

## NOTICE OF ACCEPTANCE OF FINAL UNDERTAKINGS

### ACQUISITION OF GV INSTRUMENTS LIMITED BY THERMO ELECTRON MANUFACTURING LIMITED

#### Notice of acceptance of final undertakings under section 82 of and Schedule 10 to the Enterprise Act 2002

#### Introduction

1. On 15 December 2006, the Office of Fair Trading referred the completed acquisition of GV Instruments Limited (GVI) by Thermo Electron Manufacturing Limited, part of Thermo Electron Corporation (Thermo),<sup>1</sup> to the Competition Commission (CC) for investigation and report. The reference was made under section 22 of the Enterprise Act 2002 (the Act).
2. In its report, *Thermo Electron Manufacturing Limited and GV Instruments Limited merger inquiry: a report on the completed acquisition of GV Instruments Limited by Thermo Electron Manufacturing Limited* (the report), dated 30 May 2007, the CC concluded that:
  - (a) the acquisition had resulted in the creation of a relevant merger situation;
  - (b) the creation of that situation might be expected to lead to a substantial lessening of competition (SLC) in the markets for Gas Isotope Ratio Mass Spectrometers (Gas IRMS) and Thermal Ionization Mass Spectrometers (TIMS);
  - (c) the CC should take action to remedy the SLC and the adverse effects flowing from it; and
  - (d) Thermo and its US parent company, Thermo Fisher Scientific Inc (Thermo Fisher), should be required to divest either GVI as a whole or its Gas IRMS and TIMS assets.

#### Notice of acceptance of final undertakings

3. On 5 July 2007 the CC gave notice of its proposal to accept final undertakings from Thermo and Thermo Fisher and provided an opportunity for representations to be made in relation to the undertakings. No representations were received.
4. On 30 July 2007, Thermo and Thermo Fisher gave the undertakings to the CC.
5. The CC, under section 82 of the Act, accepts the undertakings, a copy of which is set out in the attached annex. The reference has now been finally determined and the undertakings come into force accordingly.

---

<sup>1</sup>On 9 November 2006, Thermo merged with Fisher Scientific International Inc to form Thermo Fisher Scientific Inc.



Signed by authority of the CC  
Dr DIANE COYLE  
*Group Chair*  
31 July 2007

*Note:* The CC has excluded from the Undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

**UNDERTAKINGS GIVEN TO THE COMPETITION COMMISSION  
BY THERMO ELECTRON MANUFACTURING LIMITED  
AND THERMO FISHER SCIENTIFIC INC**

On 15 December 2006, the Office of Fair Trading referred the completed acquisition of GV Instruments Limited (GVI) by Thermo Electron Manufacturing Limited (Thermo) to the Competition Commission (CC) for investigation and report under section 22 of the Enterprise Act 2002 (the Act).

On 30 May 2007 the CC published its report—*Thermo Electron Manufacturing Limited and GV Instruments Limited merger inquiry: a report on the completed acquisition of GV Instruments Limited by Thermo Electron Manufacturing Limited* (the report).

The report concluded that:

- (a) the acquisition had resulted in the creation of a relevant merger situation;
- (b) the creation of that situation might be expected to lead to a substantial lessening of competition (SLC) in the markets for Gas Isotope Ratio Mass Spectrometers (Gas IRMS) and Thermal Ionization Mass Spectrometers (TIMS);
- (c) the CC should take action to remedy the SLC and the adverse effects flowing from it; and
- (d) Thermo and its US parent company, Thermo Fisher Scientific Inc (Thermo Fisher), should be required to divest either GVI as a whole or its Gas IRMS and TIMS assets.

Thermo and Thermo Fisher give the following undertakings to the CC under section 82 of the Act:

**1. Interpretation**

For the purpose of these Undertakings and the appendices other than Appendix B:

the Act	means the Enterprise Act 2002;
the Acquisition	means the acquisition by Thermo Electron Manufacturing Limited of GV Instruments Limited which completed on 20 July 2006;
adverse effects	has the meaning given to it in the recitals to these Undertakings;
Agreement	means such contract, transfer, deed, licence, letter of intent or other form of agreement as the context may require;
Approved Agreement	means an Agreement or Agreements for Effective Disposal approved by the CC; and the Vendors recognize that in considering whether to approve any Agreement the CC shall consider whether (1) the terms of the Agreement (and any other agreements or arrangements ancillary or connected to the Agreement) are such as to give rise to a real risk that the disposal of GVI's business (in whole or part) will not remedy the SLC (including any risk as to the Purchaser's ability to compete in the supply of Gas IRMS

	or TIMS) and (2) the Agreement includes a warranty, breach of which is actionable in damages or other compensation at the suit of the Purchaser, that each requirement of the Secondary Undertakings has been complied with;
Approved Person	means Slaughter & May or such other person or persons as may be Notified to the CC from time to time;
Approved Purchaser	means a purchaser (or as the case may be purchasers) whom the CC is satisfied (a) is independent of, and unconnected to, any of the Vendors or any member of the Thermo Group; (b) has the incentive, the financial resources and the access to appropriate expertise to operate the Disposal Business as a viable and active business in competition with other suppliers of Gas IRMS and/or TIMS so as to remedy the SLC; (c) will obtain all necessary approvals and consents, including the consent of any regulatory or competition authority, for the acquisition of the Disposal Business; and the Vendors recognize that the CC may require any such purchaser(s) to provide the CC with such documents (including business plans relating to the acquired business and information regarding the financing of the acquisition and the financing of the purchaser's existing business) and other material or information as the CC may require so as to be satisfied on the matters set out above;
business	has the meaning given by section 129(1) and (3) of the Act;
CC	means the Competition Commission;
Commencement Date	means the date on which these Undertakings are accepted by the CC;
Completion Period	means the period ending [X] from the Commencement Date or such longer period as the CC may allow;
control	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;
day	means a business day (other than a Saturday, Sunday or public holiday in either England or the USA) and, save where the context otherwise requires, a period of time expressed in days from or after an event begins on the first business day after that event has occurred;
The Decisions	means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

Disposal Business	means the GVI Business or such part of the GVI Business as is required to be divested to remedy the adverse effects of the SLC, and shall include such plant and machinery, and other tangible and intangible assets, rights, consents, leases, licences, intellectual property and key staff of the GVI business as are required for a purchaser to carry on the business of manufacture, testing, sale, installation and servicing of GVI's Gas IRMS and TIMS instruments in competition with Thermo as well as GVI staff involved in research and development;
Disposal Obligations	means the obligations in subparagraph 3.2 of these Undertakings;
Divestiture Period	means the Completion Period and any Trustee Divestiture Period;
Divestiture Trustee	means any person appointed in accordance with paragraph 11;
Effective Disposal	means completion of the Approved Agreements or disposal of the Disposal Business under an Approved Agreement to a Purchaser or Purchasers, and for the avoidance of doubt the disposal of parts of the Disposal Business to two or more Purchasers, with the consent of the CC, may constitute an Effective Disposal;
First Disposal Obligation	means the Disposal Obligation in subparagraph 3.2(i);
Gas IRMS	means Gas Isotope Ratio Mass Spectrometers;
GVI	means GV Instruments Limited;
GVI's Business	means the Disposal Business as carried on by GVI and its subsidiaries at the Commencement Date;
Indemnified Person	means the Divestiture Trustee, its employees, agents and advisers;
Independent Expert	means a qualified solicitor, barrister, chartered accountant or other person of suitable expertise as the CC may reasonably require for the relevant purpose;
Initial Period	means the period ending [X] from the Commencement Date;
key GVI staff	Means, for so long as they continue to be employed by GVI, [X];
Monitoring Trustee	means the Monitoring Trustee appointed in accordance with the Directions dated 10 May 2007 and paragraph 4 of these Undertakings;
Notice	means a written communication to the CC sent by post, fax, personal delivery or, with the prior consent of the CC, email;
Obligation Period	means the Initial Period or the Completion Period as the context requires;
OFT	means the Office of Fair Trading;
ordinary course of business	means matters connected to the day-to-day supply of goods and/or services by GVI and does not include

	matters involving significant changes to the organizational structure or related to the post-merger integration of GVI;
Principal Undertakings	means the obligations in paragraph 3 of these Undertakings or any of them;
Purchaser	means that Approved Purchaser (or as the case may be, each of the Approved Purchasers) who will acquire the Disposal Business to bring about Effective Disposal;
Purchaser Representation	means a genuine representation by a Purchaser (or a person who appears to have the potential to be a Purchaser) acting in good faith that the terms or subject matter of the disposal of the Disposal Business or the relevant part thereof, and all matters ancillary or connected to it, proposed by the Vendors are insufficient to enable the operation of the Disposal Business on a viable basis such that it may not remedy the SLC;
Report	has the meaning given to it in the recitals to these Undertakings;
Secondary Undertakings	means the undertakings set out in Part 1 of Appendix B;
Second Disposal Obligation	means the Disposal Obligation in paragraph 3.2(ii);
SLC	means substantial lessening of competition;
subsidiary	has the meaning given to it in section 736 of the Companies Act 1985 as amended;
Thermo	means Thermo Electron Manufacturing Limited;
Thermo's business	means the business of Thermo, Thermo Fisher and all subsidiaries carried on as at the date of these undertakings;
Thermo Fisher	means Thermo Fisher Scientific Inc;
Thermo Group	means Thermo Electron Manufacturing Limited, Thermo Fisher Scientific Inc and all of their subsidiaries;
TIMS	means Thermal Ionization Mass Spectrometer;
Trustee Divestiture Period	means the period of [X] or such other longer period as the CC may allow from (1) the end of the Completion Period or (2) in the event that a Divestiture Trustee is appointed by reason of a breach of the obligations contained in these Undertakings occurring before the end of the Completion Period, from the day on which the breach occurred;
Trustee Obligation	means bringing about Effective Disposal [X] and the performance of all ancillary tasks as are necessary or desirable for the purposes of Effective Disposal promptly and in any event within the Trustee Divestiture Period;
Undertakings	means these undertakings given by the Vendors for the purpose of remedying the SLC and the adverse effects;
Vendors	means Thermo Electron Manufacturing Limited and Thermo Fisher Scientific Inc (or both or either of them as the context may require).

Unless the context requires otherwise, the singular shall include the plural and vice versa.

Except where terms are expressly defined otherwise, the Interpretation Act 1978 shall apply to these undertakings as to an Act of Parliament.

## **2. Commencement**

2.1 The obligations in these Undertakings shall come into force on the Commencement Date.

## **3. The Principal Undertakings**

3.1 In accordance with the provisions of these Undertakings, the Vendors undertake that they shall use all reasonable endeavours to satisfy the Disposal Obligations within the relevant Obligation Period.

3.2 The Disposal Obligations are:

(i) to enter into an Approved Agreement or Approved Agreements for Effective Disposal within the Initial Period; and

(ii) to bring about Effective Disposal within the Completion Period.

3.3 The Vendors each undertake to use all reasonable endeavours to bring about the novation to the Purchaser(s), or to such other person(s) as may be directed by the Purchaser(s), of all contracts for the provision or receipt of goods or services as are relied upon by or are necessary to the Disposal Business and to which the Disposal Business is a party as the Purchaser(s) may reasonably require.

3.4 The Vendors undertake that they shall, or shall procure that any member of the Thermo Group shall, at the request of the Purchaser enter into such Agreements as are necessary to ensure Effective Disposal of the Disposal Business.

3.5 The Vendors undertake that they shall send, or cause to be sent, a letter in the terms set out in **Appendix A** to each person who has a real interest in the acquisition of GVI, in whole or part and that they shall notify the CC of each person to whom such a letter has been sent within two days of the date of despatch of each letter.

3.6 [✂]

## **4. Monitoring Trustee**

4.1 The Vendors undertake that on the Commencement Date they shall secure the continued appointment of Baker Tilly as Monitoring Trustee for the period until Effective Disposal on the same terms (but subject to paragraph 4.1.2) and with the same powers to perform:

4.1.1 the duties set out in paragraph 4.2; and

4.1.2 the duties set out in the Directions dated 10 May 2007, which are reproduced in **Part 5 of Appendix B**, provided that references in the Directions to the final determination of the reference shall be treated as references to Effective Disposal.

- 4.2 The duties set out in this paragraph are those of monitoring the process of marketing both the GVI Business and such part or parts of the GVI Business as may be required to ensure Effective Disposal and the subsequent disposal of the Disposal Business, and shall in particular include:
- 4.2.1 establishing with the Vendors an appropriate timetable for the disposal process;
  - 4.2.2 monitoring the progress made by the Vendors towards the satisfaction of the Disposal Obligations, and the steps that have otherwise been taken to comply with the Principal Undertakings including:
    - 4.2.2.1 the status of the information memorandum, the identities of the persons to whom it has been circulated, and the responses to the information memorandum;
    - 4.2.2.2 the status of the data room, its contents, and the persons who have had access to it;
    - 4.2.2.3 the steps that have been taken toward the preparation of a sale and purchase agreement, and the persons to whom the sale and purchase agreement has been distributed;
  - 4.2.3 monitoring communications from the Vendors or any of them to possible purchasers and from possible purchasers to the Vendors or any of them in connection with the disposal process;
  - 4.2.4 assessing whether there are any grounds for concern that either or both of the Disposal Obligations will not be fulfilled;
  - 4.2.5 such other matters as may be directed by the CC from time to time; and
  - 4.2.6 the provision of fortnightly reports to the CC on the matters set out in this sub-paragraph 4.2;

## **5. Matters ancillary to the Principal Undertakings**

- 5.1 The Vendors each undertake that where they or any member of the Thermo Group requires the consent or approval of the CC (however that requirement is expressed in these Undertakings) they will seek the consent or approval by the service of a Notice.
- 5.2 The Vendors each undertake that any application by them or by members of the Thermo Group for the CC's consent or approval shall make full disclosure of every fact and matter that is relevant to the CC's decision.
- 5.3 The Vendors recognize that a consent or approval granted by the CC in default of full disclosure by the Vendors or any member of the Thermo Group is voidable at the election of the CC.
- 5.4 In the event that the Vendors or any member of the Thermo Group discovers that an application for consent or approval has been made without full disclosure and is therefore incomplete the Vendors undertake:
  - (a) to so inform the CC by submission of a Notice identifying the particulars in which the application for consent is incomplete within seven days; and



(b) at the same time or as soon as possible thereafter to provide to the CC an application that is complete.

- 5.5 The Vendors each undertake to make each application or to procure that each application for consent or approval is made so that it is received by the CC at least 15 days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings and the Vendors recognize that the CC shall only be obliged to consider any application for consent or approval that is received at least 15 days, or within such other period as the CC may have allowed, before such day.
- 5.6 The Vendors recognize that the CC shall not be required to use more than its reasonable endeavours to grant or refuse consent or approval within the 15-day period.
- 5.7 Subject to the requirements of subparagraphs 5.5 and 5.6 where in the reasonable opinion of the Vendors they have identified a candidate purchaser with a real interest in the acquisition of the Disposal Business, or candidate purchasers with a real interest in the acquisition of any part or asset thereof, the Vendors may by Notice apply to the CC for a decision by the CC to recognize a candidate purchaser as an Approved Purchaser.

## **6. The Vendors' Secondary Undertakings**

- 6.1 In these Undertakings, references to the Secondary Undertakings are references to the obligations in **Part 1 of Appendix B**.
- 6.2 The Vendors each undertake for the duration of the Divestiture Period to comply with the Secondary Undertakings to the extent that they are obliged by the terms thereof to do so.

## **7. Conditions for the appointment of a Divestiture Trustee**

- 7.1 In the event that the Disposal Obligations or either of them are not satisfied, or in the event that the CC considers that the Vendors or any member of the Thermo Group is in material breach of any of the obligations identified in subparagraph 7.3 and that such breach is not remedied within a reasonable time, the Vendors undertake that they shall at the written direction of the CC appoint a Divestiture Trustee to give effect to the duty set out in subparagraph 7.2.
- 7.2 The duty of the Divestiture Trustee will be to give effect to the Trustee Obligation or to give effect to such part of the Trustee Obligation or undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CC may specify in the direction.
- 7.3 The obligations identified in this paragraph are those found in subparagraphs 3.1, 3.3, 3.4, 3.5, 4.1, 5.2 and 6.2 of these Undertakings.
- 7.4 The Vendors recognize that the CC may choose not to appoint a Divestiture Trustee immediately upon becoming entitled to do so, and further recognize:
- 7.4.1 that any delay by the CC in making a written direction appointing a Divestiture Trustee shall not affect the Vendors' obligations at such time as the CC makes any such written direction under subparagraph 7.1; and that

7.4.2 in the event that in respect of any breach the CC directs the appointment of a Divestiture Trustee in respect of part only of the Trustee Obligation, or only in respect of matters preparatory, that direction shall not affect the Vendors' obligations under subparagraph 7.1 should the CC choose to make a further direction in respect of that breach.

## **8. Reporting Obligations**

8.1 The Vendors each undertake that:

8.1.1 within the period of seven days from the Commencement Date they will provide a written report to the CC explaining the timetable that they have adopted for the satisfaction of the Disposal Obligations, outlining the progress that they have made towards the satisfaction of the Disposal Obligations, and the steps that have otherwise been taken to comply with the Principal Undertakings;

8.1.2 thereafter they will provide similar written reports to the CC every 14 days for the duration of the Divestiture Period; and

8.1.3 they will report on such other matters as the CC may from time to time direct.

8.2 The Vendors each undertake that in their reports to the CC they shall, inter alia, provide to the CC:

8.2.1 the name, address, email address, contact point and telephone number of each person who has expressed a real interest in the acquisition of GVI's Business or any part or asset thereof since the publication of the CC's provisional findings; and

8.2.2 details of the efforts taken by the Vendors and any member of the Thermo Group to solicit purchasers for GVI's Business or any part or asset thereof.

## **9. Purchaser Representations**

9.1 The Vendors each undertake that the provisions of subparagraph 9.2 shall apply where any person(s) with a real interest in the acquisition of the GVI Business or any part or asset thereof makes a Purchaser Representation to the CC.

9.2 The provisions of this paragraph are that:

9.2.1 the CC shall consult the Vendors as to whether the Purchaser Representation is justified and the Vendors shall provide to the CC such assistance as the CC shall require (including by the disclosure to the CC of commercially sensitive material, such material to be supplied on the basis that the CC will make no disclosure of it) to consider whether the Purchaser Representation is justified; and

9.2.2 in the event that the CC considers that the Purchaser Representation is justified the Vendors shall take such steps, or shall procure that any member of the Thermo Group takes such steps, as the CC shall consider necessary to address satisfactorily the issues raised in or by the Purchaser Representation.

## **10. Miscellaneous undertakings**

- 10.1 The Vendors each undertake jointly and severally to remunerate in full, and to pay all the reasonable costs and expenses of, any Independent Expert whose assistance the CC may require in connection with any of the matters in subparagraph 10.2.
- 10.2 The matters in this paragraph are:
- (a) the determination of a person as an Approved Purchaser;
  - (b) the determination of an agreement as an Approved Agreement;
  - (c) the consideration of any Purchaser Representation; and
  - (d) any other matter on which the CC may reasonably require the assistance of an Independent Expert in connection with these Undertakings.
- 10.3 The Vendors undertake that, following Effective Disposal, neither they, nor any member of the Thermo Group, shall acquire any interest in the Disposal Business, or any property, right, asset or privilege thereof, without the prior written consent of the OFT.

## **11. Divestiture Trustee—appointment procedure**

- 11.1 The Vendors undertake that within the period of five days from the day on which a direction is made by the CC pursuant to paragraph 7.1, the Vendors shall submit a list of two or more persons whom they propose to appoint as Divestiture Trustee to the CC for approval. The proposal shall contain sufficient information for the CC to verify that each proposed Divestiture Trustee fulfils the requirements set out in paragraph 11.2 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties; and
  - (b) a schedule of the steps to be taken to give effect to the mandate.
- 11.2 Each person on the list shall be independent of any of the Vendors and any member of the Thermo Group, possess the qualifications necessary for the performance of its mandate, and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms on which it is remunerated.
- 11.3 The CC may approve or reject any or all of the proposed Divestiture Trustees and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, the Vendors shall use their best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CC. If more than one name is approved, the Vendors shall be free to choose the Divestiture Trustee to be appointed from among the names approved. The Vendors undertake to appoint the Divestiture Trustee within five days from the CC's approval and in the terms of the mandate approved by the CC.
- 11.4 If all the proposed Divestiture Trustees are rejected, the Vendors shall submit the names of at least two further persons within five days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.1 to 11.3.

- 11.5 The provisions of paragraph 11.6 shall apply if:
- 11.5.1 the Vendors fail to nominate further persons in accordance with paragraph 11.4; or
  - 11.5.2 those further persons are rejected by the CC; or
  - 11.5.3 the Vendors are unable for any reason to conclude the appointment within the specified time limit.
- 11.6 The CC shall nominate one or more persons to act as Divestiture Trustee, and the Vendors shall appoint, or cause to be appointed such Divestiture Trustee within two days from such nomination under the terms of a Divestiture Trustee mandate approved by the CC.

## **12. Functions of the Divestiture Trustee**

- 12.1 The Vendors undertake to enable, and shall procure that they or any member of the Thermo Group shall enable, the Divestiture Trustee to carry out its duty.
- 12.2 The Vendors recognize that:
- 12.2.1 the CC may, on its own initiative or at the request of the Divestiture Trustee or the Vendors, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty (including directions as to the disposal of such property, assets, rights, consents, licences, privileges or interests of GVI as the CC considers necessary to bring about Effective Disposal);
  - 12.2.2 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty such terms and conditions as it considers appropriate; and
  - 12.2.3 the Divestiture Trustee shall protect the legitimate financial interests of the Vendors subject to the Divestiture Trustee's overriding obligation to carry out its duty.
- 12.3 The Divestiture Trustee shall take such steps and measures as it considers necessary to discharge its duty and to that end the Divestiture Trustee may give written directions to the Vendors, or any member of the Thermo Group, and the Vendors undertake to comply with such directions or to procure compliance with such directions and to take such steps within their competence as the Divestiture Trustee may specify.
- 12.4 The Vendors recognize that in the performance of its duty the Divestiture Trustee shall act solely on the instructions of the CC and shall not be bound by any instruction of the Vendors and the Vendors undertake that they shall not seek to create or vary the obligations and duty of the Divestiture Trustee, except with the CC's prior written consent.

## **13. Duties and obligations of the Vendors**

- 13.1 The Vendors undertake to provide and shall cause each member of the Thermo Group and their advisers to provide the Divestiture Trustee with all such cooperation,

assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request relevant to GVI's Business but excluding any matter properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of its duty. The Vendors recognize that the Divestiture Trustee shall be entitled, subject to a duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information of any member of the Thermo Group necessary for the fulfilment of its duty and the Vendors undertake that they shall, and shall procure that each member of the Thermo Group shall provide the Divestiture Trustee upon request with copies of any such document. The Vendors undertake to make available, and shall procure that each member of the Thermo Group makes available, as necessary, to the Divestiture Trustee one or more offices on their premises and shall be available, and shall procure that any member of the Thermo Group shall be available, for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of its duty.

- 13.2 The Vendors undertake that they and each member of the Thermo Group shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge its duty including by the appointment of advisers to assist with the divestiture process. The Vendors undertake that upon the request of the Divestiture Trustee the Vendors or the relevant members of the Thermo Group shall execute the documents required to give effect to the Trustee Obligation.
- 13.3 The Vendors undertake to hold each Indemnified Person harmless against any liabilities arising out of the proper performance of the Divestiture Trustee's duty, and the Vendors recognize that an Indemnified Person shall have no liability to the Vendors or any member of the Thermo Group for any liabilities arising out of the proper performance of the Divestiture Trustee's duty under these Undertakings, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 13.4 The Vendors undertake that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of its duty, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Should the Vendors refuse to approve the advisers proposed by the Divestiture Trustee the CC may, after consulting the Vendors, approve and direct the appointment of such advisers. The Divestiture Trustee may use advisers who served the Vendors during the Divestiture Period if the Divestiture Trustee considers this to be in the best interest of a prompt sale.
- 13.5 The Vendors undertake to make no objection to the disposal of GVI's Business or any asset or part thereof, [X], save on the grounds of bad faith by the Divestiture Trustee or the failure of the Divestiture Trustee to protect the legitimate financial interests of the Vendors, subject always to the Trustee Obligation; and where the Vendors wish to make an objection on the grounds of bad faith they shall submit a Notice setting out their objection within seven days from the day on which they first became aware of the fact or facts giving rise to its objection.

#### **14. Replacement, discharge and reappointment of the Divestiture Trustee**

- 14.1 The Vendors undertake that if the Divestiture Trustee ceases to perform its duty, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest:

- (a) the CC may, after consulting the Divestiture Trustee, require the Vendors to replace the Divestiture Trustee; or
- (b) the Vendors, with the prior written approval of the CC, may replace the Divestiture Trustee.

14.2 If the Divestiture Trustee is removed under subparagraph 14.1, the Divestiture Trustee may be required to continue in post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure referred to in paragraph 11.

14.3 The Vendors recognize that other than in accordance with paragraph 14.1, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CC has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been implemented.

## **15. Effect of invalidity**

15.1 The Vendors undertake that should any provision of these Undertakings be contrary to law or invalid for any reason the Vendors and each member of the Thermo Group shall continue to observe the remaining provisions.

15.2 The Vendors undertake that no member of the Thermo Group shall rely on any default or want of authority on the part of any member of the Thermo Group or of any officer or employee thereof in the execution of these Undertakings unless directed so to do by the CC.

## **16. Provision of information to the CC and OFT**

16.1 The Vendors undertake that they shall and will procure that each member of the Thermo Group shall promptly provide to the CC such information as the CC may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 82, 83 and 94(7) of the Act.

16.2 The Vendors undertake that they shall and will procure that each member of the Thermo Group shall promptly provide to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 92, 93(6) and 94(6) of the Act.

16.3 The Vendors undertake that should they or any of them at any time be in breach of any provision of these Undertakings such of them as are in breach will notify the CC;

(a) that there has been a breach; and

(b) of all the circumstances,

within five days from the time that the Vendors might reasonably have been expected to have become aware of the breach.

## **17. Service**

17.1 The Vendors hereby authorize the Approved Person to accept on their behalf service of all documents (including any document of any kind which falls to be served on or sent to the Vendors or any of them in connection with any proceedings in Courts in

the UK) orders, requests, notifications or other communications connected with these Undertakings.

- 17.2 Any document, order, request, notification or other communication shall be validly served on a Vendor if it is served on their nominated Approved Person; and service shall be deemed to have been acknowledged by any Vendor or Vendors if it is acknowledged by the Approved Person.
- 17.3 This paragraph has effect irrespective of whether, as between any Vendor and the Approved Person, the Approved Person has or continues to have any authority to accept and acknowledge service on that Vendor's behalf; and no failure or mistake by the Approved Person (including a failure to notify a Vendor of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceeding or judgment.
- 17.4 Any communication between any of the Vendors and the CC under these Undertakings shall be addressed to The Secretary to the Remedies Standing Group, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CC may direct in writing.
- 17.5 Any communication between any of the Vendors and the OFT under these Undertakings shall be addressed to Director of Mergers, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JY or such other address as the OFT may direct in writing.

## **18. Compliance**

- 18.1 The Vendors undertake to comply with such reasonable written directions as the CC or OFT may from time to time give to take such steps within their competence for the purpose of carrying out or securing compliance with these Undertakings.

## **19. Subsidiaries**

- 19.1 The Vendors undertake to procure that their Subsidiaries comply with these Undertakings as if they had been given by those Subsidiaries.

## **20. Governing Law**

- 20.1 The Vendors recognize that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 20.2 In the event that a dispute arises concerning these Undertakings, the Vendors undertake to submit that dispute to the courts of England and Wales.

## **21. Termination**

- 21.1 The Vendors recognize that these Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 21.2 The Vendors recognize that the variation, release or supercession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supercession.

FOR AND ON BEHALF OF **THERMO ELECTRON MANUFACTURING LIMITED**

.....Signature	.....Signature
James R E Coley, Director	Nicola Ward, Secretary
.....Name	.....Name
.....Title	.....Title
30 July 2007.	30 July 2007.
.....Date	.....Date

FOR AND ON BEHALF OF **THERMO FISHER SCIENTIFIC INC**

.....Signature	.....Signature
Seth Hoogasian, SVP, General Counsel and Secretary	Jonathan C Wilk, VP and Deputy General Counsel
..... Name	.....Name
.....Title	.....Title
30 July 2007.	30 July 2007.
.....Date	.....Date



**Required text for letter to any person or party likely to be interested in acquiring GVI, in whole or part**

'In order to comply with Final Undertakings given to the Competition Commission by us, we are obliged to provide you the following information.

The Competition Commission in its report *Thermo Electron Manufacturing Limited and GV Instruments Limited merger inquiry: a report on the completed acquisition of GV Instruments Limited by Thermo Electron Manufacturing Limited* ("the report") published on 30 May stated: "We therefore recommend that Thermo be required to divest either GVI as a whole, or its Gas IRMS and TIMS assets, and to enter into a binding agreement with a purchaser(s) approved by the CC".

We are required by the Competition Commission to tell you that, under paragraph 9 of the Final Undertakings, if you consider that the terms of sale that we offer you are not such as to enable you to compete in the supply of Gas IRMS or TIMS you may make a representation to the Competition Commission. If, having considered any representation that we may make in response, the Competition Commission finds that the issues raised in your representation do need to be resolved to achieve an effective disposal, it may direct us to alter the terms of sale or take such other steps as are necessary in all the circumstances.

If you wish to make a representation to the Competition Commission under paragraph 9 of the Final Undertakings, you should write to The Secretary to the Remedies Standing Group, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD.

You will find a copy of the Final Undertakings and report on the website of the Competition Commission at [www.competition-commission.org.uk](http://www.competition-commission.org.uk).'

## Part 1

### Interpretation

The Interpretation Act 1978 shall apply to this Appendix B as it does to Acts of Parliament.

Except where otherwise stated the definitions in paragraph 1 of the Undertakings shall not apply to this Appendix B for the purposes of which:

**'the acquisition'** means the acquisition by Thermo Electron Manufacturing Limited of GV Instruments Limited, completed on 20 July 2006;

**'the Act'** means the Enterprise Act 2002;

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'the CC'** means the Competition Commission;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**'the decisions'** means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

**'key staff'** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**'the OFT'** means the Office of Fair Trading;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and/or services by GVI and does not include matters involving significant changes to the organizational structure or related to the post-merger integration of GVI;

**'the specified period'** means the Divestiture Period defined in paragraph 1 of the Undertakings;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended);

**'the two businesses'** means the Thermo business and the GVI business;

**'Thermo'** means Thermo Electron Manufacturing Limited (being the UK subsidiary) Thermo Fisher Scientific Inc (being the US parent company) and all subsidiaries (specifically including Thermo Electron GmbH) collectively;

**'Thermo Fisher'** means Thermo Fisher Scientific Inc;

**'the Thermo business'** means the business of Thermo, its parent company and all subsidiaries carried on as at the date of these undertakings;

**'GVI'** means GV Instruments Limited;

**'the GVI business'** means the business of GVI and its subsidiaries carried on as at the date of these undertakings;

**'the Undertakings'** means the undertakings of which this Appendix B forms part; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

### **Management of the GVI business until Effective Disposal**

1. Except with the prior written consent of the CC, Thermo and Thermo Fisher shall not during the specified period take any action separately or jointly which might:
  - (a) lead to the further integration of Thermo's business with GVI's business;
  - (b) transfer the ownership or control of the GVI business to any third party;
  - (c) otherwise further impair the ability of the GVI business to compete independently in any of the markets affected by the acquisition; or
  - (d) prejudice the reference or impede the taking of any action under the Act which may be justified by the CC's decisions on the reference.
2. Further and without prejudice to the generality of paragraph 1, Thermo will, at all times during the specified period, procure that except with the prior written consent of the CC:
  - (a) the GVI business is carried on separately from the Thermo business and GVI's separate sales or brand identity is maintained;
  - (b) the GVI business is maintained as a going concern, and sufficient resources are made available by Thermo for the maintenance of that business as a going concern;
  - (c) except in the ordinary course of business, and subject to the provisions of subparagraph (k) below, no substantive changes are made to the organizational structure of the GVI business, or to the management responsibilities within the GVI business;
  - (d) except in the ordinary course of business, in relation to the assets of the GVI business:
    - (i) the assets, including facilities and goodwill, are maintained and preserved;
    - (ii) none of the assets are disposed of; and

- (iii) no interest in the assets is created or disposed of;
- (e) the nature, description, range and standard of goods and/or services supplied by the GVI business at the date of 25 October 2006 are in all material respects maintained and preserved;
- (f) there is no integration of the information technology of the two businesses, and the respective software and hardware platforms of the GVI business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with GVI's customers and/or suppliers in relation to the GVI business will be carried out by the GVI business alone and for the avoidance of doubt Thermo will not negotiate on behalf of GVI or enter into any joint agreements with GVI;
- (h) all existing contracts continue to be serviced by the business to which they were awarded;
- (i) all reasonable steps are taken to encourage all key staff of the GVI business to remain with the business in relation to which they were employed prior to the merger, and to recruit suitable replacements for any key positions in the GVI business which become vacant;
- (j) except as provided in subparagraph (k) below, no key staff are transferred or seconded between the GVI business and the Thermo business;
- (k) notwithstanding the undertakings set out in subparagraphs (c) and (j) above:
  - (i) Dr Gareth Jones will fulfil the role of general manager of the GVI business at Wythenshawe, Cheshire, as a full-time GVI employee until Effective Disposal;
  - (ii) the exclusive formal reporting line for Dr Gareth Jones' GVI responsibilities will be to Mike Bono, Finance Director of Thermo's Integrative Technologies division;
  - (iii) Bill Newton will fulfil his role as the GVI financial manager at Wythenshawe, Cheshire, as a full-time GVI employee until effective disposal with an exclusive formal reporting line to Dr Gareth Jones; and
  - (iii) Michael Burgess will remain an employee of Thermo, but will fulfil the full-time role of Operations Manager at GVI, with an exclusive formal reporting line to Dr Gareth Jones;
- (l) until Effective Disposal, effective Confidentiality Agreements are entered into by, and remain in place with:
  - (i) Dr Gareth Jones, Bill Newton, and Michael Burgess in respect of their employment and/or functions at GVI;
  - (ii) Mike Bono in respect of any Confidential Information concerning the GVI business which is conveyed to him in accordance with his function as the formal reporting line for Dr Gareth Jones; and

- (iii) James Coley and Jonathan Wilk in respect of any Confidential Information concerning the GVI business which either individual receives, or becomes aware of, in the course of their duties as in-house counsel for Thermo;
- (m) no Confidential Information (as defined in subparagraph (n) below) regarding the GVI business will be solicited, or otherwise procured from, Dr Gareth Jones, Bill Newton, Michael Burgess, Mike Bono or any other person employed by or on behalf of GVI, except as permitted in subparagraph (o) below and provided that such procurement is undertaken in accordance with subparagraph (p) below;
- (n) except as provided in subparagraphs (o) or (p) below, no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the GVI business ('Confidential Information') shall pass, directly or indirectly, from the GVI business (or any of their employees, directors, agents or affiliates) to the Thermo business (or any of its employees, directors, agents or affiliates) or vice versa, except where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and
- (o) notwithstanding the undertaking set out in subparagraph (n) above, the flow of Confidential Information from the GVI business (or any of their employees, directors, agents or affiliates) to the Thermo business (or any of its employees, directors, agents or affiliates) is permitted in the circumstances specified in Part 2 of this Appendix B;
- (p) advance notice of any disclosure required in accordance with subparagraph (n) above (which disclosure does not fall within the circumstances specified in part 2 of this Appendix B) is given to the CC by the General Manager of GVI at least five days before the required date of disclosure, with details of:
  - (i) the nature of any Confidential Information which it is intended to disclose;
  - (ii) the reason for the proposed disclosure; and
  - (iii) the person(s) to whom it is intended to disclose that information;
- (q) the General Manager of GVI takes all appropriate steps to:
  - (i) introduce himself to all customers, suppliers, agents and other staff of GVI as the General Manager of GVI;
  - (ii) to reassure all persons dealing with GVI that the business is an independent, going concern with the financial resources to meet all current and future commitments; and
  - (iii) to confirm the appropriate points of contact for sales, services and other business aspects.

## **Compliance**

3. Thermo will procure that each of its subsidiaries, including the GVI business, complies with these undertakings, as if each subsidiary had given them.

4. Thermo will provide to the CC such information as the CC may from time to time require for the purposes of monitoring compliance by Thermo and its subsidiaries with these undertakings.
5. Thermo will procure that the General Manager of GVI shall provide to the CC such information as the CC may from time to time require for the purposes of monitoring compliance with these undertakings.
6. In particular, on the second day of each month (or, where the second day of the month does not fall on a working day, the first working day thereafter):
  - (i) Thermo shall provide a monthly statement to the CC confirming compliance with these undertakings, in the form set out in Part 3 of this Appendix B; and
  - (ii) the General Manager of GVI shall provide a monthly statement to the CC confirming compliance with these undertakings, in the form set out in Part 4 of this Appendix B.
7. Thermo shall comply, insofar as it is able, with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.
8. At all times, Thermo will actively keep the CC informed of any material developments concerning financial and other resources made available to the GVI business.
9. At all times, Thermo will procure that the General Manager of GVI actively keeps the CC informed of any material developments relating to the GVI business which includes but is not limited to:
  - (a) details of key staff who leave or join the GVI business;
  - (b) any GVI business breakdowns in work processes which have halted business operations for more than 24 hours, or changes in the GVI business's production arrangements which have affected the working pattern of more than five GVI business employees; and
  - (c) substantial changes in the GVI business contractual arrangements or relationships with key customers, suppliers and/or agents.

## Part 2

### Permitted flow of Confidential Information

For the purpose of the Undertakings, the flow of Confidential Information is permitted without prior notification to the CC, where:

- (a) in order to comply with Thermo's obligations as a public company to give periodic guidance on financial performance to its shareholders (deriving from SEC rules and the requirements of the NYSE where Thermo is listed), Thermo requires access to the following financial information relating to GVI:
  - (i) on a monthly basis, profit and loss, balance sheet and order backlog; and
  - (ii) on a quarterly basis, profit and loss, balance sheet, order backlog and headcount, together with quarterly forecast revenues and EBITDA updated monthly;
- (b) in order for Thermo to cooperate with the reference, and to comply with regulatory and/or legal obligations under applicable law, James Coley and/or Jonathan Wilk require access to information relating to GVI:
  - (i) in their capacity as in-house counsel for Thermo; and
  - (iii) subject to confidentiality agreements with James Coley and Jonathan Wilk remaining in place until the final determination of the reference;
- (c) in order for individuals, whose identity has been notified to the CC and who have given confidentiality agreements, to take steps necessary for the fulfilment of the Disposal Obligations subject to and in accordance with the terms of their confidentiality agreements.

### Part 3

#### Compliance statement for Thermo

I [insert name] confirm on behalf of Thermo that since the date of the Undertakings given by Thermo and accepted by the CC on [date] ('the Undertakings'):

- (a) Thermo has complied with the Undertakings in the period from [insert date] to [insert date].
- (b) Thermo's subsidiaries have also complied with the Undertakings in the period from [insert date] to [insert date].
- (c) No action has been taken by Thermo in the period from [insert date] to [insert date] that will impede the taking of any action by the CC which may be justified by its decision on the reference.
- (d) Thermo and its subsidiaries will continue actively to keep the CC informed of any material developments relating to the GVI business in accordance with paragraph 8 of the Undertakings.
- (e) The GVI business has been maintained as a going concern and sufficient resources have been made available for this purpose.
- (f) Thermo has not had any involvement in the operation and updating of GVI business customer/supplier lists.
- (g) Thermo has not had any involvement in customer/supplier negotiations for the GVI business.
- (h) Thermo has not made or procured any substantive changes to the nature, description, range and quality of any goods and/or services currently supplied by the GVI business.

#### Assets—including facilities and goodwill

- (i) Thermo has not disposed of any of the assets of the GVI business.
- (j) Thermo has not created or disposed of any interest in the assets of the GVI business.
- (k) Thermo believes that all of the assets of the GVI business have been maintained and preserved.

#### Contracts

- (l) Thermo has not serviced any existing contracts awarded to the GVI business.



**Information technology systems**

(m) Thermo has not made or procured any changes to the software and hardware platforms of the GVI business.

**Staff**

(n) Thermo has not made or procured any changes to the key staff or the organizational structure of the GVI business or to the management responsibilities within the GVI business.

**Material developments**

(o) There have been no material changes to the resources made available to the GVI business, which remain sufficient to maintain it as a going concern.

**Confidential information**

(p) No business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses has passed, directly or indirectly, from the GVI business (or any of its employees, directors, agents or affiliates) to Thermo (or any of its employees, directors, agents or affiliates), or vice versa, save as permitted by the Undertakings.

(q) There have been no matters or issues concerning the use and enforcement of confidentiality agreements as provided for in paragraph 2 of the Undertakings except:

*[Detail any breaches of the confidentiality agreements, sanctions and action taken to remedy consequences of breaches]*

**FOR AND ON BEHALF OF THERMO ELECTRON MANUFACTURING LIMITED AND THERMO FISHER SCIENTIFIC INC**

Signature.....

Name .....

Title .....

Date .....

## Part 4

### Compliance statement for GVI's Manager

I, **Gareth Jones**, confirm that since the date of the Undertakings given by Thermo and accepted by the CC on [date] ('the Undertakings'):

- (a) The GVI business has been maintained as a going concern and sufficient resources have been made available for this purpose.
- (b) The GVI business's customer/supplier lists have been operated and updated purely for the purposes of the GVI business without any involvement of Thermo.
- (c) All customer/supplier negotiations for the GVI business have been carried out independently of Thermo.
- (d) There have been no substantive changes to the price, nature, description, range and quality of any goods and/or services supplied by the GVI business.

### Assets—including facilities and goodwill

- (e) Except in the ordinary course of business, none of the assets of the GVI business have been disposed of.
- (f) Except in the ordinary course of business, no interest in the assets of the GVI business has been created or disposed of.
- (g) Except in the ordinary course of business, all of the assets of the GVI business have been maintained and preserved.

### Contracts

- (h) All existing contracts awarded to and by the GVI business continue to be serviced by GVI and the relevant suppliers.

### Information technology systems

- (i) There have been no changes to the software and hardware platforms of the GVI business, beyond routine changes and maintenance.

### Staff

- (j) No changes have been made to or to the key staff or the organizational structure of the GVI business or to the management responsibilities within the GVI business.

### Material developments

- (k) Except as listed in paragraph (iii) below, there have been no:

- (i) business system breakdowns in GVI work processes which have halted operations for more than 24 hours, or changes in the GVI business's production arrangements which have affected the working pattern of more than five GVI business employees;
- (ii) substantial changes in the GVI business contractual arrangements with key customers, suppliers or agents;
- (iii) material developments occurring in the GVI business, including (but not limited to):
  - (1) sales orders, tender bids, progress with testing and/or installation of existing orders, servicing commitments and agency arrangements, save for those detailed in the (attached) spreadsheet showing the status of orders; and
  - (2) details of key staff who leave or join the GVI business.

**Confidential information**

- (l) No business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses has passed, directly or indirectly, from GVI (or any of its employees, directors, agents or affiliates) to Thermo (or any of its employees, directors, agents or affiliates), or vice versa, save as permitted in the Undertakings.

CONFIRMED BY:

Signature.....

Name                    Dr Gareth Jones

Title                    GVI General Manager

Date .....

## Part 5

### Directions for the appointment of a Monitoring Trustee

1. To supervise the establishment of any additional mechanisms necessary for ensuring compliance with the Undertakings pending final determination of the reference, to monitor compliance by Thermo Fisher, Thermo and the GVI business, as appropriate, with the Undertakings, and, so far as possible, to ensure their continued full and effective compliance, Thermo Fisher and Thermo shall appoint a Monitoring Trustee (MT). The functions of the MT shall be as set out below. The MT shall act on behalf of the CC and shall be under an obligation to the CC to carry out his functions to the best of his abilities.
2. Thermo Fisher and Thermo shall cooperate fully with the MT, in particular as set out below. Thermo Fisher and Thermo shall ensure that the terms and conditions of appointment of the MT shall reflect and give effect to the functions and obligations of the MT, Thermo Fisher and Thermo as set out in this document.

### General

3. The MT shall possess appropriate qualifications and experience to carry out his functions.
4. The MT shall neither be nor become exposed to a conflict of interest.
5. The MT shall be remunerated and reimbursed by Thermo Fisher and Thermo for all reasonable costs properly incurred in accordance with the terms and conditions of his appointment. This shall be done in such a way that does not impede his independence or his ability effectively to carry out his functions.
6. The MT shall be appointed by Thermo Fisher and Thermo as soon as is reasonably practicable and in any event by **5pm on Friday 18 May 2007**, or such later date as agreed, and shall continue to act until the CC has finally determined the reference (within the meaning of section 79 of the Enterprise Act 2002).
7. The appointment by Thermo Fisher and Thermo of a MT shall be subject to the approval of the CC as to the identity of the MT and his terms and conditions of appointment in their entirety. To this end, Thermo Fisher and Thermo shall inform the CC as soon as is reasonably practicable, and in any event by **5pm on Wednesday 16 May 2007**, of the identity of the MT that Thermo Fisher and Thermo propose to appoint and provide the CC with draft terms and conditions of appointment and once appointed, Thermo Fisher and Thermo shall provide the CC with a copy of the agreed terms and conditions of appointment.

### Primary Functions

8. The Primary Functions of the MT shall be to supervise the establishment of any additional mechanisms necessary for ensuring compliance with the Undertakings pending final determination of the reference, to monitor compliance by Thermo Fisher, Thermo and the GVI business, as appropriate, with the Undertakings, and, so

far as possible, to ensure their continued full and effective compliance, during his term of appointment.

9. The MT shall take all steps that he reasonably considers to be necessary in order for him effectively to carry out his Primary Functions. Those steps may include, but shall not be limited to the monitoring of communications within the GVI business and between the GVI business and the Thermo business, including written and electronic communications, telephone conversations and meetings.
10. The MT shall comply with any requests made by the CC for the purpose of ensuring the full and effective compliance by Thermo Fisher, Thermo and the GVI business with the Undertakings.

### **The obligations of Thermo Fisher and Thermo**

11. Thermo Fisher and Thermo (including all employees, officers, directors, advisers and consultants) shall cooperate and procure that GVI cooperates fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require, including but not limited to:
  - (a) the provision of such facilities as are necessary for the discharge by the MT of the MT's functions, including the provision of an office with a workstation, telephone, fax machine and a computer at such premises of the GVI business, and the Thermo business as the MT may reasonably require; and
  - (b) the provision of full and complete access to all personnel, books, records, documents, facilities and information of GVI, and the Thermo business as the MT may reasonably require.
12. If Thermo Fisher or Thermo are in any doubt as to whether any action or communication would infringe the Undertakings, it should contact the MT to clarify the position.
13. If Thermo Fisher or Thermo has any reason to suspect that the Undertakings might have been breached, it should notify the MT and the CC immediately.

### **Reporting functions**

14. Ten working days following the date of his appointment the MT will provide a report to the CC which provides detailed information on any additional mechanisms which have been or will be put in place to ensure continued compliance with the Undertakings.
15. Thereafter on a fortnightly basis, the MT shall provide the CC with a statement certifying whether or not, in his view, Thermo Fisher and Thermo have complied with the Undertakings. At the same time, the MT shall provide the CC with a report setting out his views in relation to the following:
  - (a) The reasons why the MT has concluded that the Undertakings have or have not been complied with. In particular, the MT should set out and explain whether:
    - (i) anything has caused him to be concerned as to whether Thermo Fisher and Thermo were complying with the Undertakings and, if it has, what steps he has taken so as to satisfy himself as to their compliance; (ii) he has any remaining doubts or uncertainties as to whether Thermo Fisher and Thermo have complied

with the Undertakings; and (iii) anything causes him to be concerned about a possible future breach of the Undertakings (whether deliberate or inadvertent).

- (b) The extent to which the MT considers that he is in a good position to monitor the compliance of Thermo Fisher and Thermo with the Undertakings. The MT should set out and explain if there is anything that he considers would assist him in monitoring the compliance of Thermo Fisher and Thermo with the Undertakings.
  - (c) The extent to which Thermo Fisher and Thermo have cooperated with the MT in his task of monitoring their compliance with the Undertakings. The MT should set out and explain if there are any aspects of the cooperation of Thermo Fisher and Thermo that he considers could be improved.
16. When providing his reports to the CC, the MT must ensure that he does not disclose any information or documents to the CC which Thermo Fisher and Thermo would be entitled to withhold from the CC on the grounds of legal privilege.
  17. The MT should notify the CC immediately if he forms a reasonable suspicion that the Undertakings have been breached, or if he considers that he is not in a position effectively to carry out his functions. In that situation, the MT should set out the reasons for his view and attach relevant supporting evidence (so far as he is permitted by paragraph 16).
  18. All communications between the MT and the CC (including the statements and reports of the MT referred to in paragraph 17) shall be confidential and not disclosed to Thermo Fisher and/or Thermo, save with the express written permission of the CC. In relation to the possibility of disclosure of such communications to third parties, the CC shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The MT shall not disclose such communications to third parties.

## **Interpretation**

19. In these directions references to 'the Undertakings' are references to the undertakings given to the CC on 26 February 2007. Terms and expressions defined in the Undertakings shall have the same meaning in these directions, save as the context otherwise requires.

### **Mandate of the Divestiture Trustee**

1. The Divestiture Trustee will be required to carry out its duties in accordance with the provisions of these Undertakings, but subject to this overriding obligation shall protect the legitimate financial interests of the Vendors.
2. The Divestiture Trustee will have the sole right to sell GVI's Business, or any asset or part thereof, during the Trustee Divestiture Period.
3. Neither the Vendors nor any member of the Thermo Group will take any steps towards the sale of GVI's Business, or any asset or part thereof, once the Divestiture Trustee has been appointed, save at the direction of the Divestiture Trustee.
4. The Divestiture Trustee shall account for sale monies and for all costs and expenses incurred in connection with the sale to the Vendors and after the deduction of all the sums properly payable to the Divestiture Trustee or to any person out of the sale proceeds shall pay the balance to the Vendors in such proportion as the Vendors have jointly directed the Competition Commission.
5. The terms of the remuneration of the Divestiture Trustee may provide the Divestiture Trustee with an incentive provided that such incentive does not give rise to any conflict of interest and does not create any impediment to a prompt sale to remedy the SLC.
6. The Vendors shall assist the Divestiture Trustee to carry out its duty in accordance with the terms of these Undertakings.
7. The Divestiture Trustee shall provide the Competition Commission with such information and reports as the Competition Commission may require to ascertain whether the Vendors, and/or the members of the Thermo Group, and or alternatively, the Divestiture Trustee, are complying with their obligations under and in relation to these Undertakings and shall promptly report to the Competition Commission if it concludes that the Vendors, and/or the members of the Thermo Group, are failing to comply.