

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. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent 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” or “Respondent” means Graco Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Graco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Graco includes, but is not limited to, Graco Minnesota Inc.
- B. “Commission” means the Federal Trade Commission.
- C. “PMC” means PMC Global, Inc., 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 12243 Branford Street, Sun Valley, California 91352; and the joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PMC Global, Inc., including, but not limited to, PMC Inc., Moehs Iberica S.L., and Gama Machinery USA, Inc. d/b/a Polyurethane Machinery Corporation or Polymac.
- D. “Antitrust Compliance Program” means a program (including, but not limited to, an effective in-person or web-based antitrust training program) to ensure compliance with this Order and with the Antitrust Laws, as required by Paragraph IV of this Order.
- E. “Antitrust Laws” means the Federal Trade

2. That is other than in accordance with the terms and conditions Generally Available and applied to similarly-situated Distributors.

H. "Distribute" or "Distribution" means the

2. That are classified or designated the same by Respondent; or,
3. That have characteristics relevant to assessing Distributors' potential future unit sales of, or future revenue generated from, Respondent's FSE Products that fall within an equivalent category or range of values.

Q. "Graco Competitors" means any Person (oth

- X. “Patent(s)” 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 Effective Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, restorations, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto.
- Y. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- Z. “PMC Releasees” means PMC, Distributors of PMC’s FSE Products, and FSE Customers that purchase, license, or lease PMC’s FSE Products.
- AA. “Price Term” means the wholesale price, resale price, purchase price, rebate, discount, price list, credit term, or any other term defining, setting forth, or relating to the money or compensation paid by or received by a Distributor in connection with the purchase, lease, consignment, or other means or method of or for obtaining FSE Products from Respondent.
- BB. “Product Support” means any service of FSE Products, assistance to FSE Products Distributors or FSE Customers, training provided to FSE Products Distributors or FSE Customers on the use or maintenance of FSE

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 Graco/PMC Agreements, any modification of the Graco/PMC Agreements 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.

D. Respondent shall not:

1. join, or file, prosecute or maintain any suit, in law or equity, against any PMC Releasee alleging that the research, development, manufacture, use, import, export, distribution, sale or lease or offer for sale of PMC's FSE Products in the Field on or prior to the Effective Date infringe any Intellectual Property owned or licensed by Respondent as of the Effective Date;
2. assign, transfer or license any Intellectual Property in the Field owned or licensed by Respondent as of the Effective Date unless the assignee, transferee, or licensee agrees in writing to provide a covenant not to sue the PMC Releasees that is at least as protective as the prohibitions in Paragraph II.D.1. above, as a condition of such assignment, transfer or license; and
3. actively induce, assist or participate in any suit, legal or other action or proceeding against any one or more of the PMC Releasees alleging that the research, development, manufacture, use, import, export, distribution, sale or lease or offer for sale of PMC's FSE Products in the Field on or prior to the Effective Date infringe any third party rights licensed to Respondent as of the Effective Date as to which Respondent does not control the right of prosecution of any suit, legal or other action.

III.

IT IS FURTHER ORDERED that Respondent, acting directly or indirectly, or through any corporate or other device, in connection with the actual or potential research, development, manufacturing, marketing, lease, or sale of FSE Products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from the following acts and practices:

- A. Respondent shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting thereto, any condition, policy, practice, agreement, or understanding that has the purpose or effect of achieving Exclusivity with a Distributor, including, but not limited to:
1. Conditioning availability or terms of th

3. Providing or offering to provide Favorable Price Terms, Delivery Services, Product Support, or other terms and conditions to a Distributor because the Distributor agrees to Exclusivity;
4. Providing or offering to provide Less Favorable Price Terms, Delivery Services, Product Support, or other terms and conditions to a Distributor because the Distributor fails or refuses to agree to Exclusivity;
5. Urging, inducing, coercing, threatening, or pressuring, or attempting thereto, a Distributor to refuse to research, develop, manufacture, market, lease, sell, or service FSE Products manufactured by a Graco Competitor; and,
6. Requiring Distributors to make annual purchases, or maintain inventory levels, of Graco's FSE Products in an amount greater than is necessary based on market conditions or other objective factors (such as sales forecasts or historic purchasing or demand levels) in order for Distributors to sell and service FSE Products to and for FSE Customers on a commercially reasonable and timely basis.

Provided, however, that:

- a. Respondent may offer to provide or provide to Distributors special (one-time) purchase terms, discounts, marketing assistance, Price Terms, Delivery Services, or Product Support.
- b. Respondent may enter into written agreements or understandings with a Distributor providing for Exclusivity with respect to both Respondent and a Distributor regarding the research, development, manufacturing, marketing, sale or lease of FSE Products developed jointly by Respondent and the Distributor, the development of which resulted from a contribution of significant capital, Intellectual Property rights, labor, or other things of value by both Respondent and the Distributor.
- c. Respondent may require its Distributors to make annual purchases of Graco's FSE Products in stated amounts and to maintain inventory of Graco's FSE Products at stated levels in order to qualify for various Price Terms.

Provided further, however, that such purchase requirements for such discounts for calendar year 2013, or such part thereof that may be covered by this Order, for a Distributor in the "Advanced" category shall be no more than \$450,000 of Respondent's FSE Products, and for a Distributor in the "Specialized" category shall be no more than \$100,000 of Respondent's FSE Products, which amounts will include in either case one demonstration model of Respondent's FSE Products. Such inventory requirements for discounts for calendar year 2013, or such part thereof that may be covered by this Order, for a Distributor in the "Advanced" category shall be no more than \$45,000 of Respondent's FSE Products, and for a Distributor in the "Specialized" category shall be no more than

\$10,000 of Respondent's FSE Products, excluding in either case the value on one demonstration model of Respondent's FSE Products. Such purchase and inventory requirements for such discounts in calendar years 2014, and thereafter, shall be determined by increasing the purchase or inventory amounts actually required in accordance with this Order in the immediately preceding calendar year by not more than 5%.

- d. It shall not by itself constitute prohibited Exclusivity if a Distributor, acting unilaterally and without an agreement with or invitation from Respondent, chooses to carry the FSE Products of Respondent on an exclusive basis, or to give preference to the FSE Products of Respondent.

B. Respondent shall not discriminate against, penalize, or otherwise retaliate against any FSE Products because such Distributor researches, develops, markets, leases, sells, or otherwise deals in (or negotiates, intends to, or proposes or announces an intention to research, develop, market, lease, sell, or otherwise deal in) FSE Products manufactured by a Graco Competitor, or otherwise refuses to enter into or continue any condition, agreement, contract, understanding or other requirement of Exclusivity. Examples of prohibited retaliation include, but are not limited to:

1. Terminating, suspending, reducing, or delaying, or threatening or proposing thereto, purchases or sales of FSE Products;
2. Auditing or reviewing the books and records of a Distributor to determine the revenue from or unit sales of purchases, sales, leases, or other Distribution of FSE Products manufactured by Graco Competitors;
3. Withdrawing or modifying, or threatening or proposing thereto, Favorable Delivery Services, Price Terms, Product Support or other terms and conditions;
4. Providing, or threatening or proposing thereto, Less Favorable Delivery Services, Price Terms, Product Support, or other terms and conditions;
5. Withholding from a Distributor FSE Products newly developed or introduced by Respondent;
6. Dealing with Distributors in a Discriminatory Manner;
7. Withholding or conditioning in a Discriminatory Manner Respondent's consent to permit a Distributor: (a) to resell FSE Products to Persons who research, develop, market, lease, sell or otherwise deal in FSE Products manufactured by a Graco Competitor; or, (b) to sell FSE Products outside certain geographic areas or territories (including, but not limited to, areas designated as Primary Trading Areas in Respondent's contracts) to Persons who research, develop, market, lease, sell or otherwise deal in FSE Products manufactured by a Graco Competitor;

Provided, however, it shall not by itself constitute prohibited retaliation if Respondent, not acting in a Discriminatory Manner:

- a. Changes the status of a Distributor because the Distributor fails to meet written objective standards including, but not limited to, sales levels, completion of training or customer service certification, or the like;
- b. Requires Distributors to receive specialized technical training or satisfy other qualification requirements to receive one or more of Respondent's FSE Products with respect to which specialize training or other qualification requirements reasonably are required;
- c. Imposes commercially reasonable and objective requirements (including, but not limited to, payment history and creditworthiness) for credit and payment arrangements;
- d. Prohibits Distributors from reselling one or more of Respondent's FSE Products to other Distributors of FSE Products where the relevant FSE Products reasonably require specialized training or other qualification requirements that the purchasing Distributor does not have;
- e. Establishes or seeks to establish new Distributors to meet actual or potential customer demand for Respondent's FSE Products; and,
- f. Offers promotional programs or other Product Support that are Generally Available to similar Distributors who meet objective written qualifications.

C. Within thirty (30) days after the Order Date, Respondent shall waive, without penalty to or financial cost from the Distributor, and shall no longer enforce any condition, requirement, policy, agreement, contract, or understanding with any Distributor that is inconsistent with the terms of this Order. Examples of provisions that shall be waived and not enforced include, but are not limited to:

1. Any provision in any agreement between Graco and a Distributor that calls for the Distributor to inform Graco, in whatever manner, of the non-Graco FSE Products that are being marketed or sold by the Distributor;
2. Any provision in any agreement between Graco and a Distributor that requires a Distributor to obtain consent from Graco in advance of any sale of FSE Products by that Distributor to any other Person.

Provided, however, Respondent shall not be prohibited from requiring a Distributor to provide reasonable notice to Respondent prior to such Distributor making an initial sale of FSE Products to any FSE Customer that Distributor has reason to believe will make a regular practice of reselling such FSE Products. Such notice shall only include the name and address of the FSE Customer. In addition, Respondent shall not be prohibited from requiring a Distributor to provide to Respondent, no more than once in any calendar year, the name and address of all its FSE Customers that such Distributor has reason to believe make a regular practice of reselling FSE Products as of the time of such notice. If after diligent inquiry, Respondent finds that any such FSE Customer does not meet written objective standards for reselling its FSE Products, it may require such Distributor to stop selling FSE Products to that FSE Customer for resale; so long as such directive is not otherwise in violation of the Order. Respondent's directive to its Distributor shall include a statement of the objective standard(s) that such FSE Customer fails to satisfy. A copy of Respondent's directive shall be provided to the FSE Customer in question, and be included in Respondent's annual compliance report to the Commission.

3. Any inventory or annual purchase requirements that fail to comply with Paragraph III.A.6.
- D. Within thirty (30) days after the Order Date, Graco shall deliver written confirmation of all waivers required by Paragraph III.C. of this Order to all

6. A description in reasonable detail of the FSE Products sold and services offered by the Person in which or from whom Respondent proposes to acquire equity or assets, as well as the geographic areas in which such products and services are sold and offered for sale.

VI.

IT IS FURTHER ORDERED that

- A. Within sixty (60) days after the Order Date

VIII.

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 Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent 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 Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and,
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on April 17, 2023.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: April 17, 2013

**Non-Public Appendix A
Graco/PMC Settlement Agreement**

[Redacted From the Public Record Vers

**Non-Public Appendix B
Graco/PMC License Agreement**

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

Appendix C

[Graco letterhead]

To our customers and business partners:

The Federal Trade Commission (FTC) has been investigating whether two Graco

U.S. Patent & Trademark Office

in violation with 15 U.S.C. § 56

U.S. Patent & Trademark Office

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U.S. Patent & Trademark Office

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Appendix D

