

AGREEMENT

THIS AGREEMENT made and entered into as of this 15<sup>th</sup> day of Feb., 1953, by and between THE EAGLE-PICHER SALES COMPANY, a Delaware corporation, with general offices in Cincinnati, Ohio, hereinafter referred to as "Seller," and THE GLIDDEN COMPANY, an Ohio corporation, with general offices in Cleveland, Ohio, hereinafter referred to as "Buyer,"

WITNESSETH:

IT IS AGREED AS FOLLOWS:

Seller agrees to sell and Buyer agrees to buy upon the following terms and conditions:

1. MATERIAL

- (a) Leaded Zinc Oxide,
- (b) American Process Lead Free Zinc Oxide, hereinafter sometimes referred to as "Zinc Oxide."

The material covered by this Agreement shall be the Seller's standard grade of product currently being offered its own trade.

2. QUANTITY

Buyer's requirements for its use in its own plants in the manufacture of paint products.

3. PRICE

Seller's established prices to the paint industry.

On all orders placed by Buyer with Seller before the first of any month for shipment during the succeeding month, Seller's established prices in effect on the first of any such month shall govern all such shipments made during such month.

On all orders placed by Buyer with Seller after the first of any month for shipment during that month, Seller's established prices in effect at the time such orders are placed shall govern all such shipments

In the event of a price decline, the lower price shall be applicable to shipments made on or after the date of such decline.

4. TERMS OF PAYMENT

15, 10 days, net cash 30 days from date of invoice. Invoices shall be payable in lawful currency of the United States.

5. SHIPPING INSTRUCTIONS

Shipments will be made from time to time as the needs of Buyer may require and will be directed by Seller to destinations which Buyer may from time to time select.

6. LIABILITY FOR RESULTS OBTAINED

Seller makes no warranty of any kind, express or implied, except that the material sold hereunder shall be of merchantable quality; and the Buyer and its customers assume all risk and liability for results obtained by the use of the material, whether used singly or in combination with other products.

7. CLAIMS

No claim of any kind, whether as to material delivered or for non-delivery of material, shall be greater in amount than the purchase price of the material in respect of which such damages are claimed, and failure to give notice of claim within sixty (60) days from date of delivery, or the date fixed for delivery, respectively, shall constitute a waiver by Buyer of all claims in respect to such material.

8. TAXES

Buyer shall reimburse Seller for all taxes, excises or other charges which the Seller may be required to pay to any government (national, state or local) upon the sale or production of the material sold hereunder.

9. FORCE MAJEURE

No liability shall result from delay in performance or non-performance caused by circumstances beyond the control of the party affected, including, but not limited to, act of God, fire, flood, war, government

action, accident, labor trouble or shortage, inability to obtain material, equipment or transportation. Quantities so affected shall be eliminated from the contract without liability, but the contract shall remain otherwise unaffected.

#### 10. ASSIGNMENT

This Agreement may be assigned by either of the parties to any corporation resulting from the consolidation or merger of either of said parties into any corporation whether or not such party be the surviving corporation in such merger or consolidation, but shall not be otherwise assignable without the agreement in writing first had of each of the parties hereto.

#### 11. PATENT INDEMNITY

Seller warrants that the use or sale of the material delivered hereunder will not infringe the claims of any United States patent covering the material itself; but does not warrant against infringement by reason of the use thereof in combination with other material or in the operation of any process.

#### 12. FAIR LABOR STANDARDS

Seller warrants that in the performance of this contract it will comply with the Fair Labor Standards Act of 1938 and any amendments thereto.

#### 13. DURATION

This Agreement shall become effective as of Feb 5<sup>th</sup> 1953 and shall continue for a period of five (5) years therefrom, and from year to year thereafter, subject to cancellation at the end of such five year period, or at the end of any year thereafter, by either party giving the other twelve (12) months' notice in writing, and subject further to the right of the Seller to cancel this Agreement at any time on ninety (90) days' notice in writing in the event it discontinues the manufacture of Zinc Oxide.

14. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

15. ENTIRETY OF CONTRACT

This Agreement constitutes the entire contract of sale and purchase of the material named herein. No modification shall be of any force or effect unless in writing and signed by the party claimed to be bound thereby, and no modification shall be effected by the acknowledgment or acceptance of purchase order forms containing different conditions.

IN WITNESS WHEREOF, this Agreement has been duly executed by the proper officers of The Eagle-Picher Sales Company and by the proper officer of The Glidden Company as of the day and year first above written.

THE EAGLE-PICHER SALES COMPANY

By W. H. Fisher, Jr.

THE GLIDDEN COMPANY

By John R. Smith  
President