committed intentional wrongful disclosure of secret processes or confidential information of the Company or any affiliate of the Company;



and any such act shall have been demonstrably and materially harmful to the Company.

(G) Other Injurious Conduct. Detrimental Activity shall also include any other conduct or act determined to be injurious, detrimental or prejudicial to any significant interest of the Company or any subsidiary unless the Optionee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company.

(H) Reasonableness. The Optionee acknowledges that the Optionee's obligations under this Section 4 are reasonable in the context of the nature of the Company's business and the competitive injuries likely to be sustained by the Company if the Optionee were to violate such obligations. The Optionee further acknowledges that this Agreement is made in consideration of, and is adequately supported by the agreement of the Company to perform its obligations under this Agreement and by other consideration, which the Optionee acknowledges constitutes good, valuable and sufficient consideration.

5. This option is not transferable by the Optionee otherwise than by will or the laws of descent and distribution, and is exercisable, during the lifetime of the Optionee, only by him or, in the case of his legal incapacity, only by his guardian or legal representative.

6. This option shall not be exercisable if such exercise would involve a violation of any applicable state securities law, and the Company hereby agrees to make reasonable efforts to comply with any applicable state securities law. If the Ohio Securities Act shall be applicable to this option, it shall not be exercisable unless under said Act at the time of exercise the shares of Common Stock or other securities purchasable hereunder are exempt, are the subject matter of an exempt transaction, are registered by description or by qualification, or at such time are the subject matter of a transaction which has been registered by description.

7. This option shall not be exercisable if at the time of exercise such exercise would require registration under the Securities Act of 1933, as amended, or any similar federal securities law then in effect, of the shares of Common Stock or other securities to be purchased hereunder and such registration shall not then be effective. The Company hereby agrees to make reasonable efforts to effect any such required registration.

8. The Committee shall make such adjustments in the option price and in the number or kind of shares of Common Stock or other securities covered by this option as such Committee in its sole discretion, exercised in good faith, may determine is equitably required to prevent dilution or enlargement of the rights of the Optionee that otherwise would result from (a) any stock dividend, stock split, combination of shares, recapitalization or other change in the capital structure of the Company, or (b) any merger, consolidation, spin-off, reorganization, partial or complete liquidation or other distribution of assets, or issuance of warrants or other rights to purchase securities, or (c) any other corporate transaction or event having an effect similar to any of the foregoing. In the event of any such transaction or event, the Committee may provide in substitution for this option such alternative consideration as it may in good faith determine to be equitable under the circumstances and may require in connection therewith the surrender of this option so replaced. No adjustment provided for in this Paragraph 8 shall require the Company to sell any fractional share.

9. The term "subsidiary" as used in this Agreement means any corporation, partnership, joint venture, unincorporated association or other entity in which the Company has a direct or indirect ownership or other equity interest. For purposes of this Agreement, the continuous employ of the Optionee with the Company or a subsidiary shall not be deemed interrupted, and the Optionee shall not be deemed to have ceased to be an employee of the Company and its subsidiaries.

10. This option is intended to be a nonqualified stock option, and will not be treated as an "incentive stock option" as that latter term is defined in Section 422 of the Internal Revenue Code.

11. This Agreement shall be governed by and construed with the internal substantive laws of the State of Ohio, without giving effect to any principle of law that would result in the application of the law of any other jurisdiction.

The undersigned Optionee hereby accepts the options granted pursuant to this Nonqualified Stock Option Agreement on the terms and conditions set forth herein.

Dated:

Optionee

Executed in the name of and on behalf of the Company at Cleveland, Ohio as of this 8th day of February, 2005.

BRUSH ENGINEERED MATERIALS INC.

By

Michael C. Hasychak

Vice President, Treasurer and Secretary

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**End of Filing**

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