

Established, 1925
Bird & Son, inc.
East Weymouth, Mass. U.S.A.

PLAINTIFF'S
EXHIBIT
BIR-91

April 5, 1957

Mr. E. J. O'Leary
Executive Vice President
The Ruberoid Company
500 Fifth Avenue
New York 36, N. Y.

PLAINTIFF'S EXHIBIT

BIR-522

Dear Mr. O'Leary:

Pursuant to our various discussions and correspondence with regard to the Ruberoid Company selling Bird Asbestos Cement products, I believe that the following represents our view of the various understandings that we should have on this transaction:

1.) BASIC ARRANGEMENT

The Ruberoid Company will furnish Bird with Asbestos Cement products on the basic principle of allowing Bird a manufacturer's discount of 10% beyond the net prices which Ruberoid has established on their own sales to their regular trade customers who are enjoying the maximum discounts Ruberoid offers.

Ruberoid will ship such Asbestos products with full freight allowed to any regularly established Bird Asphalt Roofing plant, and to Bird warehouses where their Asphalt Roofing products are stocked, at Jersey City, New Jersey, or any other point where Bird maintains a warehouse for their Asphalt Roofing products in a city in which is located an operating asphalt roofing plant of any manufacturer, in the 37 states east of the Rockies.

Ruberoid will make any adjustment in transportation with Bird on shipments made direct from Ruberoid's Asbestos Cement producing plants direct to Bird customers beyond the freight expense which Bird is able to recover from its customers in selling them in competition on Asbestos Cement products.

2.) PRICE CHANGES

In the event Ruberoid makes a change in their prices to Bird, the new prices to Bird will be established in accordance with the basic principles set forth in paragraph 1.

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In the event that such new prices from Ruberoid to Bird represent a decrease in the latter's net cost, the lower net prices will apply to any shipments in transit on the effective date of the change.

In the event that the new prices from Ruberoid to Bird represent an increase in the latter's net cost, Ruberoid will extend to Bird the same privilege of placing orders at the former lower prices and the same period to take shipments of such orders as Ruberoid provides for their regular trade customers.

3.) LABELS

Ruberoid will ship Asbestos Cement Products to Bird under Bird's own brands. The finishing materials and/or labels used will be furnished at its expense by Ruberoid according to designs and wording determined by Bird, provided that the size, shape and material used must be the same as Ruberoid normally uses for their own branded goods.

4.) PROTECTION AGAINST PATENT INFRINGEMENT

Ruberoid will assume any liabilities and damages, including costs and expenses of suit, that may be incurred by Bird because they have purchased and sold Asbestos products made under this arrangement by Ruberoid under the Bird label due to alleged or proven infringement of any patents, copyrights, design patents or other legal rights.

5.) SAMPLES

Bird will furnish samples at their expense and may, if it is mutually agreeable, arrange to have Ruberoid produce such samples with Bird labels and charge for them at Ruberoid's cost.

6.) COMPLAINTS

If Asbestos Cement products produced by Ruberoid under the Bird label are considered defective, Ruberoid will replace the material and will stand labor charges that may be involved not to exceed \$9.00 per square. In the event such complaints arise on Bird labelled Asbestos Cement products produced by Ruberoid, the latter will be given an opportunity to investigate the complaint and examine the materials to determine to our mutual satisfaction if they are defective, before any adjustment is settled in which Ruberoid is expected to participate.

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7.) DELIVERIES

Ruberoid will handle orders from Bird for Asbestos Cement products under this arrangement in the same fashion that they handle orders from their other trade buyers without prejudicing such orders in favor of other orders on their books at any time.

In the event of interruptions to production due to strikes, riots, war or other causes beyond Ruberoid's control, or in the event of delay in deliveries beyond 60 days due to excess of demand over supply for any period, Bird orders for Asbestos Cement products under this arrangement will be given the same share of Ruberoid's production that the Bird orders for the previous six months' period bear Ruberoid's total shipments in that period.

8.) TERMINATION

Once this arrangement is accepted by both parties as evidenced by mutual signatures to this letter, the arrangement will continue in force indefinitely unless terminated by a six months' notice in writing given by either party to the other prior to the desired termination date.

9.) CURRENT PRICES AND TERMS

- A. Ruberoid will furnish Bird with 12 x 24 Asbestos Siding (with Duroc finish) at Ruberoid's published carload list price less discounts of 6% less 10%, and 12¢ per cwt. allowance.

Full freight will be allowed by Ruberoid on shipments to Bird's Asphalt Roofing plants and/or warehouses as specified in paragraph 1.

On direct rail carload or truckload shipments from Ruberoid's plants to Bird customers, if destination of the shipment is within Ruberoid's own or a competitive Asbestos Cement factory point, Ruberoid will allow full freight charges. If destination is outside of Ruberoid's own or a competitive Asbestos Cement factory point, Ruberoid will allow Bird up to 12¢ per cwt. and if applicable will equalize freight charges with the nearest competitive Asbestos Cement factory point.

- B. American Thatch Asbestos roof shingles available from Ruberoid's Mobile, Alabama and Dallas, Texas plants only, will be sold to Bird at Ruberoid's published carload list price, less discounts of 6% less 10%, and 12¢ per cwt. allowance.

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On direct rail carload or truckload shipments, where destination is within Ruberoid's own or a competitive Asbestos Cement factory point, full freight charges will be allowed. If destination is outside of Ruberoid's own or a competitive Asbestos Cement factory point, Ruberoid will allow up to 12¢ per cwt. and if applicable will equalize freight charges with the nearest Asbestos Cement factory point.

Shipment of American Thatch Roof shingles must be limited to destinations normally served by Mobile, Alabama and Dallas, Texas plants of the Ruberoid Company.

- C. Stonewall Asbestos Board will be sold by Ruberoid to Bird at Ruberoid's published list price less 10%, less 5%, less 10%, F.O.B. Ruberoid's Asbestos Cement plants at South Bound Brook, New Jersey, Mobile, Alabama, Dallas, Texas, or St. Louis, Missouri. Batten strips will be sold at a similar discount basis from the published list price.

On rail carload or truckload shipments from Ruberoid's plants to Bird customers, if the destination of the shipment is within Ruberoid's own or a competitive Asbestos Cement factory point where these products are manufactured, full freight charges will be allowed. If destination is outside Ruberoid's own or a competitive Asbestos Cement factory point, and if applicable Ruberoid will equalize freight charges with the nearest competitive Asbestos Cement factory point.

Terms of payment - 2% 10th proximo., net 30th proximo.

If you agree with the statement of this arrangement as set forth above, I would suggest that you sign the duplicate copy of this letter and return it to us, keeping the other for your files. That will be sufficient for our purposes to establish the basis for working together for Bird's purchase of Asbestos Cement products from the Ruberoid Company.

As soon as we have received your indication that this is acceptable, we will then advise you more definitely as to when we feel we can get started on this program.

Very truly yours,

Building Materials Division

E. L. Chamberlain

Vice President

Approved

E. J. O'Leary
Exec. V. P.

KLC:cat

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