

J. R. HOPPER
MR. W. P. BRAY

I. S. WILSON
APRIL 22, 1980

RECEIVED
APR 25 1980
J. R. HOPPER

DOW CONTRACT #56687 FOR VCM TO POTTSTOWN/PERRYVILLE

Attached is a work copy of the subject contract containing changes suggested by our legal and physical distribution departments as well as the writer.

Mr. Fred Brown of Dow would like to come in at 10:00 a.m. on Wednesday, April 30 to finalize the wording for this contract.

Would you please review this work copy and note any changes you would like to see made.


I. S. WILSON

ISW:cs
Att.

cc: R. J. Klein
J. R. Hopper

OCC 017245

CONTRACT NO. 56687

AGREEMENT made this _____ day of _____, 1980, between Dow Chemical U.S.A., an operating unit of The Dow Chemical Company, with executive offices in Midland, Michigan, herein called "Seller" and The Firestone Tire and Rubber Company, an Ohio corporation with offices in Akron, Ohio, herein called "Buyer".

W I T N E S S E T H:

WHEREAS, Seller a manufacturer of vinyl chloride monomer complying with Dow specification number 91575 attached hereto; hereinafter called "VCM", wishes to sell same to Buyer upon the terms and conditions herein after set forth; and

WHEREAS, Buyer desires to purchase same from Seller upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Term - the term of this agreement shall be the period commencing January 1, ¹⁹⁸¹~~1980~~ through December 31, ¹⁹⁸⁵~~1986~~ and from year to year thereafter, subject to termination by Buyer or Seller at the end of the initial contract period or at the end of any subsequent contract year upon 24 months prior written notice; according to the terms and conditions below. *This provision shall not apply under condition noted in 2.C.*

2. Quantity

A. Seller's maximum obligation shall be ¹⁵~~60~~ percent of Buyer's requirements for consumption, not to exceed ^{8,000,000}~~21,000,000~~ pounds in any month without further agreement.

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B. Buyer's obligation shall be ¹⁵~~60~~ percent of its requirements for consumption at its plants at Pottstown, Pennsylvania and Perryville, Maryland each month. ~~(estimated to be 20 million pounds per month.)~~

C. *Should Buyer expand their Baton Rouge, La. facility and should Seller be chosen to supply additional VCM for that expansion, this contract is subject to a new letter from 90 days written notice.*

3. Seller shall be obligated to supply from, and Buyer shall be obligated to take at, their respective facilities stated herein. Seller's obligation to supply and Buyer's obligation to take may be reduced proportionately to any reduction of operation at such respective facility in response to any governmental action relating to environmental matters.

4. Buyer shall place orders by the 15th day of the month preceding delivery, and shall take deliveries in approximately equal monthly quantities except as may be otherwise provided herein. If Buyer shall fail during any month to order such monthly quota, the quantity not ordered may be deducted from Seller's maximum obligation to supply.

5. Price

A. \$0.20 per pound.

B. Seller may increase the price at any time with thirty (30) days prior written notice. Seller shall be limited to one increase in any ninety (90) day period, with the exception that if Seller decreases the price for any reason, Seller may subsequently at any time with 30 days written notice to Buyer increase the price to the level charged prior to the price decrease.

C. Favored Nations - Seller hereby agrees that if during the term of this agreement, specifically excluding one contract executed prior to June 6, 1969, and excluding contracts which may be terminated and are in the termination period, it sells or delivers vinyl chloride monomer to any of its U.S. VCM contract customers under terms and conditions that result in an FOB Seller's U.S. VCM producing plant price lower than the price in effect hereunder, it will offer to sell Buyer the same quantity, or Buyer's quantity obligation in paragraph 2A herein, if lower, of vinyl chloride monomer under the same terms and conditions.

6. FOB Seller's facility at Freeport, Texas or Plaquemine, Louisiana at Seller's option. *Terms and conditions on shipments from a facility outside continental U.S.A. shall be negotiated as an amendment to this contract prior to any shipments being made from non-USA origins.*

7. Transportation Terms - Freight collect

8. Method of Shipment - Seller's tankcars

9. Demurrage and Detention - Buyer will use all reasonable effort to unload and return Seller's delivery equipment to carrier within the tariff or contracted period free of demurrage and/or detention charges.

Unloading demurrage and/or detention charges on such equipment are to be paid by Buyer.

During periods when Seller's cars are in the possession ~~or under the~~ jurisdiction of Buyer, Buyer is responsible for cars and shall be liable to Seller for any or all damage to or destruction thereof which is directly attributable to Buyer. Buyer shall unload and then tender cars to the railroad, in accordance with routing instructions given by Seller, within Seller's then allowable time for the product involved beginning on the first 7:00 a.m. following placement ("actual" or "constructive", as defined in freight tariff PHJ60041 and subsequent tariffs). For days held in excess of this allowable detention time, Seller shall have the right to collect from Buyer as liquidated damages Seller's then generally applicable daily rate for each day, or part thereof *in accordance with demurrage/detention lease agreement in effect at the time of placement.* ~~Seller based on changing competitive conditions, if lower, that car is held by Buyer in excess of this allowable detention time.~~

If any of Seller's cars arrive at destination in damaged condition, Buyer shall immediately notify railroad agent at destination of such damage, and also make immediate report thereof to Seller. All repairs to cars shall be made under the supervision or the direction of Seller.

10. Title and risk of loss in all goods sold hereunder shall pass to Buyer upon Seller's delivery to carrier at shipping point *and upon execution of a bill of lading.*

by Seller. The terms and conditions herein may only be modified by an amendment, expressly stated as such, signed by both parties. By ordering for shipment the goods herein, Buyer agrees to all the terms and conditions contained in this document.

17. Patent Infringement - If suit is brought against Buyer alleging that the manufacture or sale of any staple commodity of commerce sold hereunder infringes any U.S. Patent, then Seller will defend Buyer and pay any awards against Buyer for such infringement, provided Buyer gives Seller prompt written notice and permits Seller to defend.

18. Warranties - Seller warrants that the goods supplied hereunder shall conform to the description stated on attached sales specification, that it will convey good title thereto and that such goods shall be delivered free from any lawful security interest or lien or encumbrance. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, NOR IS THERE ANY OTHER EXPRESS OR IMPLIED WARRANTY.

19. Limitation of Seller's Liability - In no event shall the Seller be liable for any incidental or consequential damages, whether or not arising out of negligence. ^{option} Seller's liability and Buyer's exclusive remedy for any cause of action arising out of this contract, including negligence, is expressly limited at Buyer's option to replacement of, or repayment of the purchase price for, the goods with respect to which damages are claimed. *very unusual*
All claims of whatsoever nature shall be deemed waived unless made in writing within thirty days of Buyer's receipt of the goods. *Bevin*

20. Force Majeure - In the event of war, fire, flood, strike, labor trouble, breakage of equipment, accident, riot, act of governmental authority, acts of God, or contingencies beyond the reasonable control of Buyer or Seller, interfering with the production, supply, transportation, or consumption practice of the party at the time respecting the goods covered by this contract, or in the event of inability to obtain on terms deemed by the Seller to be practicable any raw material (including energy source) used in connection therewith, quantities so affected shall be eliminated from this contract without liability, but the contract shall otherwise remain

*Option
to
replace
damages
resulting
from
illness
gross
or
small
negligence*

11. Terms of Payment - Invoices for all VCM delivered hereunder shall be accumulated and submitted weekly and shall be paid within thirty (30) days from the date of the invoice.

12. Competitive Offer - If Buyer receives a written offer from a domestic producer not controlled by or controlling Buyer to supply, in place of Seller, at least 50 percent of the goods to be supplied hereunder for at least 24 months, which are of like quality, for a like use and deliverable in like quantities, at a delivered cost less than the then effective delivered cost hereunder, upon Buyer's notice stating all the terms and conditions including the quantity the Buyer intends to purchase of the competitive offer, Seller shall by written notice within thirty days of receipt of Buyer's notice (a) meet the competitive price and amend this contract accordingly, (b) choose not to meet and deduct from the Seller's maximum obligation to supply the quantity that the Buyer intends to purchase from the competitive source or (c) cancel the competitive quantity from the contract if agreement cannot be reached under (a) or (b) above.

13. Credit - Seller may defer shipments or alter payment terms if Buyer fails to pay invoices in accordance with terms of this agreement; provided, however, that Buyer is first given fifteen (15) days within which to cure said failure upon written notice from Seller.

14. Non-Assignability - The rights and duties of this contract are not assignable or transferable by either party without the other's written consent. This document constitutes a complete statement of the contract between the two parties.

15. Uniform Commercial Code - This contract shall be governed by and construed in accordance with the Uniform Commercial Code as in effect in Michigan except as the provisions of such code are herein modified.

16. Amendments - Any modification of this document by the Buyer, and any additional or different terms included in Buyer's purchase order, any other document responding to this offer, or subsequent documents, purchase orders or acknowledgment requests provided by Buyer relating to this contract after its execution, shall be null and void whether or not signed

unaffected. Seller may, during any period of shortage due to any of said causes, allocate its supply of such raw material among its various uses therefor, (e.g., manufacturing and sales) in such manner as Seller deems practicable and allocate its supply of such goods among such various uses therefor in any manner which is fair and reasonable.

21. Non-Waiver - Failure of Seller or Buyer to exercise any rights under this agreement upon one occasion shall not waive a party's right to exercise the same on another occasion.

ACCEPTED by the parties of the date first entered above by their respective corporate officers.

THE FIRESTONE TIRE & RUBBER COMPANY

By: _____

Title: _____

Date: _____

DOW CHEMICAL U.S.A.

By: _____

Title: _____

Date: _____



DOW CHEMICAL U.S.A.

AN OPERATING UNIT OF THE DOW CHEMICAL COMPANY

WORLDWIDE AMERICAN SALES

SALES SPECIFICATION

MS

THE DOW CHEMICAL COMPANY QUALITY ASSURANCE
SALES SPECIFICATION

91575

DATE PRINTED: 15 NOV 76

PAGE: 1

PRODUCT CODE: 91575

EFFECTIVE: 22 MAR 76

NAME:

VINYL CHLORIDE MONOMER

DESC: COLORLESS, FLAMMABLE COMPRESSED GAS

TEST ITEM	UNIT	LIMITS	TEST METHODS
PURITY, MIN	%	99.9	
N-ACETYLENE, MAX	PPM	2	VC-19; VC-1
1,3-BUTADIENE, MAX	PPM	5	VC-17; VC-19
METHYL CHLORIDE, MAX	PPM	50	VC-19; VC-17
ETHYLENE DICHLORIDE, MAX	PPM	5	VC-18
WATER CONTENT, MAX	PPM	100	VC-11
ACIDITY (AS HCl), MAX	PPM	2	VC-2
IRON, NON-FILTERABLE, MAX	PPM	0.15	VC-5
NONVOLATILE RESIDUE, MAX	PPM	50	VC-6
OXYGEN IN VAPOR PHASE, MAX (SEE NOTE 1)	PPM BY VOL	1000	VC-21

PI: 1190396 BULK

NOTE:

(1) 1000 PPM BY VOLUME = 500 PPM BY WEIGHT.

LAST PAGE

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