

Firestone
INTEROFFICE

DATE May 26, 1977

TO MR. R. K. JOHNSON

FROM J. T. LEONARD

REFERENCE

SUBJECT SHELL MEETING - AKRON

Confirming our conversation, Shell offered the attached draft for our consideration.

At a quick glance, we objected to the performance clause.

I will give you additional comments when I have a chance to read the draft completely.

J. T. Leonard
J. T. Leonard *dlc*

JTL/dla

Attachment

RECEIVED

MAY 27 1977

R. K. JOHNSON

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A G R E E M E N T

This Agreement is made this day of 1977, by and between SHELL CHEMICAL COMPANY, a division of SHELL OIL COMPANY, a Delaware corporation with offices at One Shell Plaza, Houston, Texas 77002 (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").

1. TERM. This Agreement shall be binding upon the parties upon and after the execution hereof. It shall remain in full force and effect for a Primary Period of three (3) years, beginning on January 1, 1978, and shall continue thereafter for successive renewal terms of one (1) year each, unless and until terminated. Either party may terminate as of the last day of the Primary Period or of any renewal term by giving notice of termination to the other party at least twenty-four (24) months in advance.

2. QUANTITIES. Shell shall sell and deliver to Firestone and Firestone shall purchase and accept from Shell Vinyl Chloride Monomer (hereinafter referred to as "VCM") in annual quantities determined as hereinafter presented. Deliveries of VCM in any one calendar month shall not, except at Shell's option, exceed one-eleventh (1/11) of the applicable current calendar year maximum or cumulatively exceed 1/6 of said calendar year maximum in two (2) succeeding months.

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QUANTITIES OF VCM - MILLIONS OF LBS

<u>YEAR</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
1978	80	95
1979	110	125
1980	135	150
1981 and each year thereafter	180	200

In the last half of 1980 and in 1981 and thereafter, a portion of the above-mentioned minimum and maximum quantities are contingent upon (1) Shell's successful movement in the last half of 1980 of the equivalent quantity of Texas-produced ethylene to Louisiana (0.49 times the VCM contingent portion) and (2) Shell receiving final board approval to construct a new olefins production facility in Louisiana (approval expected by December 31, 1977), and successful startup and achievement of design capacity production rates from such new facility in 1981. The VCM contingent portion in the last half of 1980 is 25 million pounds and in 1981 and each year thereafter 50 million pounds.

Firestone shall notify Shell, not less than twelve (12) months prior to the start of 1979 and each subsequent year, as to its nomination of the quantities of VCM desired during that and the next succeeding calendar year, within the range of the applicable calendar year minimum and maximum amounts specified above. Except as further limited by such applicable calendar year minimum and maximum quantities, Firestone will be required to receive not less than 95% of the most recent nomination for such calendar year (Firestone's "obligated quantity"), and Shell will be required to deliver up to, but not in excess of (except at its

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option), 105% of the most recent nomination for such calendar year (Shell's "obligated quantity").

In the event that Firestone requests Shell to deliver more VCM in any calendar year than the applicable calendar year maximum, and Shell so agrees, then the applicable calendar year minimum and maximum shall be of no effect for such year, and that amount requested by Firestone and agreed to by Shell shall be treated as the most recent nomination for such calendar year.

In the event Shell requests Firestone to purchase less VCM in any calendar year than the applicable calendar year minimum, and Firestone so agrees, then the applicable calendar year minimum and maximum shall be of no effect for such year, and that amount requested by Shell and agreed to by Firestone shall be treated as the most recent nomination for such calendar year.

3. PERFORMANCE. If Firestone fails, for reasons other than those provided for in Article 10 hereof, to order and accept for any year its obligated quantity, the following shall occur:

A. Subject to Articles B. and C. hereof: at Firestone's option, either (1) the minimum and maximum quantities specified in Article 2 for all years of this Agreement subsequent to the year of such underperformance by Firestone shall be reduced by the difference between its "obligated quantity" for the year of underperformance and the quantity actually ordered and accepted by Firestone during such year or, (2) Firestone shall pay to Shell as liquidated damages for each pound of VCM below such "obligated quantity" not ordered and accepted during the year an amount to be calculated as follows:

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$$\text{Payment} = V - 0.48E - 0.64C - 1.0$$

V = VCM average sales price hereunder for the year in question.

E = Shell's valuation of ethylene in VCM as determined by Shell.

C = Shell's valuation of chlorine in VCM as determined by Shell.

If option (2) is applicable, payment shall be made by Firestone within thirty (30) days after the date of Shell's invoice.

B. If no later than ninety (90) days prior to January 1 of any calendar year of the Term hereof Firestone requests Shell to attempt to sell elsewhere a specific portion of the obligated quantity of VCM that Firestone is required to order and accept hereunder during such year, then to the extent that Shell may sell such portion thereof at a price considered by Shell, in its sole judgment, to be satisfactory, the obligated quantity for the year in question shall be correspondingly reduced. If Shell is required to commit such portion of the obligated quantity for a future year or years in order to dispose of the same, then the minimums and maximums specified in Article 2 hereof for such subsequent year or years shall be correspondingly reduced.

C. If after Firestone requests Shell to sell a specific portion of its obligated quantity in accordance with Article B above, and Firestone fails to order and accept that portion of its "obligated quantity" not requested of Shell to be sold to third parties during that year, then the provisions of Article A shall apply with regard to the underlifted quantity (i.e., the difference between the "obligated quantity" not requested of Shell to be sold to third parties by Shell and the quantity actually ordered and received by Firestone during the

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year), provided, however, that the choice of option 1) or option 2) above shall reside in Shell, not Firestone.

D. Notice of the option elected shall be given by Firestone or Shell, as appropriate, within fifteen (15) days following the year in which the underperformance by Firestone occurs.

4. PRICE. For all quantities of VCM delivered to Firestone or for Firestone's account, FOB Shell shipping origin, Firestone shall pay Shell _____ cents (_____) per pound of VCM delivered and accepted. Shell shall advise Firestone by December 1, 1977 as to the exact price applicable January 1, 1978. This price or any other price in effect hereunder, may be increased at any time after it has been in effect ninety (90) days upon thirty (30) days' notice given to Firestone by Shell. Any price in effect hereunder may be decreased at Shell's option by Shell at any time.

For any calendar year, if Firestone provides Shell satisfactory written evidence that a third party is willing to sell Firestone at least 75 million pounds of VCM at a price which is lower by more than 0.25 cents (\$0.0025) per pound for VCM provided hereunder for the same time period, and such competitive offer is made without disclosure by Firestone of the price hereunder, then unless Shell elects (and so advises Firestone in writing) within thirty (30) days to meet such competitive price for the quantities so offered, the offered quantities shall be deducted from the obligated quantity of both parties hereunder for such calendar year.

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In the event Shell elects to meet such a competitive offer, no later offer of the same competitor or of the same parcel, made within twelve (12) months of the date of Shell's election, shall be considered to be a competitive offer within the meaning of this Article 4.

5. PAYMENT. Payment for VCM delivered hereunder shall be made to Shell within thirty (30) days after the date of Shell's invoice.

6. DELIVERIES.

A. General: Not less than 10 days prior to the beginning of each calendar month Firestone shall advise Shell as to the quantity of VCM desired for subsequent delivery to Firestone during the following three (3) months.

It is intended that Shell shall deliver the VCM provided hereunder into tank cars supplied by Shell. Deliveries shall be made from Shell's plant at Norco, Louisiana, or from other locations at Shell's option on reasonably advanced notice.

B. VCM by Tank Car. 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 which is mutually acceptable. "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 and with an oxygen content less than 1,000 ppm. In the event that the oxygen content exceeds 1,000 ppm, no heel allowance will

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be granted and Firestone shall pay the actual cost (plus plant overhead) of purging the car to make it suitable for loading.

7. GOVERNMENTAL CHARGES. All new taxes and other governmental charges other than those based on income, which are imposed on VCM, or on the raw materials, process materials or catalysts from which the VCM is produced, or on Shell (including without limitation its VCM manufacturing facility), 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 price and within thirty (30) days after the date of Shell's statement.

8. LIABILITIES - CLAIM. Shell warrants that the VCM sold to Firestone 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 on the contents of Shell's storage spheres prior to delivery to Firestone and Firestone shall accept Shell's Certificate of Analysis therefore as representative of the quality of the VCM delivered hereunder with respect to meeting the specifications warranted unless proven to be in error. Firestone shall have the right on reasonable advance notice to obtain from Shell, from time to time, a sample of the VCM delivered hereunder in a sample container provided by Shell and purchased from Shell by Firestone.

Shell shall have no liability for, and Firestone shall indemnify Shell against all claims, loss, liability and expense on account of any

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injury or death of persons (including Firestone's employees) or damage to property (including Firestone's) to the extent caused by Firestone's negligence in unloading, storage, handling or use of the VCM delivered hereunder after the VCM is loaded into tank cars.

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 ninety (90) days after the date of delivery or other transaction or occurrence giving rise to the claim.

10. EXCUSES FOR NONPERFORMANCE. Neither Shell nor Firestone shall be liable for failure or delay in the performance of this Agreement, to the extent that, in Shell's case, its ability to produce or deliver the VCM sold hereunder, or in Firestone's case, its ability to consume the VCM which Shell sells hereunder, is delayed, impaired, or prevented, by any circumstances (except financial) reasonably beyond its control, or by fire, explosion, breakdown in machinery or equipment, failure of catalyst, or riots, strikes, labor disputes, voluntary or involuntary compliance with any law, order, regulation, recommendation, or request of any governmental authority (including, without limitation, those relating to price controls and product allocation), or total or partial failure of the usual means of transportation of chlorine, ethylene, Dichloroethane, VCM or PVC or inability or delay in obtaining all or any part of the raw materials used in the manufacture of chlorine, Dichloroethane, VCM or PVC, from earlier established internal or third party

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sources of supply. As used herein, "labor dispute" shall mean any controversy to which either Shell or Shell's source for raw materials or Firestone or Firestone's source of raw materials 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 to do so except where the same is applicable to such party in its sole judgment. The quantities of VCM consequently undelivered as a result of causes so excused hereunder shall not be required to be made up by Shell upon resumption of full deliveries of VCM hereunder and such excused quantities shall be deducted from the applicable remaining obligated quantities of Shell and Firestone under this Agreement. In the event that Shell becomes excused from delivering any quantity of VCM due to any of the causes specified above, Shell shall allocate a pro rata share of its remaining supply of VCM to Firestone, such share to be equal to the percentage which Firestone's nominated quantity for the year in question bears to the total of VCM commitments to all customers and Shell's internal requirements as determined by Shell for such year at Shell's Norco, Louisiana plant, times the volume available for shipment. Neither Firestone nor Shell shall have any obligation in the event of any excused causes specified above to purchase ethylene, chlorine, Dichloroethane or VCM to perform hereunder, nor to be required to supply ethylene, chlorine, Dichloroethane or VCM produced in any of its plants

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other than those normally used for performance hereunder, provided that available supplies of such products from sources previously used during the applicable calendar year to supply the same hereunder are apportioned equitably among customers and internal uses in such manner as Firestone and Shell, in their sole judgment, find appropriate. If Shell's performance is excused hereunder due to inability to obtain feedstocks, process materials or catalysts used in the manufacture of VCM from Shell's earlier planned or established sources, Shell shall use diligent efforts to obtain such feedstocks, process materials or catalysts from other than earlier planned or established sources but fees hereunder shall be adjusted to reflect any increase in cost to Shell. If Shell is unable to obtain such feedstocks, Firestone, at its option, on reasonable notice may provide such feedstocks as are acceptable to Shell by mutually agreeable delivery methods and at Firestone's cost, and Shell shall convert VCM from such feedstocks provided by Firestone for delivery to Firestone for so long as Shell's excused performance continues hereunder but prices shall be adjusted to reflect any corresponding increase or decrease in cost of feedstocks to Shell.

11. ASSIGNABILITY. Neither this Agreement nor any claim against Firestone or Shell arising directly or indirectly out of or in connection with this Agreement shall be assignable by either party or by operation of law, without the prior written consent of the other party.

12. REMEDIES. In the event of any breach by either party of any of the provisions of this Agreement which continues for thirty (30) days after notice thereof is given by the other, such other party shall

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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 to the defaulting party, effective as of the date of such notice. Either party's right to require strict performance of the obligations of the other shall not be affected in any way by any previous waiver, forbearance or course of dealing.

13. 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
A Division of Shell Oil Company
P. O. Box 2463, One Shell Plaza
Houston, Texas 77001
Attention: General Manager, Chemical Sales

All purchase orders or purchase acknowledgements which may be used to order or acknowledge orders for delivery of VCM hereunder shall be deemed to be intended for convenience and the provisions contained therein shall not serve to add to or otherwise vary the provisions of this Agreement.

14. ENTIRETY-RELEASE. This Agreement comprises the entire Agreement and merges and supersedes all prior understandings and representations (oral or written) between Shell and Firestone concerning the

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conversion of chlorine into VCM for Firestone, specifically including an agreement dated January 1, 1974. 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 by the party claimed to be bound thereby, 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

By _____
J. F. Kroeger
General Manager Chemical Sales

By _____

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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
Nonvolatile (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 Nonchlorinated Hydrocarbons (Including BD and Acetylene)	15 ppm, Maximum by Weight
Polymer	25 ppm, Maximum by Weight
Water	100 ppm, Maximum by Weight

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