

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

_____)	
In the Matter of)	
)	
GRACO INC.,)	
a corporation,)	Docket No. 9350
)	
ILLINOIS TOOL WORKS INC.,)	PUBLIC
a corporation, and)	
)	
ITW FINISHING LLC,)	
a limited liability company.)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having heretofore issued its administrative Complaint charging Respondents Graco Inc. (“Graco”), Illinois Tool Works Inc., and ITW Finishing LLC (“ITW”), hereinafter referred to as the Respondents, with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief, and the Respondents having answered the Complaint denying said charges; and

The Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by the Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and the executed Consent Agreement, and thereupon issued its Order to Hold Separate and Maintain Assets, and having

accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Graco Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Minnesota, with its office and principal place of business located at 88-11th Avenue Northeast, Minneapolis, Minnesota 55413.
2. Respondent Illinois Tool Works Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 3600 West Lake Avenue, Glenview, Illinois 60026.
3. Respondent ITW Finishing LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3600 West Lake Avenue, Glenview, Illinois 60026. ITW Finishing LLC is indirectly wholly-owned by Illinois Tool Works Inc.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Graco” means Graco Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups and affiliates in each case controlled by Graco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition Date, Graco includes the Liquid Finishing Business Assets.
- B. “ITW” means Illinois Tool Works Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, groups and affiliates in each case controlled by ITW (including, but not limited to, Respondent ITW Finishing LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means the acquisition described in the Asset Purchase Agreement, by and among Graco Inc., Graco Holdings Inc., Graco Minnesota Inc., Illinois Tool Works Inc., and ITW Finishing LLC, dated April 14, 2011 (the “Asset Purchase Agreement”).

- E. “Acquisition Date” means April 2, 2012, the date the Acquisition was consummated.
- F. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional and marketing materials, including website content; sales materials; research and development data, files and reports; technical information; data bases; studies; drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; educational materials; tax returns; financial and accounting records; and other documents, information, and files of any kind.
- G. “Commission-approved Acquirer” means any Person that receives the prior approval of the Commission to acquire the Liquid Finishing Business Assets pursuant to Paragraph II. (or Paragraph V.) of this Order.
- H. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind, except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- I. “Direct Cost” means an amount not to exceed the cost of labor, material, travel, and other expenditures to the extent such costs are directly incurred to provide the relevant assistance, support, or service. The cost of labor shall not exceed the hourly wage rate for any of Respondent’s employees who provide such labor.
- J. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent Graco (or between a Divestiture Trustee appointed pursuant to Paragraph V. of this Order) and a Commission-approved Acquirer to purchase the Liquid Finishing Business Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- K. “Divestiture Date” means the date on which Respondent Graco (or the Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest,

license, assign, grant, transfer, deliver and otherwise convey the Liquid Finishing Business Assets completely and as required by Paragraph II. (or Paragraph V.) of this Order.

- L. “Gema Powder Finishing Business” means the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing powder finishing systems and products conducted prior to the Acquisition by Respondent ITW, including all business activities relating to the development, manufacture, and sale of products under the brand name Gema.
- M. “Hold Separate” means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.
- N. “Hold Separate Business” means the (i) Liquid Finishing Business Assets and (ii) Liquid Finishing Business.
- O. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Respondent Graco (after the Acquisition) in which Graco has a proprietary interest, and all associated rights thereto, including all of the following in any jurisdiction throughout the world: (i) all brand names, commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, trade dress, logos, slogans, service marks, internet website content and internet domain names presently used by Respondent ITW, together with all translations, adaptations, derivations, and combinations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (ii) all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, and all inventions and discoveries (whether patentable or unpatentable and whether or not reduced to practice), and all improvements thereto; (iii) all copyrightable works, all registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations and renewals in connection therewith; (iv) all mask works and all applications, registrations, and renewals in connection therewith; (v) all know-how, trade secrets, and confidential or proprietary information (including ideas, research and development, formulas, compositions, manufacturing and production processes and techniques, technical data and information, blue prints, designs, drawings, specifications, protocols, quality control information, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, and all other data, technology, and plans); (vi) all computer software (including source code, executable code, data, databases and related documentation); (vii) all advertising and promotional materials; (viii) all other proprietary rights; and (ix) all copies and tangible embodiments thereof (in whatever form or medium).
- P. “Liquid Finishing Business” means the worldwide business of developing, assembling, manufacturing, distributing, selling, or servicing liquid finishing systems and products conducted prior to the Acquisition by Respondent ITW, including all business activities relating to the development, manufacture, and sale of products under the brand names

Binks, DeVilbiss, Ransburg, and BGK. “Liquid Finishing Business” does not include the Gema Powder Finishing Business.

- Q. “Liquid Finishing Business Assets” means all of Graco’s (after the Acquisition) rights, title, and interest in and to all property and assets, tangible and intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the Liquid Finishing Business, including but not limited to:
1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Liquid Finishing Business since the date of the announcement of the Acquisition, and not replaced, if such property was used in connection with the operation of the Liquid Finishing Business prior to the Acquisition;
 3. All inventories, wherever located, including all finished product, work in process, raw materials, spare parts, and all other materials and supplies to be used or consumed in the production of finished products;
 4. All (a) trade accounts receivable and other rights to payment from customers of Respondents and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Respondents and the full benefit of all security for such accounts or notes, and (c) any claim, remedy or other right related to any of the foregoing;
 5. All agreements and contracts (including but not limited to agreements and contracts with customers, distributors, suppliers, vendors, sales representatives, agents, licensees and licensors), purchase orders, sales orders, leases, mortgages, notes, bonds and other binding commitments, whether written or oral, and all rights thereunder and related thereto;
 6. All consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;
 7. All intangible rights and property, including Intellectual Property, going-concern value, goodwill, telephone, telecopy and e-mail addresses and listings;
 8. All Business Records; *provided, however*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Liquid Finishing Business Assets to be divested and to

Respondent Graco's retained assets or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Liquid Finishing Business Assets to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the relevant party shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes;

9. All insurance benefits, including rights and proceeds;
10. All rights under warranties and guarantees, express or implied; and
11. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Liquid Finishing Business Assets need not include any part of such assets that the Commission-approved Acquirer determines it does not need, or that the Commission otherwise determines need not be divested, and the Commission approves the divestiture without such assets.

- R. "Liquid Finishing Business Employees" means any full-time, part-time, or contract employee(s) of the Liquid Finishing Business, immediately prior to the Acquisition.
- S. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- T. "Prospective Acquirer" means a Person that Respondent Graco (or a Divestiture Trustee) intends to submit as a Commission-approved Acquirer to the Commission for its prior approval pursuant to Paragraph II. (or Paragraph V.) of this Order.
- U. "Respondents" means Graco and ITW, individually and collectively.
- V. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- W. "Transitional Services" means any transitional assistance, support or services necessary to enable the Commission-approved Acquirer to continue the development, manufacturing, distribution, sales, and services related to operation of the Liquid

Finishing Business Assets, including, but not limited to, the provision of administrative services, consultation and advice, technical assistance, and training.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Graco shall divest the Liquid Finishing Business Assets, absolutely and in good faith, at no minimum price, as an on-going business, no later than 180 days after the date this Order becomes final, to a Commission-approved Acquirer that receives the prior approval of the Commission, and only in a manner (and pursuant to a Divestiture Agreement with the Commission-approved Acquirer) that receives the prior approval of the Commission.
- B. No later than the Divestiture Date, Respondent Graco shall secure all consents, assignments, waivers, licenses, certificates, registrations, permits, or other authorizations from all Persons that are necessary for the divestiture and operation of the Liquid Finishing Business Assets to the Commission-approved Acquirer; *provided, however*, that Respondent Graco may satisfy this requirement by certifying that the Commission-approved Acquirer has executed appropriate agreements directly with each of the relevant Persons.
- C. In the event Respondent Graco is unable to obtain any consent(s), assignment(s), waiver(s), license(s), certificate(s), registration(s), permit(s), or other authorization(s) necessary for the divestiture and/or operation of the Liquid Finishing Business Assets from any Person, Respondent Graco shall:
 1. Provide such assistance as the Commission-approved Acquirer may reasonably request in its efforts to obtain a comparable license, certificate, registration, permit, or other authorization; and
 2. With the acceptance of the Commission-approved Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.
- D. At the request of the Commission-approved Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent Graco shall, for a period not to exceed twelve (12) months from the Divestiture Date, or as otherwise approved by the Commission, provide Transitional Services to the Commission-approved Acquirer:
 1. Sufficient to enable the Commission-approved Acquirer to operate the divested assets and business in substantially the same manner as they were operated prior to the Acquisition; and
 2. At substantially the same level and quality as such services were provided by Respondents in connection with the operation of the divested assets and business prior to the Acquisition.

Provided, however, that Respondent Graco shall not (i) require the Commission-approved Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Transitional Services because of a material breach by the Commission-approved Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, except if Respondent Graco is unable to provide such services due to such material breach, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which a Commission-approved Acquirer would be entitled to receive in the event of Respondent Graco's breach of any agreement to provide Transitional Services.

- E. Respondent ITW shall provide the Commission-approved Acquirer, at the request of the Commission-approved Acquirer, the transition and support services Respondent ITW has agreed to provide to Respondent Graco in the Asset Purchase Agreement on the terms and subject to the conditions contemplated by the Asset Purchase Agreement.
- F. Respondent Graco shall provide the Commission-approved Acquirer with the opportunity to identify, recruit and employ any Liquid Finishing Business Employee in conformance with the following:
1. No later than ten (10) days after a request from a Prospective Acquirer, or staff of the Commission, Respondents shall provide the Prospective Acquirer with the following information for each Liquid Finishing Business Employee, as and to the extent permitted by law:
 - (a) name, job title or position, date of hire and effective service date;
 - (b) a specific description of the employee's responsibilities;
 - (c) the base salary or current wages;
 - (d) the most recent bonus paid, aggregate annual compensation for Respondent ITW's last fiscal year and current target or guaranteed bonus, if any;
 - (e) employment status (i.e., active or on leave or disability; full-time or part-time);
 - (f) any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - (g) at the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Liquid Finishing Business Employee.
 2. No later than thirty (30) days before the Divestiture Date, after a request from a Prospective Acquirer, Respondent Graco shall provide the Prospective Acquirer with (i) an opportunity to meet, personally and outside the presence or hearing of any employee or agent of any Respondent, with any Liquid Finishing Business Employee for the purpose of discussing potential employment, (ii) an opportunity to inspect the personnel files and other documentation relating to any such

employee, to the extent permissible under applicable laws such employee, and (iii) to make offers of employment to any Liquid Finishing Business Employee.

3. Respondent Graco shall (i) not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Liquid Finishing Business Employee, (ii) not offer any incentive to any Liquid Finishing Business Employee to decline employment with the Prospective Acquirer, (iii) not make any counteroffer to any Liquid Finishing Business Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent Graco to terminate the employment of any employee or prevent Respondent Graco from continuing the employment of any employee; (iv) remove any impediments within the control of Respondent Graco that may deter any Liquid Finishing Business Employee from accepting employment with the Prospective Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent Graco that would affect the ability of such employee to be employed by the Prospective Acquirer, and (v) not otherwise interfere with the recruitment of any Liquid Finishing Business Employee by the Prospective Acquirer.

G. Until the Divestiture Date, Respondent Graco shall provide each Liquid Finishing Business Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Liquid Finishing Business Assets pending divestiture. Such incentives shall include employee benefits, including regularly scheduled raises, bonuses, vesting of current and accrued retirement benefits (as permitted by law), on the same basis as provided under the Asset Purchase Agreement to other employees hired by Respondent Graco in the Acquisition, and such additional incentives as may be necessary to assure the continuation and to prevent any diminution of the viability, marketability and competitiveness of the Liquid Finishing Business Assets until the Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Order and the Hold Separate.

H. For a period of two (2) years after the Divestiture Date, Respondent Graco shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Liquid Finishing Business Employee who has accepted an offer of employment with the Commission-approved Acquirer, or who is employed by the Commission-approved Acquirer, to terminate his or her employment relationship with the Commission-approved Acquirer; *provided, however*, Respondent Graco may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Liquid Finishing Business Employees; and

2. Hire Liquid Finishing Business Employees who apply for employment with Respondent Graco, so long as such individuals were not solicited by Respondent Graco in violation of this paragraph; *provided further*, that this sub-Paragraph shall not prohibit Respondent Graco from making offers of employment to or employing any Liquid Finishing Business Employees if the Commission-approved Acquirer has notified Respondent Graco in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by the Commission-approved Acquirer.
- I. The purpose of the divestiture of the Liquid Finishing Business Assets is to ensure the continuation of the Liquid Finishing Business Assets as an ongoing, viable business operating in the same relevant markets in which such assets were competing at the time of the announcement of the Acquisition by Respondents, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) keep confidential and not disclose (including with respect to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Business Information pertaining to the Liquid Finishing Business and Liquid Finishing Business Assets; *provided, however*, that the Respondents may disclose or use such Confidential Business Information:
 1. In the course of performing their obligations as permitted under this Order or the Hold Separate, including as necessary to effect the marketing and divestiture of the Liquid Finishing Business Assets pursuant to Paragraph II. of this Order and the provision of Transitional Services; *provided further*, that Respondents' employees who provide support services under the Hold Separate or Transitional Services under the Divestiture Agreement, or who staff the Hold Separate Business, shall be deemed to be performing obligations under this Order or the Hold Separate.
 2. In the course of performing their obligations under the Divestiture Agreement;
 3. To enforce the terms of the Divestiture Agreement or to prosecute or defend against any dispute or legal proceeding;
 4. To comply with financial reporting requirements, obtain legal advice, defend legal claims, enforce actions threatened or brought against the Liquid Finishing Business or Liquid Finishing Business Assets, or as required by applicable law, regulations and other legal requirements (including in connection with tax returns, reports required by securities laws and payroll, benefits or personnel reports or

information) or in overseeing compliance with policies and standards concerning health, safety and environmental aspects of the operation of the Liquid Finishing Business and the integrity of the Liquid Finishing Business financial controls;

5. To Respondent Graco's lenders and auditors; and
 6. As otherwise permitted by the Commission staff.
- B. If the disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph III.A. of this Order, then Respondents shall limit such information (i) only to those employees or other Persons who require such information for the purposes permitted under Paragraph III.A., (ii) only to the extent such information is required, and (iii) only after such employees or other Persons have signed an agreement in writing to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph III. as to their employees and any other Person and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of their employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of the Commission-approved Acquirer or to reduce any obligations of the Respondents under such agreements.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondent Graco shall comply with all provisions of the Divestiture Agreement, and any breach by Respondent Graco of any term of such agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent Graco cannot fully comply with both terms, the Order Term shall determine Respondent Graco's obligations under this Order. Any failure by Respondent Graco to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- D. Respondent Graco shall not modify or amend any of the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R.

§ 2.41(f)(5). Notwithstanding any paragraph, section, or other provision of the Divestiture Agreement, any modification of the Divestiture Agreement without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent Graco has not divested the Liquid Finishing Business Assets and otherwise fully complied with the obligations as required by Paragraph II.A. of this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to divest the Liquid Finishing Business Assets and/or perform Respondent Graco’s other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate entered in this matter.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Graco shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Graco, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Graco has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Graco of the identity of any proposed Divestiture Trustee, Respondent Graco shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent Graco shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by this Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest, assign, grant, license, transfer, deliver or otherwise convey the relevant assets that are required by this Order to be divested, assigned, granted, licensed, transferred, delivered or otherwise conveyed.
2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested, assigned, granted, licensed, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Graco's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to a Commission-approved Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Graco from among those approved by the Commission; *provided further, however*, that Respondent Graco shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Graco, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Graco, such

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

6. Respondent Graco shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondent Graco and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraph II of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order, and the Hold Separate. Respondent Graco shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and with the Hold Separate, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent Graco completed such divestiture and the date the divestiture was accomplished.
- B. One (1) year after the date this Order becomes final, Respondents, and annually thereafter for the next five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may request, Respondent Graco shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order and any Divestiture Agreement.

VII.

IT IS FURTHER ORDERED that Respondent Graco shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Graco;
- B. Any proposed acquisition, merger or consolidation of Respondent Graco; or
- C. Any other change in Respondent Graco, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, upon written request and five (5) days' notice to the relevant Respondent, with respect to any matter contained in this Order, the relevant Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the relevant Respondent(s) and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the relevant Respondent(s) related to compliance with the Consent Agreement and/or the Orders, which copying services shall be provided by such Respondent(s) at the request of the authorized representative(s) of the Commission and at the expense of such Respondent(s); and
- B. Without restraint or interference from such Respondent(s), to interview officers, directors, or employees of such Respondent(s), who may have counsel present.

IX.

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

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: