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

COMMISSIONERS: **William E. Kovacic, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 J. Thomas Rosch

)

Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Hexion LLC is a limited liability company organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address c/o Hexion Specialty Chemicals, Inc., 180 East Broad Street, Columbus, Ohio 43215.
2. Respondent Huntsman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 500 Huntsman Way, Salt Lake City, Utah 84108.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. "Hexion" means Hexion LLC, its directors, officers, employees, agents, representatives, succe

2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means Respondent Hexion’s acquisition of fifty percent (50%) or more of the voting securities of Respondent Huntsman.
- G. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Specialty Epoxy Resin Product or MDI Product. The term “Agency” includes, without limitation, the United States Environmental Protection Agency.
- H. “Closing Date” means the date on which Respondent(s) (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Specialty Epoxy Resin Product Assets to an Acquirer pursuant to this Order.
- I. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Specialty Epoxy Resin Product(s); *provided however*, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of “Confidential Business Information” shall not apply to the following:
1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;
 2. information related to the Specialty Epoxy Resin Products that Respondent Huntsman can demonstrate it obtained without the assistance of Respondent Hexion prior to the Acquisition;
 3. information that is required by Law to be publicly disclosed;
 4. information that does not directly relate to the Specialty Epoxy Resin Product(s); or
 5. information relating to Respondents’ general business strategies or practices relating to research, Development, manufacture, marketing or sales of products that does not discuss with particularity the Specialty Epoxy Resin Product(s).
- J. “Contract Manufacture” means to manufacture a Contract Manufacture Product by the Respondents or a Designee to be supplied to an Acquirer.
- K. “Contract Manufacture Product(s)” means all inputs and components of the Specialty Epoxy

Resin Products, or any finished goods that are provided for resale as Specialty Epoxy Resin Products that, are not being manufactured at the Specialty Epoxy Resin Product Facilities on a regular basis as of the Closing Date, and that either are or were being manufactured by Hexion at any time on or after July 12, 2006.

- L. “Copyrights” means rights to all original works of authorship of any kind directly related to the Specialty Epoxy Resin Product(s) and any registrations and applications for registrations thereof, including, but not limited to, the following: all such rights with respect to all promotional, marketing and advertising materials, educational and training materials for the sales force, and sales forecasting models; copyrights in all process development data and reports relating to the research and Development of the Specialty Epoxy Resin Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Specialty Epoxy Resin Product(s), including copyrights in all raw data, statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to the Specialty Epoxy Resin Product(s); all copyrights in analytical and quality control data; and all correspondence with Agencies.
- M. “Designee” means any entity other than Respondents that will manufacture a Specialty Epoxy Resin Product for an Acquirer.
- N. “Development” means all data, information, documents, reports, analyses, studies, and other materials, including all process development data and reports, relating to the research and Development of the Specialty Epoxy Resin Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Specialty Epoxy Resin Product(s), including all raw data, statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Specialty Epoxy Resin Product(s); all analytical and quality control data; and all correspondence with Agencies.

relevant provisions of this Order.

- Q. “Domain Name” means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any entity or authority that issues and maintains the domain name registration. The term “Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Trademarks required to be divested and shall not include those domain names listed in Appendix A.
- R. “Effective D(c)TjR D names authority

- T. "Expiration Date" means the earliest of the following days:
1. the day on which Respondent Hexion withdraws its tender offer for the voting securities of Respondent Huntsman;
 2. the day on which Respondent Hexion's tender offer for the voting securities of Respondent Huntsman expires without extension or amendment by Respondent Hexion;
 3. the day on which a Third Party acquires fifty (50) percent or more of the voting securities of Respondent Huntsman; or
 4. the day six (6) months after the day on which this Order becomes final.
- U. "Formaldehyde and Derivatives Business Unit" or "FDBU" means the division within Respondent Hexion focused on the production and sale of formaldehyde and its derivatives, including Hexamine, Methaform and various other specialty chemicals produced when formaldehyde is reacted with various substances.
- V. "Formulated System" means the exact combination and proportion of epoxy resins, curing agents, reactive diluents and other components that achieves a particular set of application and end-use characteristics in a final product.
- W. "Government Entity" means any Federal, state, local or non-U.S. government, ooU.00 0.0000 TD(oo)Tj14.

Federal Republic of Germany. The term “InfraTec” shall include any Person in which Respondent Hexion holds an Ownership Interest and that: (1) holds or controls assets related to and located at the facility located at Varziner Strasse 49, 47138, at Duisburg, Federal Republic of Germany, such facility is identified in under the term “Specialty Epoxy Resin Product Facilities” in this Order, and (2) provides site services to that facility.

- AA. “InfraTec Assets” means all of Respondent Hexion’s Ownership Interest in InfraTec. The term “InfraTec Assets” shall include, without limitation, all of Respondent Hexion’s Ownership Interest in InfraTec that Respondent Hexion held as of August 2, 2007, *i.e.*, that Ownership Interest representing seventy (70) percent of the total ownership of InfraTec.
- BB. “Interim Monitor” means any monitor appointed pursuant to Paragraph V of this Order or Paragraph IV of the related Order to Maintain Assets.
- CC. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- DD. “Manufacturing Employees” means all salaried employees of Respondent Hexion who have directly participated in the planning, design, implementation or operational management of the Manufacturing Technology of the Specialty Epoxy Resin Products (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the three (3) year period immediately prior to the Closing Date.
- EE. “Manufacturing Equipment” means all fixtures, equipment (including, without limitation technical equipment and computers), and machinery that is or has been used at the Specialty Epoxy Resin Product Facilities at any time since April 29, 2005, in the research, Development, or manufacture of a Specialty Epoxy Resin Product and that is suitable for use in the research, Development, or manufacture of a Specialty Epoxy Resin Product as of the Effective Date.
- FF. “Manufacturing Technology” means:
1. all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the Specialty Epoxy Resin Product(s), including, but not limited to, the following: all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical safety, quality assurance, quality control, research records, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with compliance with Agency regulations, and labeling and all other information related to the manufacturing process, and supplier lists; tabulations, chemical descriptions and specifications of, all raw materials inputs, components, and ingredients related to the Specialty Epoxy Resin Products; and

2. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture the Specialty Epoxy Resin Product(s).

GG. "Marketing and Business Development Employees" means all management level employees of Respondent Hexion who directly have participated (irrespective of the portion of working time involved) in the marketing, contracting, or promotion of the Product(s) within the three (3) year period immediately prior to the Closing Date. These employees include, without limitation, all management level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, business development, epoxy resin and related specialty markets, but excluding administrative assistants.

HH. "Marketing Materials" means all marketing materials used specifically in the marketing or sale of a Specialty Epoxy Resin Product(s) prior to and as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, sales call reports, vendor

the Respondent(s) to hold any voting or nonvoting stock, share capital, equity, assets or other interests or beneficial ownership in a specified entity or specified asset(s).

OO. "Patents" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any product of or owned by Respondents as of the Closing Date (*except* where this Order specifies a different time).

PP. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

QQ. "Persons" means all persons, including individuals, partnerships, joint ventures, firms, corporations, associations, trusts, unincorporated organizations, joint ventures, or other business or Government Entities, and any subsidiaries, divisions, groups or affiliates thereof.

7. pursuant to which a Third Party provides the Manufacturing Technology related to the Specialty Epoxy Resin Product(s) to Respondent Hexion;
8. pursuant to which a Third Party is licensed by Respondent Hexion to use the Manufacturing Technology;
9. constituting confidentiality agreements involving the Specialty Epoxy Resin Product(s);
10. involving any royalty, licensing, or similar arrangement involving the Specialty Epoxy Resin Product(s);
11. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Specialty Epoxy Resin Products to Respondent Hexion including, but not limited to, consultation arrangements;
12. pursuant to which any Third Party collaborates with Respondent Hexion in the performance of research, Development, marketing, distribution or selling of the Specialty Epoxy Resin Product(s) or the Specialty Epoxy Resin Product(s) business;
13. pursuant to which any entity that is, in whole or in part, owned by a Third Party, provides management services related to infrastructure expansion within, utility services within, transportation into or out of, or logistical support services within, any of the Specialty Epoxy Resin Product Facilities; and/or

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

SS. “Product Intellectual Property” means all of the following related to each Specialty Epoxy Resin Product (other than Product Licensed Intellectual Property):

1. Patents;
2. Copyrights;
3. Software;
4. Trademarks;
5. Trade Dress;
6. trade secrets, know-how, utility models, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process and in final Specialty Epoxy Resin Products, protocols, methods and

other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, other than Product Licensed Intellectual Property;

7. rights to obtain and file for patents and copyrights and registrations thereof; and
8. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, “Product Intellectual Property” does not include the corporate names or corporate trade dress of “Hexion” or “Huntsman”, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondents or the related logos thereof;

provided further, however, Product Intellectual Property expressly includes all customer specific product formulations for Specialty Epoxy Resin Products, licenses from customers related to the manufacture of products for that specific customer, and all proprietary and/or trade secret information related to a particular customer.

TT. “Product Licensed Intellectual Property” means the following:

1. Patents that are related to a Specialty Epoxy Resin Product that Respondent Hexion can demonstrate have been routinely used, prior to the Effective Date, by Respondent Hexion for a Retained Product(s) that:
 - a. has been marketed or sold on an extensive basis by Respondent Hexion within the two-year period immediately prec

provided however, that, in cases where the aggregate retail sales in dollars of the Retained Product(s) within the two-year period immediately preceding the Acquisition collectively are less than the aggregate retail sales in dollars within the same period of the Specialty Epoxy Resin Product(s) collectively, the above-described intellectual property shall be considered, at the Acquirer's option, to be Product Intellectual Property and, thereby, subject to assignment to the Acquirer; *provided further, however*, that in such cases, Respondents may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products and such a license to Respondents may be perpetual, fully paid-up and royalty-free license(s) with rights to sublicense;

provided further, however, Product Licensed Intellectual Property expressly *excludes* all customer specific product formulations for Specialty Epoxy Resin Products, licenses from customers related to the manufacture of products for that specific customer, and all proprietary and/or trade secret information related to a particular customer as such property is exclusively Product Intellectual Property.

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

VV. "Remedial Agreement(s)" means the following:

4. any agreement between Respondents and a Third Party to effect the assignment of assets or rights of Respondents related to a Specialty Epoxy Resin Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

WW. “Research and Development Employees” means all salaried employees of Respondents who directly have participated in the research, Development, or regulatory approval process, or clinical studies of the Specialty Epoxy Resin Products (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the three (3) year period immediately prior to the Closing Date.

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

1. inventory of research and development records, research history, research efforts, research notebooks, research reports, technical service reports, testing methods, invention disclosures, and know how related to the Specialty Epoxy Resin Products;
2. all correspondence to Respondent Hexion from Agencies and from Respondent Hexion to the Agencies relating to Product Approval(s) submitted by, on behalf of, or acquired by, Respondent Hexion related to the Specialty Epoxy Resin Products;
3. annual and periodic reports related to the above-described Product Approval(s), including any safety update reports;
4. Agency-approved product labeling related to the Specialty Epoxy Resin Products;
5. currently used product usage instructions, including, without limitation, package inserts related to the Specialty Epoxy Resin Products;
6. Agency-approved circulars and information related to the Specialty Epoxy Resin Products;
7. reports relating to the protection of human safety and health related to the manufacture or use of the Specialty Epoxy Resin Products;
8. reports relating to the protection of the environment related to the manufacture or use of the Specialty Epoxy Resin Products;
9. summary of product complaints from customers related to the Specialty Epoxy Resin Products; and
10. product recall reports filed with any Agency related to the Specialty Epoxy Resin

Products.

- YY. “Retained Product” means any product(s) manufactured by Respondent Hexion prior to the Effective Date at any site owned or operated by Respondent Hexion prior to the Effective Date other than the Specialty Epoxy Resin Product Facilities.
- ZZ. “Sales Employees” means all employees of Respondent Hexion who directly have participated (irrespective of the portion of working time involved) in the marketing or promotion of the Specialty Epoxy Resin Product(s) directly to customers within the three (3) year period immediately prior to the Closing Date. This includes employees trained to perform such sales activity for a Specialty Epoxy Resin Product within the three (3) year period immediately prior to the Closing Date.
- AAA. “Software” means computer programs related to the Specialty Epoxy Resin Product(s), including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Website; *provided, however*, that “Software” does not include software that is readily purchasable or licensable from sources other than the Respondents and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- BBB. “Specialty Epoxy Resin Products” means, all non-commodity, value-added, epoxy resin products, including, without limitation, epoxy novolacs, glycidyl amines, cycloaliphatic, mono and multifunctional reactive diluents, curing agents, specialty blends, solution

4. all Manufacturing Technology related to the Specialty Epoxy Resin Product(s);
5. all Marketing Materials related to the Specialty Epoxy Resin Product(s);
6. all Website(s) related to the Specialty Epoxy Resin Product(s);
7. all Product Development Reports related to the Specialty Epoxy Resin Product(s);
8. at the Acquirer's option, all Product Assumed Contracts related to the Specialty Epoxy Resin Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
9. a list of all customers and/or targeted customers for the Specialty Epoxy Resin Product(s) and the net sales (in either units or dollars) of the Specialty Epoxy Resin Products to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Specialty Epoxy Resin Products on behalf of the High Volume Account and his or her business contact information;
10. at the Acquirer's option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date, including, but not limited to, raw materials, supplies, operating materials, packaging materials, work-in-process, finished goods and merchandise, and other items of inventory related to the Specialty Epoxy Resin Product(s);
11. copies of all unfilled customer purchase orders for the Specialty Epoxy Resin Product(s) as of the Closing Date, to be provided to the Acquirer not later than two (2) days after the Closing Date;
12. at the Acquirer's option, subject to any rights of the customer, all unfilled customer purchase orders for the Specialty Epoxy Resin Products;
13. the Specialty Epoxy Resin Product Facilities;
14. the InfraTec Assets;
15. the Hexion Stuttgart Assets; and

16. all of the Respondents' books and records, customer files, customer lists and records, vendor files, vendor lists and records, cost files and records, credit information, distribution records, business records and plans, studies, surveys, and files related to the foregoing or to the Specialty Epoxy Resin Product(s);

provided however, that in cases in which documents or other materials included in the relevant assets to be divested contain information: (1) that relates both to the Specialty Epoxy Resin Product(s) and to other products or businesses of the Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Specialty Epoxy Resin Product(s); or (2) 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 Acquirer, the relevant party shall provide such Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Retained Product(s).

DDD. "Specialty Epoxy Resin Product Core Employees" means the Marketing and Business Development Employees, Manufacturing Employees, Research and Development Employees, and the Sales Employees.

EEE. "Specialty Epoxy Resin Product Divestiture Agreements" means the following agreements:

1. "Master Agreement" by and among Hexion Specialty Chemicals, Inc., and Hexion Specialty Chemicals GmbH, as sellers, CHS Resins, A.S., as buyer, and Spolek Pro Chemickou A Hutni Výrobu, Akciová Společnost, dated as of September 19, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto;
2. "Raw Materials Supply Agreement" by and among Spolek Pro Chemickou A Hutni Výrobu, Akciová Společnost and Hexion Specialty Chemicals, Inc. dated as of September 19, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto; and
3. "Transitional Services Agreement" by and among Hexion Specialty Chemicals, Inc, and Hexion Specialty Chemicals GmbH, and CH.S. Resins, A.S., as buyer, dated as of September 19, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto;

related to the Specialty Epoxy Resin Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Specialty Epoxy Resin Product Divestiture Agreements are attached to this Order and contained in non-public Appendix C.

FFF. “Specialty Epoxy Resin Product Facilities” means all assets comprising each of the facilities of Respondent Hexion identified below, including, without limitation, all of the following: real estate; buildings; warehouses; storage tanks; structures; Product Manufacturing Equipment; other equipment; machinery; tools; spare parts; personal property; furniture; fixtures; supplies associated with each particular facility; and other tangible property, owned, leased, or operated on or behalf of Hexion and located at the locations identified below,

1. located at Varziner Strasse 49, 47138, Duisburg, Federal Republic of Germany (but shall *exclude* only that portion of the facility primarily related to the manufacture of formaldehyde or phenolic resin, such exclusion only to apply to the extent that such portion of the facility is not or has not been used by Respondent Hexion in the manufacture of Specialty Epoxy Resin Products);
2. 16122 River Road, West Site, Norco, Louisiana 70079 (but shall *exclude* only that portion of the facility used by Respondent Hexion to the manufacture epichlorohydrin, allyl chloride, calcium chloride and other chlorine based chemicals);
3. 8600 West 71st Street, Bedford Park, Illinois 60501; and
4. 12650 Directors Drive, Suite 100, Houston, Texas 77477.

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

HHH. “Spolek” means Spolek Pro Chemickou A Hutni Výrobu, Akciova Společnost, a corporation organized, existing, and doing business under and by virtue of the laws of the Czech Republic, with its offices and principal place of business located at Revoluční 1930/86, 400 32 Ústí nad Labem, Czech Republic. The term “Spolek” shall include CH.S. Resins, A.S., a subsidiary of Spolek Pro Chemickou A Hutni Výrobu, Akciova Společnost.

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

provided, however, that if Respondents have divested the Specialty Epoxy Resin Product Assets to Spolek prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Spolek is not an acceptable purchaser of the Specialty Epoxy Resin Product Assets then Respondents shall immediately rescind the transaction with Spolek, in whole or in part, as directed by the Commission, and shall divest the Specialty Epoxy Resin Product Assets, as is relevant, within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer(s) and only in a manner that receives the prior approval of the Commission;

provided further, that if Respondents have divested the Specialty Epoxy Resin Product Assets to Spolek prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Specialty Epoxy Resin Product Assets to Spolek (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Effective Date and as a condition precedent to the consummation of the Acquisition, Respondents shall secure all consents and waivers from all Third Parties (including, without limitation, such consents and waivers related to the InfraTec Assets) that are necessary to permit Respondents to divest the Specialty Epoxy Resin Product Assets required to be divested pursuant to this Order to the Acquirer, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Specialty Epoxy Resin Products;

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

- C. Respondents shall transfer the Manufacturing Technology to the Acquirer in an organized, comprehensive, complete, useful, timely, and meaningful manner. Respondents shall, *inter alia*:
1. designate employees of Respondents knowledgeable with respect to such Manufacturing Technology to a committee for the purposes of communicating directly with such Acquirer and the Interim Monitor (if any has been appointed) for the purposes of effecting such transfer;
 2. prepare technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Specialty Epoxy Resin Products, such protocols and acceptance criteria to be subject to the approval of the Acquirer;

3. prepare and implement a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all Manufacturing Technology to the Acquirer; and
4. upon reasonable written notice and request from the Acquirer to Respondents, provide in a timely manner, at no greater than Direct Cost, assistance and advice to enable the Acquirer (or the Designee of the Acquirer) to:
 - a. manufacture the Specialty Epoxy Resin Products in the same quality achieved by the Respondents and in commercial quantities;
 - b. obtain any Product Approvals necessary for the Acquirer to manufacture, sell, market or distribute the Specialty Epoxy Resin Products; and
 - c. receive, integrate, and use such Manufacturing Technology.

D. Respondents shall:

1. upon reasonable written notice and request from the Acquirer to Respondents, Respondents shall Contract Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products at Respondents' Supply Cost, for a period of time sufficient to allow the Acquirer (or the Designee of the Acquirer) to:
 - a. obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, the Contract Manufacture Products independently of Respondents; and
 - b. to secure sources of supply of the ingredients, inputs and components for the Contract Manufacture Products from entities other than Respondents;
2. make representations and warranties to the Acquirer that the Contract Manufacture Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meet the specifications of the relevant customers;
3. for the Contract Manufacture Products supplied by Respondents, Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the product(s) supplied to the Acquirer pursuant to a Remedial Agreement by Respondents to meet customer specifications. This obligation may be made contingent upon the Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement shall be consistent with the obligations assumed by Respondents under this Order; *provided, however*, that Respondents may reserve the right to control the defense of any such

litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondents' responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further,*

E. Respondents shall:

1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information;
2. deliver such Confidential Business Information as follows:
 - a. in good fa

- F. Respondents shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Manufacturing Technology, Product Intellectual Property, or Product Licensed Intellectual Property related to the relevant Specialty Epoxy Resin Product(s) from the Third Party. Such agreements include, but are not limited to, agree

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

4. until the

employee, and any other employee retained by Respondents and designated by the Interim Monitor (if applicable) sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Specialty Epoxy Resin Products as strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

- J. Not later than thirty (30) days after the Effective Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Specialty Epoxy Resin Products by Respondents' personnel to all of Respondents' employees who:
1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of each of the relevant Specialty Epoxy Resin Products;
 2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that are used or suitable for use in commerce for the same or similar purposes as the relevant Specialty Epoxy Resin Products; and/or
 3. may have Confidential Business Information related to the Specialty Epoxy Resin Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the relevant Closing Date. Respondents shall provide a copy of such notification to the Acquirer. Respondents shall maintain complete records of all such agreements at Respondents headquarters a ~~de~~

without disruption, delay, or impairment of the regulatory approval processes related to the business associated with each Specialty Epoxy Resin Product;

- e. ensure the completeness of the transfer of the Manufacturing Technology; and
2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the businesses associated with each Specialty Epoxy Resin Product.
- L. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer(s) or the Specialty Epoxy Resin Product Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Specialty Epoxy Resin Product(s) under the following:
1. any Patent owned or licensed by Respondents as of the Effective Date that claims a method of making, using, or administering, or a composition of matter, relating to a Specialty Epoxy Resin Product, or that claims a de

potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Specialty Epoxy Resin Products; or (2) the use within, import into, export from, or the supply, distribution, or sale within the United States.

- N. Within eighteen (18) months of the Closing Date, Respondents shall either license or assign any and all intellectual property to the Acquirer that constitutes either Product Intellectual Property or Product Licensed Intellectual Property that the Acquirer, with the concurrence of the Interim Monitor, identifies as being necessary to the conduct of the business associated with the Specialty Epoxy Resin Product (as such business had been conducted by Respondent Hexion prior to the Effective Date) and that was not listed and/or included in the intellectual property that was licensed or assigned to the Acquirer pursuant to the Remedial Agreements previously submitted by Respondents to the Commission.
- O. For any patent infringement suit in which either Respondent is alleged to have infringed a Patent of a Third Party prior to the Closing Date or for such suit as such Respondent has prepared or is preparing as of the Closing Date to defend against such infringement claim(s), and where such a suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the resear

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent Hexion does not acquire more than fifty (50) percent of the voting securities of Respondent Huntsman on or before the Expiration Date, then Respondent Hexion shall divest, absolutely and in good faith, all of its Ownership Interest in Respondent Huntsman on the New York Stock Exchange, or such other securities exchange as the voting securities

pending. With respect to any such discovery, Respondent Hexion shall enter into a protective order to prevent any information from being used for any purpose other than providing legal representation or evidence as to the particular dispute and to prevent any information from being disclosed to any person(s) not necessary to the resolution of such dispute; or

7. take any action or omit to take any action in a manner that would be incompatible with the status of Respondent Hexion as a passive investor in Respondent Huntsman.

The requirements of this Paragraph IV.B. shall continue and remain in effect so long as Respondent Hexion retains any Ownership Interest in Respondent Huntsman.

- C. The purpose of the requirements of Paragraph IV is to ensure that, if the Acquisition does not occur, Respondent Hexion will not seek to exert, or exert influence upon, the business operations of Respondent Huntsman.

V.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Hexion, which consent shall not be unreasonably withheld. If Respondent Hexion has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Hexion of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 1. the Interim Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and asset maintenance obligations and related

requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission;

2. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and

3. the Interim Monitor shall serve until, the latter of:

- a. the date of completion by Respondents of the divestiture of all Specialty Epoxy Resin Product Assets and the transfer of the Manufacturing Technology, Product Intellectual Property, and Product Licensed Intellectual Property in a manner that fully satisfies the requirements of this Order; and
- b. with respect to each Specialty Epoxy Resin Product, the date the Acquirer (or the Designee(s) of such Acquirer) has obtained all Product Approvals necessary to manufacture, market, import, export, and sell such Specialty Epoxy Resin Product and able to manufacture such Specialty Epoxy Resin Product in commercial quantities independently of Respondents;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the date on which this Order becomes final;

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order; *provided, however*, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph VIII.C., and every one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:

1. obtaining all of the relevant Product Approvals necessary to manufacture in commercial quantities, the Specialty Epoxy Resin Products independently of Respondents and;
2. to secure sources of supply of the ingredients, inputs and components for the Specialty Epoxy Resin Products from entities other than Respondents.

I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

J. The Commission may, among other things, require

- M. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. 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 Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Hexion, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Hexion 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 Hexion of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the pri00000 0.0.00 0.00 0.00 rgBT94.4a4BT94.4400 294.84

otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed;

2. the Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times;
3. subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
4. the Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring 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 Respondents from among those approved by the Commission; and, *provided further, however*, that Respondents shall select such entity requirec

Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation of

VII.

IT IS F

1. Paragraphs II.A , II.B., II.C., II.E., II.G., II.J.; and
2. and all of their responsibilities to render transitional services to the Acquirer as provided by this Order and the Remedial Agreement(s);

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

- D. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents 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.

IX.

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

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger or consolidation of Respondents; or
- C. any other change in Respondents, 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.

X.

IT IS FURTHER ORDERED that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

- C. Respondents shall include in each Remedial Agreement related to each of the Specialty Epoxy Resin Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondents' obligations to the Acquirer(s) pursuant to this Order.
- D. Respondents shall also include in each Remedial Agreement a representation from the Acquirer that such Acquirer shall use commercially reasonable efforts to secure the Product Approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Specialty Epoxy Resin Product and to have any such manufacture to be independent of Respondents, all as soon as reasonably practicable.
- E. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent ma

**APPENDIX A
EXCLUDED DOMAIN NAMES**

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

**APPENDIX B
SPECIALTY EPOXY RESIN PRODUCTS**

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

**NON-PUBLIC APPENDIX C
SPECIALTY EPOXY RESIN PRODUCT
DIVESTITURE AGREEMENTS**

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