

Complaint

IN THE MATTER OF

**MAGNESIUM ELEKTRON NORTH AMERICA,
INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket No. C-4381; File No. 091 0094**Complaint, December 21, 2012 – Decision, December 21, 2012*

This consent order addresses the \$15 million acquisition by Magnesium Elektron North America, Inc. of certain assets of Revere Graphics Worldwide, Inc. The complaint alleges that the acquisition violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by significantly reducing competition in the market for magnesium plates for photoengraving. The consent order requires Magnesium Elektron to sell assets used in the development, manufacture, and sale of magnesium plates for photoengraving to Universal Engraving, Inc.

Participants

For the *Commission*: Sebastian Lorigo and David Von Nirschl.

For the *Respondent*: Peter Guryan, Fried, Frank, Harris, Shriver & Jacobsen LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (the “Commission”), having reason to believe that respondent Magnesium Elektron North America, Inc. (“MEL”), acquired Revere Graphics Worldwide, Inc. (“Revere”), in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

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I. RESPONDENT MAGNESIUM ELEKTRON

1. MEL is a division of the Luxfer Group, which is an international group of businesses specializing in the design, manufacture, and supply of high performance materials. MEL is a company organized and existing under the laws of the State of Delaware, with its principal place of business at 1001 College Street, Madison, Illinois, 62060. MEL specializes in the development, manufacture, and supply of magnesium products, including magnesium plates for photoengraving.

II. REVERE GRAPHICS WORLDWIDE

2. Prior to its acquisition by Respondent, Revere was engaged in the manufacture and sale of metal plates used for photoengraving, with its principal place of business located at 5 Boundary Street, Plymouth, Massachusetts, 02366. Revere rolled and coated zinc, copper, brass, and magnesium plates which were used by customers for photoengraving.

III. JURISDICTION

3. MEL is, and at all times relevant herein, has been engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. THE ACQUISITION

4. In September 2007, MEL acquired the worldwide assets of Revere for approximately \$15 million. At the time of the acquisition, both MEL and Revere manufactured magnesium plates for photoengraving. While Revere also manufactured and sold zinc, copper, and brass plates for photoengraving, prior to its acquisition of Revere, MEL only sold magnesium plates for photoengraving applications.

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V. THE RELEVANT PRODUCT MARKET

5. For purposes of this Complaint, the relevant line of commerce within which to analyze the effects of the transaction is the market for magnesium plates for photoengraving.

VI. THE RELEVANT GEOGRAPHIC MARKET

6. For purposes of this Complaint, the relevant geographic market within which to analyze the effects of the transaction is the world.

VII. MARKET STRUCTURE

7. The market for photoengraving magnesium plates is highly concentrated. Prior to the transaction, MEL and Revere were the only suppliers of magnesium plates for photoengraving in the world, and thus, the acquisition resulted in a merger-to-monopoly in the relevant market.

VIII. CONDITIONS OF ENTRY

8. Entry into the relevant market has not been, and would not be, timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Magnesium alloy must be rolled to precise specifications in order to be used for photoengraving applications, and thus, substantial expertise is necessary for entry into this market. Further, the relevant market is small, which deters potential entrants from investing in the skill and expertise required for entry.

IX. EFFECTS OF THE ACQUISITION

9. The effects of the acquisition have been a substantial lessening of competition, and the creation of a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the acquisition has:

- a. Eliminated actual, direct, and substantial competition between MEL and Revere in the relevant market;

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- b. Substantially increased the level of concentration in the relevant market; and
- c. Increased MEL's ability to exercise market power unilaterally in the relevant market.

X. VIOLATIONS CHARGED

10. The allegations contained in Paragraphs 1 through 9 above are hereby incorporated by reference as though fully set forth here.

11. The agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The transaction described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of December, 2012, issues its Complaint against said Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Magnesium Elektron North America, Inc. ("Magnesium Elektron" or "Respondent") of the assets of Revere Graphics Worldwide, Inc. ("Revere"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C.

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§ 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to section 2.34 of its rules, now in further conformity with the procedure described in 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 Magnesium Elektron North America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address located at 1001 College Street, Madison, Illinois 62060. Luxfer Holdings PLC (the ultimate parent entity of Magnesium Elektron, North America, Inc.) has its headquarters address at Anchorage Gateway, 5 Anchorage Quay, Salford, M50 3XE, England. Magnesium Elektron Ltd., a division of Luxfer Holdings PLC, has its mailing address as P.O. Box 23, Swinton, Manchester, M27 8DD.
2. Revere Graphics Worldwide, Inc., as of the date of the above-described acquisition, was a United States

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corporation with its headquarters address located at 5 Boundary Street, Plymouth Massachusetts 02366.

3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, 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. “Magnesium Elektron” or “Respondent” means Magnesium Elektron North America, Inc. , its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Magnesium Elektron, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. The term “Magnesium Elektron” also includes Luxfer Holdings PLC (the ultimate parent entity of Magnesium Elektron North America, Inc., Inc.), its directors, officers, employees, agents, representatives, successors, and assigns; and their joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Luxfer Holdings PLC, (including, without limitation, Magnesium Elektron Ltd. and the assets of Revere Graphics Worldwide, Inc. acquired pursuant to the Acquisition).
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means the following:
 1. a Person specified by name in this Order to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to

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accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

- D. "Acquisition" means Respondent's acquisition of the assets of Revere Graphics Worldwide, Inc.
- E. "Acquisition Date" means September 6, 2007, the date Respondent consummated the Acquisition.
- F. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), specifications(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Revere Photoengraving Product.
- G. "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 Revere Photoengraving Product Assets and grants the Revere Photoengraving Product License to an Acquirer pursuant to this Order.
- H. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondent acquired from Revere 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 Revere Photoengraving Product(s). The term "Confidential Business Information" *excludes* (i) information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in

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connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws and (ii) information relating to Respondent's general business strategies or practices relating to research, Development, manufacture, marketing or sales of products that does not discuss with particularity the Revere Photoengraving Product(s).

- I. "Contract Manufacture" means:
 - 1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer; and/or
 - 2. to provide, or to cause to be provided, any part of the manufacturing process of a Contract Manufacture Product on behalf of an Acquirer.
- J. "Contract Manufacture Product(s)" means Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products, including finished and unfinished products; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Revere Photoengraving Product, "Contract Manufacture Product(s)" means:
 - 1. the finished magnesium photoengraving products listed in the MENA Products Supply Agreement; and
 - 2. the uncoated semi-finished magnesium photoengraving products listed in the MENA Products Supply Agreement.
- K. "Development" means all research and development activities, including, without limitation, the following: test method development; formulation, including without limitation, customized formulation for a particular customer(s); mechanical properties testing; performance testing; safety testing; composition

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measurements; process development; manufacturing scale-up; development-stage manufacturing; quality assurance/quality control development; statistical analysis and report writing; and conducting experiments and other activities for the purpose of obtaining or achieving any and all Product Approvals and Specifications. “Develop” means to engage in Development.

- L. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. The term “Direct Cost” *excludes* any allocation or absorption of excess or idle capacity. “Direct Cost” to the Acquirer for its use of any of Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Revere Photoengraving Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Revere Photoengraving Product.
- M. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- N. “Employee Information” means a complete and accurate list containing the following, for each Revere Photoengraving Product Employee (as and to the extent permitted by the Law):
1. the name of each former employee of Revere;
 2. with respect to each such employee, the following information:
 - a. the last job title or position held;

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- b. the facility where the employee was last employed; and
 - c. employment status (*i.e.*, active, no longer employed, or on leave or disability; full-time or part-time) with Respondent.
- O. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- P. “High Volume Account(s)” means any customer of Respondent or Revere within the United States whose annual gross purchase amounts (on a company-wide level), in units or in dollars, of magnesium photoengraving products from Respondent or Revere was among the top twenty (20) highest of such purchase amounts during the period from January 1, 2008 through the Closing Date.
- Q. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order.
- R. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- S. “Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) acquired by Respondent pursuant to the Acquisition to manufacture each Revere Photoengraving Product, including, but not limited to, the following:
 - 1. product specifications, including without limitation, the exact combination and proportion of metals, other agents, reactive diluents and other components that achieves a particular set of application and end-use characteristics necessary for photoengraving;

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2. processes, including without limitation, hot reversing mill rolling, warm mill rolling, shearing to weight flatten, weight flattening, back coat painting, grinding, final shearing after grinding, pretreatment, photoresist coating and protective film applications;
3. processing equipment specifications;
4. standard operating procedures;
5. product designs and design protocols;
6. plans, ideas, and concepts;
7. operating manuals for photoresist magnesium coated magnesium photoengraving machines acquired by Respondent pursuant to the Acquisition;
8. specifications for purchasing magnesium slabs suitable for use in the Revere Photoengraving Products;
9. safety procedures for handling of materials and substances;
10. flow diagrams;
11. quality assurance and control procedures, including, without limitation, goods inwards testing and polyethylene release testing;
12. research records;
13. annual product reviews;
14. manuals and technical information provided to employees, customers, suppliers, agents or licensees including, without limitation, manufacturing, equipment, and engineering manuals and drawings;

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15. audits of manufacturing methods for Revere Photoengraving Products conducted by all of the following:
 - a. applicable United States' Agencies;
 - b. non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications related to the use of metals or metal alloys for applications in particular industries, including the engraving industry (*e.g.*, International Organization for Standardization); and
 - c. direct purchasers of Revere Photoengraving Products that use the Revere Photoengraving Products to manufacture products.
 16. control history;
 17. labeling;
 18. supplier lists;
 19. chemical descriptions and specifications of, all raw materials inputs, components, and ingredients related to the Revere Photoengraving Products; and
 20. all other information related to the manufacturing process.
- T. "Order Date" means the date on which this Decision and Order becomes final and effective.
- U. "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

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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 Respondent as of the Closing Date (*except* where this Order specifies a different time).

- V. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- W. “Product Approval(s) and Specification(s)” means the approvals, specifications, certifications, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the Revere Photoengraving Products that have been adopted or required as of the Closing Date by the following:
 - 1. applicable U.S. Agencies;
 - 2. non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications related to the use of metals or metal alloys for applications in particular industries, including the engraving industry (*e.g.*, International Organization for Standardization), and
 - 3. direct purchasers of Revere Photoengraving Products that use the Revere Photoengraving Products to manufacture products.
- X. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before

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the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to any Revere Photoengraving Product and pursuant to which any Third Party purchases, or has the option to purchase, any Revere Photoengraving Product from Respondent;
2. pursuant to which Respondent purchases raw materials, inputs, components, or other necessary ingredient(s) or had planned to purchase the raw materials(s), inputs, components or other necessary ingredient(s) from any Third Party for use in connection with the manufacture of any Revere Photoengraving Product;
3. relating to any experiments, audits, or scientific studies involving any Revere Photoengraving Product;
4. with universities or other research institutions for the use of any Revere Photoengraving Product in scientific research;
5. relating to the particularized marketing of any Revere Photoengraving Product or educational matters relating solely to any Revere Photoengraving Product;
6. pursuant to which a Third Party provides the Manufacturing Technology related to any Revere Photoengraving Product to Respondent;
7. pursuant to which a Third Party is licensed by Respondent to use the Manufacturing Technology;
8. constituting confidentiality agreements involving any Revere Photoengraving Product;

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9. involving any royalty, licensing, or similar arrangement involving any Revere Photoengraving Product;
10. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Revere Photoengraving Products to Respondent including, but not limited to, consultation arrangements;
11. pursuant to which any Third Party collaborates with Respondent in the performance of research, Development, marketing, distribution or selling of any Revere Photoengraving Product or the business associated with the Revere Photoengraving Products; and/or

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

- Y. “Product Intellectual Property” means all of the following related to each Revere Photoengraving Product:
1. Patents;
 2. Software;
 3. 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 Revere Photoengraving Products, protocols, methods of production and other confidential or proprietary technical, business, research, Development and other information, and

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all rights in any jurisdiction to limit the use or disclosure thereof;

4. rights to obtain and file for patents and copyrights and registrations thereof; and
5. 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 expressly includes all customer specific product formulations for Revere Photoengraving Products that were acquired by the Respondent pursuant to the Acquisition, 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 that were acquired by the Respondent pursuant to the Acquisition.

Z. “Proposed Acquirer” means an entity proposed by Respondent (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 Respondent pursuant to this Order.

AA. “Remedial Agreement(s)” means the following:

1. any agreement between Respondent and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;

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2. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to a Revere Photoengraving Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;
 3. any agreement between Respondent and an Acquirer (or between a Divestiture Trustee and 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, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order; and/or
 4. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to a Revere Photoengraving 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.
- BB. "Research and Development Records" means all research and development records relating to Revere Photoengraving Products acquired by Respondent pursuant to the Acquisition including, but not limited to:
1. inventory of research and development records, research history, research efforts, research notebooks, research reports, technical service

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reports, testing methods, invention disclosures, and know how related to the Revere Photoengraving Products;

2. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with (i) Agencies and (ii) non-governmental Persons that provide audits and certifications of management systems and/or manufacturing processes and product assessments and certifications (*e.g.*, International Organization for Standardization) relating to Product Approval(s) and Specification(s) submitted by, on behalf of, or acquired by, Respondent or Revere related to the Revere Photoengraving Products;
3. designs of experiments, and the results of successful and unsuccessful designs and experiments;
4. annual and periodic reports (both internal and external) related to the above-described Product Approval(s) and Specification(s);
5. currently used product usage instructions related to the Revere Photoengraving Products;
6. reports relating to the protection of human safety and health related to the manufacture or use of the Revere Photoengraving Products;
7. reports relating to the protection of the environment related to the manufacture or use of the Revere Photoengraving Products;
8. summary of performance reports, safety reports, and product complaints from customers related to the Revere Photoengraving Products; and
9. product recall reports filed with any Agency related to the Revere Photoengraving Products.

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- CC. “Retained Product(s)” means any product(s) that is not a Revere Photoengraving Product.
- DD. “Revere” means Revere Graphics Worldwide, Inc. as was in existence prior to the Acquisition.
- EE. “Revere Photoengraving Product(s)” means photoresist magnesium photoengraving products Developed, in Development, researched, manufactured, marketed or sold prior to the Acquisition by Revere and that were acquired by the Respondent pursuant to the Acquisition and any photoresist magnesium photoengraving product Developed, in Development, researched, manufactured, marketed or sold by Respondent using the Product Intellectual Property or Manufacturing Technology acquired by the Respondent pursuant to the Acquisition.
- FF. “Revere Photoengraving Product Assets” means all of Respondent’s rights, title and interest in and to: (i) all assets related to the Revere Photoengraving Products acquired by the Respondent pursuant to the Acquisition, and (ii) any and all improvements or changes made thereto, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of each Revere Photoengraving Product, including, without limitation, the following:
1. all Product Intellectual Property related to the Revere Photoengraving Product(s);
 2. all Product Approvals and Specifications related to the Revere Photoengraving Product(s);
 3. all Manufacturing Technology related to the Revere Photoengraving Product(s); and
 4. all Product Development Reports related to the Revere Photoengraving Product(s)

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5. all Research and Development Records;
6. at the Acquirer's option, all Product Assumed Contracts related to the Revere Photoengraving Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
7. a list of all customers that have purchased any magnesium photoengraving product within the United States from Respondent or Revere from the period beginning January 1, 2008 through the Closing Date and High Volume Accounts including the name of the employee(s) of the customer for each High Volume Account that was responsible for the purchase of the Revere Photoengraving Products on behalf of the High Volume Account and his or her business contact information; and
8. all of the Respondent's operating manuals, 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 Revere Photoengraving Product(s);

provided however, "Revere Photoengraving Product Assets" excludes (1) documents relating to the Respondent's general business strategies or practices relating to research, Development, manufacture, marketing or sales of photoengraving plates, where such documents do not discuss with particularity the Revere Photoengraving Products; (2) administrative, financial, and accounting records; (3) quality control records that are determined not to be material to the manufacture of the Revere Photoengraving Products by the Interim Monitor or the Acquirer of the Revere Photoengraving Products; (4) manufacturing equipment; and (5) any real estate and the buildings and other permanent structures located on such real estate.

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GG. “Revere Photoengraving Product Divestiture Agreements” means the following agreements:

1. “Technology Purchase and Sale Agreement” by and between Magnesium Elektron North America, Inc. and Universal Engraving, Inc., dated as of August 17, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto;
2. “MENA Products Supply Agreement” by and between Universal Engraving, Inc. and Magnesium Elektron North America, Inc., dated as of August 17, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto; and
3. “PSI Product Supply Agreement” by and between Universal Engraving, Inc. and Magnesium Elektron North America, Inc., dated as of August 17, 2012, and all amendments, exhibits, attachments, agreements, and schedules thereto;

each related to the Revere Photoengraving Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Revere Photoengraving Product Divestiture Agreements are attached to this Order and contained in non-public Appendix A.

HH. “Revere Photoengraving Product Employees” means all persons employed by Revere as of the day before the Acquisition Date who participated in the research, Development, manufacture, marketing or sales of the Revere Photoengraving Products, including such persons as are employed by the Respondent as of the Closing Date; *provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for the Revere Photoengraving Products, “Revere Photoengraving Product Employees” means the specific individuals identified as “Revere

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Photoengraving Product Employees” in such Remedial Agreement.

- II. “Revere Photoengraving Product Releasee(s)” means the Acquirer or any entity controlled by or under common control with the Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of the Acquirer-affiliated entities.
- JJ. “Software” means computer programs related to the Revere Photoengraving 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 the term “Software” *excludes* software that is readily purchasable or licensable from sources other than the Respondent and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- KK. “Supply Cost” means a cost not to exceed the manufacturer’s average direct per unit cost in United States dollars of manufacturing the Revere Photoengraving Product, or raw material or ingredients related to a Revere Photoengraving Product, for the twelve (12) month period immediately preceding the Acquisition 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 Revere Photoengraving Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Revere Photoengraving Product.

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- LL. “Third Party(ies)” means any non-governmental Person other than the following: the Respondent; or, the Acquirer of particular assets or rights pursuant to this Order.
- MM. “Universal” means, Universal Engraving, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its headquarters address located at 9090 Nieman Road, Overland Park, Kansas 66214.

II.**IT IS FURTHER ORDERED** that:

- A. Not later than ten (10) days after the Order Date, Respondent shall divest the Revere Photoengraving Product Assets, absolutely and in good faith, to Universal pursuant to, and in accordance with, the Revere Photoengraving Product Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Universal or to reduce any obligations of Respondent under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Revere Photoengraving Product Assets, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent has divested the Revere Photoengraving Product Assets prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that Universal is not an acceptable purchaser of the Revere Photoengraving Product Assets then Respondent shall immediately rescind the transaction with Universal, in whole or in part, as directed by the Commission, and shall divest the Revere Photoengraving Product Assets within one hundred eighty (180) days from the Order Date,

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absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

provided further, that if Respondent has divested the Revere Photoengraving Product Assets to Universal prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Revere Photoengraving Product Assets to Universal (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. Respondent shall secure all consents and waivers from all Third Parties that are necessary to permit Respondent to divest the Revere Photoengraving Product Assets to the Acquirer, and/or to permit the Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Revere Photoengraving Products;

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

- C. Respondent shall provide the Manufacturing Technology to the Acquirer in an organized, comprehensive, complete, useful, timely, and meaningful manner. Respondent shall, *inter alia*:
1. designate employees of Respondent knowledgeable with respect to such Manufacturing Technology to a committee for the purposes of communicating directly with the Acquirer and the

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Interim Monitor (if any has been appointed) for the purposes of effecting such delivery;

2. prepare technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Revere Photoengraving 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 delivery 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 Respondent and pursuant to a Remedial Agreement, provide in a timely manner, at no greater than Direct Cost, assistance and advice to enable the Acquirer to:
 - a. manufacture the Revere Photoengraving Products or an equivalent photoresist magnesium photoengraving in the same quality achieved by Respondent and/or Revere and in commercial quantities; and
 - b. receive, integrate, and use such Manufacturing Technology.

D. Respondent shall:

1. Contract Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions pursuant to a Remedial Agreement, a supply of each of the Contract Manufacture Products at Respondent's Supply Cost, for a period of time sufficient to allow the Acquirer to:

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- a. manufacture and sell in commercial quantities, the Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products independently of Respondent; and
 - b. secure sources of supply of the raw materials, inputs and components for the Contract Manufacture Products from entities other than Respondent;
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 and quality for their intended use;
3. for the Contract Manufacture Products supplied by Respondent, Respondent 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 Contract Manufacture Products supplied by Respondent to the Acquirer to meet relevant customer specifications. This obligation may be made contingent upon the Acquirer giving Respondent prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement to Contract Manufacture shall be consistent with the obligations assumed by Respondent under this Order; *provided, however*, that Respondent 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 Respondent's responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further*, that this obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the

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representations and warranties made by Respondent to the Acquirer;

4. make representations and warranties to the Acquirer that Respondent shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondent to deliver the Contract Manufacture Products in a timely manner as required by the Remedial Agreement to Contract Manufacture unless Respondent can demonstrate that its failure was entirely beyond the control of Respondent and in no part the result of negligence or willful misconduct by Respondent;
5. during the term of the Remedial Agreement to Contract Manufacture, upon request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture, storage, or transport of the Contract Manufacture Products that are generated or created after the Closing Date;
6. during the term of the Remedial Agreement to Contract Manufacture, maintain or cause to be maintained manufacturing facilities necessary to manufacture each of the Contract Manufacture Products; and
7. pursuant to a Remedial Agreement, provide consultation with knowledgeable employees of Respondent and training, at the request of the Acquirer and at a facility in the United States chosen by the Acquirer, for the purposes of enabling the Acquirer to manufacture Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products in the same quality achieved by the Respondent and in commercial quantities, and in a manner consistent with the relevant customer specifications for

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photoengraving use, independently of Respondent, and sufficient to satisfy management of the Acquirer that its personnel are adequately trained in the manufacture of Revere Photoengraving Products.

E. Respondent shall:

1. submit to the Acquirer, at Respondent's expense, copies of all Confidential Business Information;
2. deliver copies of the Confidential Business Information as follows:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness; and
3. pending complete delivery of copies of all Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Revere Photoengraving Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order.

F. Respondent 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, the Product Intellectual Property, or the raw materials, inputs, or components, related to the

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relevant Revere Photoengraving Product(s) from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Manufacturing Technology or Product Intellectual Property.

- G. Not later than ten (10) days after the Closing Date, Respondent shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.F. that allows the Third Party to provide the relevant Manufacturing Technology, Product Intellectual Property, raw materials, inputs, or components to the Acquirer. Within five (5) days of the execution of each such release, Respondent shall provide a copy of the release to the Acquirer.
- H. Respondent shall:
1. for a period of at least eighteen (18) months from the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the Revere Photoengraving Product Employees. Each of these periods is hereinafter referred to as the “Revere Photoengraving Product Employee Access Period(s)”;
 2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondent to provide the Employee Information; or (2) ten (10) days after the Closing Date, provide the Acquirer or the Proposed Acquirer with the Employee Information related to the Revere Photoengraving Product Employees. Failure by Respondent to provide the Employee Information for any Revere Photoengraving Product Employee within the time provided herein shall extend the Revere Photoengraving Product Employee Access Period(s) with respect to that employee in an amount equal to the delay; and

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3. during the Revere Photoengraving Product Employee Access Period(s), not interfere with the hiring or employing by the Acquirer of the Revere Photoengraving Product Employees and remove any impediments within the control of Respondent that may deter these persons from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment or other contracts with Respondent that would affect the ability or incentive of those persons to be employed by the Acquirer. In addition, Respondent shall not make any counteroffer to such a Revere Photoengraving Product Employee who has received a written offer of employment from the Acquirer;

provided, however, that, this Paragraph II.H.3. shall not prohibit Respondent from continuing to employ any Revere Photoengraving Product Employee under the terms of such person's employment with Respondent prior to the date of the written offer of employment from the Acquirer to such person.

- I. Until Respondent completes delivery of all of the Revere Photoengraving Product Assets to the Acquirer and provides the Manufacturing Technology to the Acquirer,
 1. Respondent shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the businesses associated with each Revere Photoengraving Product;
 - b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to each Revere Photoengraving Product;

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- d. ensure the Revere Photoengraving Product Assets are delivered to the Acquirer in a manner without disruption, delay, or impairment of the Product Approval and Specification processes related to the business associated with each Revere Photoengraving Product;
 - e. ensure the completeness of the delivery of the Manufacturing Technology; and
2. Respondent shall not sell, transfer, encumber or otherwise impair the Revere Photoengraving Product Assets (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 Revere Photoengraving Product.
- J. Respondent shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer or the Revere Photoengraving Product Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Revere Photoengraving Product(s) under the following:
1. any Patent owned or licensed by Respondent as of the Acquisition Date that claims a method of making, using, or a composition of matter, relating to a Revere Photoengraving Product;
 2. any Patent owned or licensed at any time after the Acquisition Date by Respondent that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of a Revere Photoengraving Product, other than such Patents that claim inventions conceived by and reduced to practice after the Closing Date;
- if such suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a

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particular Revere Photoengraving Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Revere Photoengraving Product. Respondent shall also covenant to the Acquirer that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Revere Photoengraving Product Releasee(s) under such Patents, if the suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of a particular Revere Photoengraving Product; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the United States of a particular Revere Photoengraving Product.

- K. For any patent infringement suit in which the Respondent is alleged to have infringed a Patent of a Third Party prior to the Closing Date or for such suit as the 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 relevant Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Revere Photoengraving Product(s); or (2) the use, import, export, supply, distribution, or sale of that Revere Photoengraving Product(s), Respondent shall:
1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent in connection with obtaining resolution of any pending patent litigation involving that Revere Photoengraving Product;
 2. waive conflicts of interest, if any, to allow the Respondent's outside legal counsel to represent the

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relevant Acquirer in any ongoing patent litigation involving that Revere Photoengraving Product; and

3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondent's outside counsel relating to that Revere Photoengraving Product.
- L. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Revere Photoengraving Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Revere Photoengraving Products; or (2) the use within, import into, export from, or the supply, distribution, or sale within the United States.
- M. Within eighteen (18) months of the Closing Date, Respondent shall either license or assign any and all intellectual property to the Acquirer that constitutes Product 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 Revere Photoengraving Product (as such business had been conducted by Revere prior to the Acquisition Date) and that was not listed and/or included in the intellectual property that was divested to the Acquirer pursuant to the Remedial Agreements previously submitted by Respondent to the Commission.
- N. Respondent shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Revere Photoengraving

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Products a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.

- O. The purpose of the divestiture of the Revere Photoengraving Product Assets and the provision of the Manufacturing Technology and the related obligations imposed on the Respondent by this Order is:
1. to ensure the continued use of the Revere Photoengraving Product Assets in the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Revere Photoengraving Products;
 2. to provide for the future use of the Revere Photoengraving Product Assets for the research, Development, manufacture, use, import, export, distribution, and sale of each of the respective Revere Photoengraving Products;
 3. to create a viable and effective competitor, who is independent of the Respondent in the research, Development, manufacture, use, import, export, distribution, or sale of each of the respective Revere Photoengraving Products; and
 4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its

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obligations and performs all of its responsibilities as required by this Order and the Remedial Agreements.

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent 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 of the identity of any proposed Interim Monitor, Respondent 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, Respondent 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 Respondent's 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, Respondent 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 Respondent's 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

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3. the Interim Monitor shall serve until, the latter of:
 - a. the date of completion by Respondent of the divestiture of all Revere Photoengraving Product Assets and the delivery of the Manufacturing Technology and Product Intellectual Property in a manner that fully satisfies the requirements of this Order; and
 - b. with respect to each Revere Photoengraving Product, the date the Acquirer is able to manufacture, market, import, export, and sell such Revere Photoengraving Product or an equivalent photoresist magnesium photoengraving product for use for photoengraving applications and able to manufacture such Revere Photoengraving Product or an equivalent photoresist magnesium photoengraving product in commercial quantities independently of Respondent;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the Order Date;

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

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's 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 Respondent's compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the

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Interim Monitor's ability to monitor Respondent's 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. Respondent 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 ninety (90) days after Respondent has filed its final report pursuant to Paragraph V.A., and every ninety (90) days thereafter, the Interim Monitor shall

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report in writing to the Commission concerning progress by the Acquirer toward:

1. the Acquirer's ability to manufacture in commercial quantities, the Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products independently of Respondent; and
 2. securing sources of supply of the raw materials, inputs and components for the Revere Photoengraving Products or equivalent photoresist magnesium photoengraving products from entities other than Respondent.
- I. Respondent 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 the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
 - K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
 - L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

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- 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.

IV.**IT IS FURTHER ORDERED** that:

- A. If Respondent has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Revere Photoengraving Product Assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. 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 shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these 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 Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If the Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by

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the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent 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, Respondent 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 divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent 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 assign, grant, license, divest, transfer, deliver or 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 the Commission 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,

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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. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent 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 Respondent's 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 Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such Person within five (5) days after 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, 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

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Respondent, 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 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, 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 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, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty

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(60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondent 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.
- E. 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.
- F. 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.

V.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order is issued, and every sixty (60) days thereafter until Respondent has fully complied with the following:
 1. Paragraphs II.A , II.B., II.C., II.D., II.E., and II.G.; and
 2. all of its responsibilities to render transitional services to the Acquirer as provided by this Order and the Remedial Agreement(s);

Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and

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has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its 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 Revere Photoengraving Product 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.

- B. One (1) year after the date this Order is issued, annually for the next four (4) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondent 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.

VI.

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

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

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VII.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, Respondent shall assure that Respondent's counsel (including in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. To assure Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or the Revere Photoengraving Product Assets;

provided, however, that Respondent may disclose such information as necessary for the purposes set forth in this Paragraph VII pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, however, that pursuant to this Paragraph VII, Respondent shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if such Acquirer withholds such agreement unreasonably); and (2) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

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VIII.**IT IS FURTHER ORDERED** that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondent shall include in each Remedial Agreement related to each of the Revere Photoengraving Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondent's obligations to the Acquirer pursuant to this Order.
- D. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

IX.

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 the 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 the 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 the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized

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representative(s) of the Commission and at the expense of the Respondent; and

- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on December 21, 2022.

By the Commission.

NON-PUBLIC APPENDIX A**REVERE PHOTOENGRAVING PRODUCT****DIVESTITURE AGREEMENTS**

[REDACTED]

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Magnesium Elektron North America, Inc. (“MEL”) to remedy the anticompetitive effects

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stemming from MEL's acquisition of Revere Graphics Worldwide, Inc. ("Revere"). Under the terms of the proposed Consent Agreement, MEL is required to sell assets used in the development, manufacture, and sale of magnesium plates for photoengraving to Universal Engraving, Inc. ("Universal Engraving").

In September 2007, MEL acquired the worldwide assets of Revere for approximately \$15 million. At the time of the acquisition, both parties manufactured and sold magnesium plates for photoengraving. The Commission's Complaint alleges that the acquisition violates 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, in the market for magnesium plates for photoengraving.

The proposed Consent Agreement remedies the alleged violation by requiring MEL to provide Universal Engraving with the intellectual property and know-how used to roll and coat magnesium plates for photoengraving applications. In addition, MEL will enter into a supply agreement with Universal Engraving that requires MEL to provide Universal Engraving with magnesium plates for photoengraving until Universal Engraving is able to produce and sell these products on its own. Finally, MEL will enter into a supply agreement with Universal Engraving for chemicals that are used in the magnesium photoengraving process, which Universal Engraving will be able to sell in conjunction with its magnesium plates.

The proposed Consent Agreement has been placed on the public record for thirty days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the Consent Agreement again and any comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make final the accompanying Decision and Order.

II. The Relevant Market and Market Structure

The relevant market within which to analyze the competitive effects of the acquisition is the worldwide market for magnesium

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plates for photoengraving. At the time of the acquisition, MEL and Revere were the only manufacturers and sellers of magnesium plate for photoengraving, combining to account for 100 percent of the relevant market.

III. Entry

Entry is not likely to deter or counteract the anticompetitive effects of the acquisition. In order to be suitable for photoengraving applications, magnesium must be rolled and coated to exact and precise specifications. Accordingly, a new entrant would require substantial expertise in order to enter the market. In addition, the market is relatively small, which deters potential entrants from investing in the skill and expertise required for entry.

IV. Effects of the Acquisition

Absent the proposed Consent Agreement, the acquisition would result in further and ongoing competitive harm in the worldwide market for magnesium plates for photoengraving. Prior to the acquisition, MEL and Revere were the only providers of the relevant product. As a result, the acquisition eliminated actual, direct, and substantial competition between MEL and Revere, and resulted in a merger-to-monopoly in the market for magnesium plates for photoengraving.

V. The Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the acquisition by requiring MEL to sell the technology and know-how for manufacturing magnesium plates for photoengraving to Universal Engraving. This divestiture replaces competition that was eliminated as a result of MEL's acquisition of Revere.

Universal Engraving, based in Overland Park, Kansas, is a global leader in the manufacture and sale of products used in the photoengraving process, including brass and copper plates for photoengraving applications. Currently, Universal Engraving does not sell magnesium plates for the photoengraving process. However, under the terms of the proposed Consent Agreement,

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Universal Engraving will acquire the assets required to compete effectively in that market.

The proposed Consent Agreement also contains several provisions designed to ensure that the divestiture is successful. First, MEL must supply Universal Engraving with magnesium plate now, thereby allowing Universal Engraving to enter the relevant market immediately in competition with MEL. In addition, MEL must provide Universal Engraving with technical assistance related to the manufacture and sale of magnesium plates for photoengraving. Finally, MEL will supply Universal Engraving with chemicals that are used in the photoengraving process, particularly, chemicals that are used to engrave magnesium plates.

If, after the public comment period the Commission determines that Universal Engraving is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, MEL must unwind the divestiture and divest the assets within 180 days of the date the Order becomes final to another Commission-approved acquirer. If MEL fails to divest the assets within the 180 days, the Commission may appoint a trustee to divest the relevant assets.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS
