F-VCM - SHELL

J. T. LEONARD 7/18 copies to T. C. Walker
R. K. Johnson

JULY 17, 1974

MRS. MARGUERITE WESTFALL
PATENT LAW

R. H. SCHAKE

RECEIVED
JUL 19 1974
R. K. JOHNSON

SHELL CHEMICAL COMPANY, DIVISION OF SHELL OIL - VINYL CHLORIDE MONOMER

Attached for filing in the vault is original fully executed copy of contract dated January 1, 1974 covering Firestone vinyl chloride monomer purchases from Shell during the period January 1, 1974 through December 31, 1976, and evergreen thereafter. Either party can terminate contract effective December 31, 1976 or end of any calendar year thereafter by giving eighteen (18) months prior notice.

This January 1, 1974 contract supersedes the October 28, 1971 vinyl chloride monomer contract.

PURCHASING DEPARTMENT

RHS:cs
cc: S. T. Wepsic
W. P. Fray
J. T. Leonard

Att.

OCC 017778

CONFIDENTIAL

AGREEMENT

THIS AGREEMENT is entered into this 1st day of January, 1974, by and between SHELL CHEMICAL COMPANY, a division of SHELL OIL COMPANY, a Delaware Corporation, having an office at One Shell Plaza, P. O. Box 2463, Houston, Texas 77001 (hereinafter referred to as "Shell"), and THE FIRESTONE TIRE & RUBBER COMPANY, an Ohio Corporation, having an office at 1200 Firestone Parkway, Akron, Ohio 44317 (hereinafter referred to as "Firestone").

WHEREAS, Shell and Firestone have entered into a previous Agreement dated October 28, 1971, for the sale by Shell to Firestone of Vinyl Chloride Monomer (hereinafter referred to as "VCM"); and

WHEREAS, Shell and Firestone each desire to extend the period of such sale arrangement; and

WHEREAS, Shell and Firestone each recognize that the costs of VCM manufacture are increased substantially from those contemplated when entering into said previous Agreement and that future costs for such manufacture are increasingly uncertain owing to the uncertain costs of hydrocarbon supplies for feedstocks and power, the escalation in costs for chlorine and other raw materials, catalyst, utilities, power and labor, and the increased capital and operating costs that may be required to meet Federal, State and Local Government environmental standards and operating requirements; and

WHEREAS, Shell and Firestone each desire to provide for such price changes as are realistic and necessary from time to time for Shell to maintain its VCM operations at a level of economic viability sufficient to enable Shell to provide for necessary raw materials and other resources so as to sustain the long-term continuity of VCM supply by Shell to Firestone;

NOW, THEREFORE; in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto, effective as of January 1, 1974, now hereby agree as follows:

W I T N E S S E T H:

1. Term. This Agreement shall be in effect for a primary period beginning as of January 1, 1974, and ending December 31, 1976, and from calendar year to calendar year thereafter, either party being able to terminate this Agreement effective at the end of the primary period or the end of any calendar year thereafter, by giving the other party at least eighteen (18) months prior written notice.

2. Quantities. Shell shall sell and deliver to Firestone and Firestone shall purchase and accept from Shell VCM in an amount not less than nor more (except with Shell's written approval) than the respective minimums and maximums set forth in this Agreement but not exceeding, except with Shell's approval, 1/11 of the applicable maximum calendar year quantity during any calendar month, or cumulatively one-sixth (1/6) of the applicable calendar year maximum in two (2) succeeding months.

MAXIMUM - MINIMUM QUANTITIES OF VCM (LBS)
PER CALENDAR YEAR

Year	Minimum Quantity	Maximum Quantity
1974	40,000,000	50,000,000
1975	80,000,000	95,000,000
1976 and annually thereafter	80,000,000	95,000,000

Firestone shall give written notice to Shell not less than nine (9) months prior to each calendar year hereof as to the quantity of VCM it estimates it desires to purchase and be delivered by Shell during that calendar year within the range of the calendar year minimum and maximum amounts as specified in this Agreement. Subject to the minimum and maximum quantities hereunder, Firestone shall be required to receive not less than ninety-five (95) percent of the estimated calendar year quantity and Shell shall be required to deliver not more than one hundred five (105) percent of the estimated calendar year quantity in each calendar year covered by this Agreement, unless Shell shall agree in writing to deliver a greater or lesser quantity ordered by Firestone. In the event that Firestone desires and Shell agrees to sell VCM in excess of the calendar year maximum or less than the calendar year minimum stated hereunder then the said calendar year maximum and minimum shall be of no further effect for such year and that amount requested by Firestone and agreed to by Shell shall be considered a commitment for such calendar year, and for such calendar year Firestone shall be required to receive not less than 95% and Shell shall be required to deliver not more than 105% of the commitment for such calendar year.

3. Price - Terms of Payment.

(a) The price of VCM, F.O.B. Shell's plant, shall be 5.247 cents per pound during the calendar year 1974 for so long as the Economic Stabilization Act and Regulations issued thereunder prohibit Shell from increasing the same and thereafter such higher price per pound of VCM actually delivered to Firestone during the year, up to 5.90 cents as is legally permissible under said Act and Regulations. To the extent not prohibited by any such law or regulations, these prices or any other prices subsequently in effect hereunder shall be subject to increase or decrease any time after they have been in effect for ninety (90) days by Shell giving Firestone at least thirty (30) days prior written notice. If any such increase is unacceptable to Firestone, Firestone shall so notify Shell at least fifteen (15) days before the effective date of the increase, whereupon this Agreement shall terminate.

(b) If prior to the commencement of any calendar year Firestone provides Shell with satisfactory written evidence of any offer received from a third party at least ninety (90) days prior to the commencement of such calendar year of a price applicable to the purchase by Firestone of at least 75,000,000 pounds of VCM for such calendar year and said offered price is lower by more than 0.1 cents per pound of VCM than Shell's applicable price for the same period, then unless Shell elects to meet such third party price for the quantities so offered, and so advises Firestone in writing within thirty (30) days following receipt of written notice from Firestone of such third party offer, Firestone may accept the competitive offer and for said calendar year, as well as each calendar year thereafter, a definite quantity shall be deducted from the minimum and maximum volumes as specified by Firestone and at Firestone's sole option by notice to Shell within thirty (30) days after receipt of Shell's notice.

(c) Payment for VCM shall be made to Shell within thirty (30) days after receipt of Shell's statement for VCM delivered to Firestone or Firestone's order.

4. <u>Orders - Deliveries</u>. Not less than ten (10) days prior to the beginning of each month thereof, Firestone shall submit to Shell a notice setting out the quantity of VCM desired to be purchased during such month.

Firestone shall receive all VCM purchased hereunder into tank cars provided by Shell FOB either Shell's Houston, Texas plant or Shell's Norco, Louisiana plant according to Shell's option, said tank cars to be trip leased by Shell to Firestone.

The quantity or weight of VCM delivered into tank cars shall be determined on the basis of outage tables with appropriate corrections for temperature or on the basis of certified weights of the common carrier of each loaded tank car utilizing printed tare of such tank cars or some other means to be mutually agreed to. "Heel" allowance shall be computed on the basis of the standard factor at 5 psig of 3 pounds per 100 gallons of car capacity provided such cars are returned to Shell with a VCM pressure of between 5 and 10 psig prior to loading.

5. Government Charges

(a) All new and increased domestic or foreign taxes and other governmental charges excluding those based on income, franchise, licensing and excess profit taxes, which are imposed after December 31, 1973 on VCM, or on the raw or processed materials from which the VCM is produced, ~~Shell~~ (including without limitation its VCM manufacturing facilities), or required to be paid or collected by Shell by reason of the production, sale transportation, or delivery of the VCM hereunder, shall be paid to Shell by Firestone in addition to the prices specified herein and within fifteen (15) days after receipt of Shell's statement.

(b) Governmental Restraint. If as to the price at any time in effect hereunder, Shell is ever prevented either from charging or changing the same by any governmental law, regulation, order, request, or recommendation, Shell may terminate this Agreement ninety (90) days after giving Firestone notice.

6. Liabilities - Claims. Shell warrants that the VCM delivered hereunder will meet the specifications set forth in Exhibit "A", but Shell makes NO OTHER WARRANTIES hereunder, WHETHER OF MERCHANTABILITY, FITNESS OR OTHERWISE, AND NONE SHALL BE IMPLIED. Firestone shall accept Shell's analysis of VCM delivered hereunder as determined by Shell on the contents of Shell's storage spheres prior to delivery to Firestone and Firestone shall accept Shell's Certificate of Analysis therefor as representative of the quality of the VCM delivered hereunder with respect to meeting the specifications warranted.

Shell shall have no liability for, and Firestone shall indemnify Shell against all claims, loss, liability and expense on account of any injury or death of persons (including Firestone's employees) or damage to property (including Firestone's) caused by or happening in connection with Firestone's loading, receipt, storage, handling or use of the VCM delivered hereunder after the VCM passes into tank cars unless due to negligence of Shell, its agents or employees in the manufacture or delivery of the VCM.

Neither Shell nor Firestone shall have any liability to the other for any claims arising directly or indirectly out of or in connection with this Agreement, unless the claimant gives the other party notice of the claim setting forth fully the facts on which it is based within thirty (30) days after the date of delivery, or other transaction or occurrence giving rise to the claim. Claims shall in any case be limited to the applicable price of VCM set forth herein, and neither party shall ever be liable for any indirect, special or consequential damages.

7. Excuses for Non-Performance. Either Shell or Firestone shall be excused from its obligations hereunder when and to the extent that performance

is delayed, impaired or prevented by any circumstances (except financial) reasonably beyond its control, or by fire, explosion, breakdown in machinery or equipment, or failure of catalyst, or riots, strikes, labor disputes, voluntary or involuntary compliance with any law, order, regulation, recommendation, or request of any governmental authority, or total or partial failure of the usual means of transportation of chlorine, ethylene, Dichloroethane or VCM, or inability or delay in obtaining all or any part of the raw materials used in the manufacture of Dichloroethane or VCM from Shell's earlier established internal or third party sources of supply. As used herein, "labor dispute" means any controversy to which either Shell or Shell's source for raw materials, contractor, subcontractor or agent, or Firestone or a Firestone customer, contractor, subcontractor, or agent, has an interest, involving wages, hours or working conditions and includes any strike, picketing, lockout, suspension of construction or any other action taken in connection with or because of the labor dispute. Neither Shell nor Firestone shall have any obligation to participate in any settlement of a labor dispute, or to request its agents or contractors or raw material suppliers or customers to do so except where the same is acceptable to such party in its sole judgment. The quantities of VCM consequently undelivered as a result of causes excused hereunder shall not be required to be made up by Shell or Firestone upon resumption of full deliveries of VCM hereunder and such excused quantities shall be deducted from the applicable calendar year quantities. In the event that Shell is excused from delivering any quantity of VCM due to any of the causes specified above, Shell shall have the right to apportion, solely according to Shell's judgment, consistent with Section 2-615 of the Uniform Commercial Code, its available VCM productive capacity to include Firestone in such a manner as it deems appropriate and Shell shall have no obligation in the event of any excused causes specified above to purchase ethylene, chlorine, Dichloroethane or VCM or to utilize any internal sources of supply of the same to perform hereunder.

8. Assignability. Neither this Agreement nor any claim arising directly or indirectly out of or in connection therewith shall be assignable by either party or by operation of law without the written consent of the other party, which consent shall not be unreasonably withheld, except that either party may assign its rights hereunder, subject to the obligation thereof, to any successor of substantially all of its business assets pertaining to VCM production or the use thereof as a raw material, as applicable.

9. Remedies. In the event of any breach by either party of any of the provisions of this Agreement, the other party shall have the right in addition to any other rights or remedies it may have to suspend or refuse deliveries hereunder and/or to terminate this Agreement by notice of the defaulting party effective as of the date of such notice. Either party's right to require strict performance of the obligation of the other shall not be affected in any way by any previous waiver, forebearance or course of dealing.

10. Notices. All notices or demands under this Agreement whether required by the terms hereof or otherwise shall be in writing and shall be delivered or mailed by certified or registered mail, return receipt requested, to the following addresses of the parties or to such other addresses as may be hereafter designated in writing by the respective parties:

If to Firestone: The Firestone Tire & Rubber Company
1200 Firestone Parkway
Akron, Ohio 44317
Attention: Purchasing Agent

If to Shell: Shell Chemical Company
One Shell Plaza - P. O. Box 2463
Houston, Texas 77001
Attention: Manager Chemical Intermediates

11. Governing Law. This agreement shall be interpreted under and governed by the laws of the State of Texas.

12. Entirety - Execution. This Agreement comprises the entire Agreement and merges and supersedes all prior agreements, understandings and representations (oral and written) between Shell and Firestone concerning the subject matter hereof, including specifically said previous Agreement of October 28, 1971. Neither this Agreement nor any subsequent Agreement amending or supplementing this Agreement shall be binding on Shell or Firestone unless and until it has been signed on Shell's or Firestone's behalf by a duly authorized representative, and commencement of performance hereunder or under any such subsequent Agreement shall not constitute a waiver of this requirement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in duplicate as of the day and date first written above.

SHELL CHEMICAL COMPANY A Division of Shell Oil Company	THE FIRESTONE TIRE & RUBBER COMPANY
By John F Kroeger	By S. T. Wepsic, Vice President

EXHIBIT "A"

SPECIFICATIONS FOR VINYL CHLORIDE MONOMER

Appearance	Clear. No suspended matter
Acetylene	1 ppm, Maximum by Weight
Acetaldehyde	1 ppm, Maximum by Weight
Inhibitor	None added
Sulfur	1 ppm, Maximum by Weight
Iron	1 ppm, Maximum by Weight
Acidity (as HCl)	1 ppm, Maximum by Weight
Non-Volatile (including Polymer)	75 ppm, Maximum by Weight
Peroxides (as H_2O_2)	0.1 ppm, Maximum by Weight
Methyl Chloride	70 ppm, Maximum by Weight
Chlorinated Hydrocarbons ($ViCl_2$, 1,1-EDC, 1,2-EDC)	10 ppm, Maximum by Weight
Butadiene	8 ppm, Maximum by Weight
Total Non-Chlorinated Hydrocarbons (Including BD and Acetylene)	15 ppm, Maximum by Weight
Polymer	25 ppm, Maximum by Weight
Water	100 ppm, Maximum by Weight