

Document 11

AGREEMENT

PLAINTIFF'S EXHIBIT

CT-1553

THIS AGREEMENT, made and entered into as of this 1st day of ~~January~~ ^{May}, 1983, by and between TEXAS MINING COMPANY, (herein sometimes referred to as "Supplier") and CERTAIN-TEED CORPORATION, (herein sometimes referred to as "Buyer").

WITNESSETH:

WHEREAS, Buyer is the Owner and Operator of a Plant located adjacent to the northern limits of the City of Hillsboro, Texas, (herein sometimes referred to as "Buyer's Plant") and said Buyer's Plant is involved in the manufacture of Asbestos Cement Products wherein Buyer is the user of Pulverized Sand; and

WHEREAS, Supplier has previously delivered to Buyer Pulverized Sand pursuant to an Agreement originally dated October 31, 1963, and Buyer desires to continue Supplier as the supplier of Pulverized Sand complying with the Specifications attached hereto and made a part hereof; and

WHEREAS, Supplier is able to supply the demand of such Plant and furnish the Pulverized Sand as herein outlined and, in order to accomplish the same, Supplier is willing to sell and deliver unto Buyer the Pulverized Sand specified herein and Buyer is willing to purchase the same, all as herein below set forth;

NOW, THEREFORE, it is agreed by and between Supplier and Buyer:

CTD007001

I

SALES AND QUANTITY

Supplier agrees to sell to Buyer during the term of this Agreement and Buyer agrees to purchase from Supplier, a minimum of seventy-five percent (75%) of Buyer's requirements of Pulverized Sand produced by Supplier for use in Buyer's Plant for the manufacture of Asbestos Cement Products. Supplier's obligation to sell Pulverized Sand to Buyer shall not exceed Two Thousand Five Hundred (2,500) tons thereof per month unless Buyer gives Supplier notice six (6) months in advance. Upon six (6) months advance notice by Buyer to Supplier, Supplier's obligation to sell Pulverized Sand hereunder to Buyer may be increased up to a maximum of Three Thousand (3,000) tons thereof per month. Buyer is granted the privilege of purchasing up to but not exceeding twenty-five percent (25%) of Buyer's annual requirements of Pulverized Sand per year from other Suppliers.

Provided Supplier is timely delivering to Buyer the quantities of Pulverized Sand as outlined in this Article, nothing in this Agreement shall be construed as restricting Supplier from selling Pulverized Sand to parties not a party to this Agreement.

II

TERM

J The Term of this Agreement shall be one (1) year from *May* ~~January~~ 1, 1983, which Term may be extended by mutual agreement between Supplier and Buyer.

III

PRICE

During the Term of this Agreement, Pulverized Sand will be delivered in bulk form by Supplier to Buyer's storage facilities at its Hillsboro, Texas, Plant by Truck or Rail shipment, freight collect, at the fixed price of \$19.26 per 2,000 pound ton, F.O.B. Supplier's Brady, Texas, Plant.

IV

PRICE ADJUSTMENT OR TERMINATION

If Buyer receives a bona fide offer to purchase the Pulverized Sand, at a price, including terms and conditions, lower than that applicable under this Agreement, and if Buyer certifies to Supplier the details of such offer, Supplier will, within fifteen (15) days, either meet such price on the same quantity offered or allow Buyer to purchase the Pulverized Sand so offered. Buyer shall give Supplier prompt notice of any quantity of Pulverized Sand purchased or to be purchased in accordance with the provisions of this paragraph. All amounts so purchased by Buyer shall be applied to reduce the quantity required to be purchased by Buyer hereunder.

QUALITY

The Pulverized Sand to be produced by Supplier and delivered to Buyer hereunder shall conform to Buyer's Specification No. 501 for Pulverized Sand, dated September 11, 1969, which is attached hereto and marked "Exhibit A". Buyer shall have the right at any time from time to time to change said Specifications, provided the machinery and equipment of Supplier in use at that time can produce Pulverized Sand with the changed Specifications and provided the raw material available to Supplier is of such quality that it will meet such changed Specifications after being pulverized, and Supplier agrees in writing to such changes in Specifications.

Upon delivery of the Pulverized Sand, Buyer shall reject the same within five (5) working days after delivery thereof if the Pulverized Sand fails to meet Buyer's said Specifications. Failure to notify Supplier of rejection within such time shall be deemed an acceptance of the Pulverized Sand as delivered.

In the event material not meeting the quality called for in Article V is delivered by Supplier to Buyer, Supplier shall be responsible for disposing of such material. However, if Buyer fails to give Supplier notice that the Sand fails to meet Buyer's Specifications within the time limits as stated in this Article V, Buyer shall be liable for any and all demurrage or re-delivery charges assessed by the Railroads or Trucking Companies.

VI

COMPATIBILITY - CHANGE IN QUALITY

Supplier has previously delivered to Buyer Pulverized Sand meeting the Specifications set out in Article V. If the Pulverized Sand delivered hereunder is changed materially from the quality or composition of the Pulverized Sand delivered for testing and such change(s) causes the Supplier's Pulverized Sand to be incompatible with the processes used in Buyer's Plant by Buyer, then all deliveries hereunder and the obligations of both Buyer and Supplier shall terminate without penalty or damages to either party; provided, however, that Supplier will first be allowed ninety (90) days in which to correct any change in its Pulverized Sand so as to make its Sand compatible with Buyer's process and if such correction is timely made, this Agreement shall continue in force. During such ninety (90) day period, Buyer may purchase Pulverized Sand from others without such purchase being in violation of the terms of this Agreement.

VII

INTERRUPTION OF DELIVERIES

Force Majeure shall include any stoppage or interruption caused directly or indirectly by fire, windstorm, explosion, strike, lockout, war, insurrection, lawful orders of any Court or regulatory body having jurisdiction over the parties hereto, or any other matter beyond control of either of the parties hereto. Stoppage or interruption caused by Force Majeure shall not result

in damages nor liability of either party hereto nor be grounds for termination of this Agreement. Should deliveries be interrupted by strike against a Railroad Carrier of Supplier's Pulverized Sand (which would be Force Majeure as set forth above), Supplier will, at Buyer's option, Truck said Pulverized Sand to Buyer's Plant facilities and sell the same to Buyer at a price increased by an amount, if any, equal to the increase in transportation costs. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such Force Majeure unless both parties agree that the total quantity to be delivered hereunder shall remain unchanged.

VIII

BILLING

Billings to Buyer shall be based upon the quantities delivered by Rail or Truck as the case may be and each billing shall be accompanied by an analysis of the Pulverized Sand showing that it conforms with the Buyer's Specifications referred to in Article V hereof. Payments for Pulverized Sand so delivered shall be due to Supplier at its Bank in Dallas, Texas. Payment is net thirty (30) days following the date of billing.

IX

REGULATORY BODIES

This Agreement is subject to all present and future valid Laws and Lawful Orders of all regulatory bodies, now or

hereafter, having jurisdiction over the parties hereto; and should either of the parties by force of any Law or Regulation imposed by order or be required to do any act inconsistent with the provisions hereof, this Agreement shall nevertheless continue in force and effect but be deemed to have been modified to conform with the requirements of such Law or Regulation.

X

MISCELLANEOUS

(A) Supplier shall maintain a Laboratory with necessary equipment to run the Wet Screen Analysis, Blaine Surface Area and Moisture Content to determine whether or not the product to be delivered meets the Specifications set out in Article V. Buyer shall have access to the analytical results.

(B) Supplier shall maintain in storage on Supplier's premises, One Hundred Fifty (150) tons of Pulverized Sand which shall be available for sale and delivery to Buyer.

(C) Any notice, request, demand, report or bill provided for in this Agreement shall be in writing and shall be considered as duly delivered when mailed by either Certified or Registered, postage prepaid, United States Mail addressed to the party to whom such notice is to be given as follows:

Supplier: Texas Mining Company
2104 East Randol Mill Road
Suite 101
Arlington, Texas 76011

Buyer: CertainTeed Corporation
Pipe and Plastics Group
Hillsboro, Texas

with a copy to:

CertainTeed Corporation
Pipe and Plastics Group
Purchasing Department
P. O. Box 860
Valley Forge, Pennsylvania 19482

(D) Upon delivery of the Pulverized Sand provided for herein, Buyer shall test the material to its satisfaction to determine its acceptability as soon as practicable but no later than at the end of five (5) working days following receipt as set forth in Article V, and if the same is accepted by Buyer, Supplier shall have no further duty or liability to Buyer as to the particular Pulverized Sand so delivered and upon delivery and acceptance, Buyer shall thereafter assume all responsibility therefor.

(E) Buyer shall save and hold harmless Supplier from all claims and demands of third parties resulting from claims arising out of Buyer's operations or any use of the product of Buyer's Plant allegedly caused by the Pulverized Sand to be delivered hereunder. Supplier agrees to save and hold harmless Buyer from any claims resulting or growing out of Supplier's operations up to the time of delivery of the Pulverized Sand and the acceptance thereof by Buyer.

(F) Sales Tax, if any, shall be borne by Buyer.

(G) This Agreement supersedes that certain Agreement entered into between Supplier and Buyer dated January 1, 1980, and said Agreement is hereby terminated by mutual consent.

XI

ASSIGNABILITY

This Agreement shall not be assigned in whole or in part by either of the parties hereto without the written consent of the other. All terms, conditions, and provisions contained in this Agreement shall be binding on the permitted assigns of either of the parties hereto. Consolidations, mergers, or other corporate reorganizations shall not be construed to be assignments requiring written consent.

IN WITNESS WHEREOF, the respective parties hereto have caused this Agreement to be executed by their respective Officers thereunto duly authorized and their Corporate Seals to be affixed thereto by a Secretary or Assistant Secretary, all as of the date first hereinabove set forth.

SUPPLIER:

TEXAS MINING COMPANY

ATTEST:

John D. Kiser
Assistant Secretary

By James R. Kiser
Vice President & General Manager

BUYER:

CERTAIN-TEED CORPORATION

ATTEST:

D. E. Young

By [Signature]



CERTAIN-TEED PROD. CORPORATION
PIPE DIVISION

T.C.D. REF. NO. 4	SPECIFICATION NO. 501	PAGE NO. 1
SUPERSEDED BY May 15, 1968		DATE OF ISSUE September 11,

DESCRIPTION:

Pulverized Silica

A. GENERAL

1. Description

Pulverized silica, for purposes of this specification, consists of a high purity grade of natural occurring crystalline sand or silica which has been subjected to grinding and classification processes in order to control its fineness. In some cases it may be necessary to wash the sand or silica in order to improve its purity and color. The refined pulverized silica shall be white to light gray in color.

B. USE

Pulverized silica reacts chemically with free calcium hydroxide formed during high pressure steam curing of Portland Cement.

C. LOT SIZE

For sampling and inspection purposes, a lot shall be defined as the quantity of pulverized silica shipped in a single carrier, or in one day.

D. REQUIREMENTS

1. Special

1.1 Initial Approval

All pulverized silica suppliers shall be approved in writing by the Technical Services Manager - Materials of Certain-Teed Asbestos and Plastics (CAP) Division. Any change in the source of the silica or in its processing by an approved supplier must be authorized in writing by the Technical Services Manager - Materials before the end product may be supplied to CAP Division plants.

2. Chemical and Physical Requirements

Chemical and physical requirements shall be in accordance with Tables A and B.

CTD007010

PREPARED BY E. Verelam	APPROVED BY J. J.	R. E. D. J. J.	MFG. J. J.	SALES J. J.	I.C. J. J.	OTHERS J. J.
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CERTAINTEED PRODUCTS CORPORATION
PIPE DIVISION

4

501

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SUPERSEDES:

May 15, 1968

DATE OF ISSUE:

September 11, 1968

DESCRIPTION:

Pulverized Silica

E. TEST METHODS

1. Chemical and Physical

The following tests will be conducted in accordance with the applicable CAP Division Test Methods.

Test	Test Method
Free Moisture Content	TM - 30
Loss on ignition	TM - 31
Total silica (SiO_2)	TM - 25
Per cent available SiO_2	TM - 25
Surface area	TM - 3
Wet sieve analysis	TM - 24

F. ACCEPTANCE AND REJECTION

CAP Division reserves the right to reject any lot of pulverized silica which does not conform to the requirements of this specification. If any lot is rejected, the supplier shall be advised within 24 hours and the reason for the rejection explained.

G. PACKAGING AND MARKING

Pulverized silica shall be supplied in bulk shipments by railroad car, truck or direct pipe line. Unless otherwise specified, each lot shall be marked as CPC 501 Silica and identified by the delivery date. All invoices shall include this information.

CTD007011

REPAIRED BY:	APPROVED BY:	R & D	MFG.	SALES	I.E.	OTHERS
E. J. J. J.	J. J. J.	J. J. J.	J. J. J.	J. J. J.	J. J. J.	J. J. J.

CONFIDENTIAL DOCUMENT - NOT TO BE DISTRIBUTED TO UNAUTHORIZED PERSONNEL



CERTAINTEED

CERTAINTEED PRODUCTS CORPORATION
PIPE DIVISION

SPECIFICATIONS CLASSIFICATION:

Standard Purchasing Specification

T.C.O. REF. NO.

6

SPECIFICATION NO.

501

PAGE NO.

3

SUPERSEDES:

May 8, 1972

DATE OF ISSUE:

APR 25 1972

DESCRIPTION:

Pulverized Silica

TABLE A

Chemical Requirements - Type A and Type B

<u>Ingredient or Item</u>	<u>Max. %</u>	<u>Min. %</u>
Free moisture content	1.0	
Loss on ignition	1.0	
Total SiO ₂		95.0
Available SiO ₂		90.0

TABLE B

Physical Requirements

<u>Item</u>	<u>Requirement</u>	
	<u>Type A</u>	<u>Type B</u>
Surface Area, Blaine sq. cm./gram		
a. 98+% SiO ₂ (total)	--	2300 Min.
b. 96 - 98% SiO ₂ (total)	3300±300	--
c. Under 96% SiO ₂ (total)	4000±300	--
Residue on U.S. Std. No. 200 mesh sieve, %, Max.	10.0	15.0
Residue on U.S. Std. No. 325 mesh sieve, %, Max.	35.0	40.0

CTD007012

PREPARED BY:

D

APPROVED BY:

R. D.

MFB.

SALES

I.C.

OTHERS