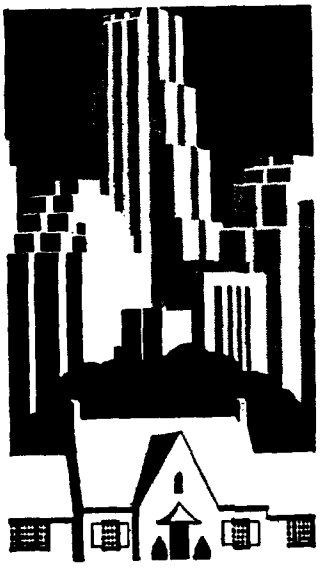
PLAINTIFF'S EXHIBIT

USG-1941



# UNITED STATES GYPSUM COMPANY

## SALES POLICY FOR ASPHALT ROOFING PRODUCTS

HISTORICAL FILE
*Trade-Mark Protection*
*Received* 12-6-33
DO NOT DESTROY

BB022 2311

EFFECTIVE NOVEMBER 20, 1933

**1** **Definitions of Trade Buyers:**

**(A)** ***Dealers:***

(a) Merchants engaged in the distribution of asphalt roofings and allied products, who regularly carry a stock thereof; manufacturers of portable or ready-cut houses are regarded as dealers.

(b) Roofers and Roofing Contractors whose principal efforts are devoted to the application of asphalt roofing products and who maintain a place of business and equipment for the conduct of such enterprise.

**(B)** ***Wholesale Carload Distributors:***

(a) Shall have a "Jobber" or "Wholesaler" classification in a recognized, published trade directory or registry or commercial credit directory.

(b) Shall employ at least two salesmen who are wholly engaged in selling in the field the "jobbers'" line (including asphalt roofing products) to dealers and roofers.

(c) Shall normally maintain a minimum stock of 80,000 pounds of asphalt roofing products included in this Merchandising Plan.

(d) Shall regularly sell from his warehouse stock of asphalt roofing products at least fifty percent (50%) at wholesale.

(e) Shall have sufficient financial capacity to carry on a wholesale or jobbing business.

(f) Shall have our authorization, in writing, to distribute our line of asphalt roofing products by carload shipments direct from our factory to his dealer and roofer customers.

(g) Shall assume the credit responsibility in connection with all sales, shipments of which are made by us direct to their customers.

**(C)** ***Wholesale Less Carload Distributors:***

(a) Shall have a "Jobber" or "Wholesaler" classification in a recognized, published trade directory or registry or commercial credit directory.

(b) Shall employ at least one salesman who is wholly engaged in selling in the field the "jobbers'" line (including asphalt roofing products) to dealers and roofers.

(c) Shall normally maintain a minimum stock of 80,000 pounds of asphalt roofing products included in this merchandising plan.

(d) Shall regularly sell from his warehouse stock of asphalt roofing products at least fifty percent (50%) at wholesale.

(e) Shall have sufficient financial capacity to carry on a wholesale or jobbing business.

**(D)** ***Reserve Supply Companies:***

(a) Shall have been organized under the laws of the state in which it is located, with a capital structure, the ownership of which is distributed among a group of retail dealers.

(b) Shall have for its purpose the purchase of building material lines for stock in a central warehouse for resale to its members or others.

(c) Shall normally maintain a minimum of 300,000 pounds as a central stock of asphalt roofing products included in this Merchandising Plan.

(d) Shall have sufficient financial capacity to carry on a Reserve Supply Company business.

**(E)** ***Line Lumber Yards:***

(a) Shall be comprised of a group of dealers who may have a single firm name for all locations or different names for different locations.

(b) Shall make its purchases from a central administrative office, which office shall have a controling interest in each yard, or branch financially.

(c) Said purchases for stock of group A products from all manufacturers during the calendar year shall exceed 25 carloads.

**(F)** ***Interstate Industrial Consumers:***

Large manufacturers, mining, packing, power companies, air transportation companies, etc., who operate plants in more than one state and who purchase asphalt roofing products for their own use and not for resale.

**(G)** ***Railroads (Common carriers under I. C. C. Jurisdiction):***

All common carriers under the jurisdiction of the Interstate Commerce Commission who operate rail and/or steamship lines, docks and/or terminals.

**(H)** ***Railway Equipment Companies:***

Concerns who purchase asphalt roofing products for use in the construction of railway equipment.

**(I)** ***U. S. Government:***

Only Federal Government Departments.

**2** **Prices:**

As indicated in our printed price lists effective at date of shipment. Carload prices will apply on carload shipments; less carload prices will apply on less carload shipments.

All orders shall be taken at firm prices, subject to immediate shipment, and such orders shall be complete with respect to specifications, prices, terms and conditions. If not complete, they shall be considered as orders for future shipment. All orders for future shipment shall be subject to prices, terms and conditions in effect at the time of shipment.

In case of price advance, all orders on hand for immediate shipment, including back orders, and orders for immediate shipment in mail (postmarks on letters, or filing time on telegrams shall be considered date of receipt) at former prices, and not shipped within five days, (Sundays and holidays excluded) following the date of a price advance, shall be either cancelled or invoiced at the higher prices, regardless of the reason or cause for failure to make shipment within the five-day period.

In the event our prices are reduced, shipments in transit will be given the benefit of the lower prices, provided customer submits as evidence freight bill showing that the shipment actually was in transit, and not in the buyer's stock when our prices declined. Unfilled orders on hand at time of price decline will also be shipped at the lower prices.

**Exceptions:**

***A. U. S. Government:***

Quotations in writing to the U. S. Government will be made either for immediate shipment or within a specified time, in accordance with delivery requirements as stated in official circulars inviting bids. Increases in our prices between the time of making such quotations and the actual opening of bids will not be effective against such written quotations.

***B. Railroads:***

When requested, we will quote Railroads a guarantee against price advance on shipments during a period not to exceed six (6) months, providing such quotations are made in writing. Otherwise our newly established prices in the event of a price advance will prevail.

***C. Built-up Materials for Specific Jobs:***

Prevailing prices on asphalt built-up roofing materials will be quoted to built-up roofers or distributors on specific jobs subject to these provisions: that order be placed with us within 10 days after the award of the roofing contract, but not later than 60 days from the date of our quotation; shipments to be made as required by each job, but within a year of the date the order was placed.

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**3** **Orders accepted are subject to the following:**

***Terms and Conditions:***

All discounts, prices, terms, and other details of our merchandising plan are subject to change without notice.

***Terms of payment are as follows:***

Cash discount shall not exceed 2%—10 days, 30 days net; or on special arrangement 2%—10th proximo, net 30 days proximo. Cash discount on payments within the discount period will be allowed on the net merchandise value of invoices, f. o. b. factory, (freight allowances not deducted).

***Back Orders:***

Any item or items on a carload order omitted from the carload shipment due to material not being available at our Factory when original carload shipment is forwarded will be shipped within 30 days of date of the original shipment on as favorable terms as though it had been included with the original shipment.

**4** **Shipments are defined as follows:**

(a) Carload shipments are single shipments of 40,000 lbs. or more invoiced to one customer, moving via rail and/or water.

(b) Less carload shipments shall include all single shipments of less than 40,000 lbs. and all truck shipments regardless of quantity.

(c) Club, pool and stopover car shipments shall include total shipments aggregating 40,000 lbs. or more, moving in a single car, but invoiced to one customer. If amounting to less than 40,000 lbs., and invoiced to more than one customer, they will be treated as less carload shipments.

NOTE: Club, pool or stopover cars may only be arranged when first and subsequent stopover points and destination are *not* Factory Points and/or Factory Zones.

**5** **Products are classified as follows:**

GROUP A.
Asphalt shingles.
Sidings.
Smooth and mineral surfaced roll roofings.
Starter strips.
Cap sheets.
Nails.
Lap fasteners.

GROUP B.
Asphalt felts—Tarred felts.

GROUP C.
Asphalt and pitch.

GROUP D.
Asphalt paints.
Plastic cements.
Coatings.

GROUP E.
Building papers and sheathings.

**6** **Freight equalization or factory points:**

ALABAMA—Mobile.
GEORGIA—Port Wentworth.
ILLINOIS—Chicago, Chicago Heights, Clearing, East St. Louis, Joliet, Madison, Marseilles, Vandalia, Waukegan, Wilmington.
INDIANA—South Bend.
LOUISIANA—Gretna, New Orleans.
MARYLAND—Baltimore.
MASSACHUSETTS—East Walpole, Millis (Cliquot), Norwood.
MINNESOTA—Minneapolis, St. Paul.
MISSOURI—Kansas City, St. Louis.
NEW JERSEY—Bound Brook, South Bound Brook, East Rutherford, Edgewater, (Shady Side), Elizabeth, Genasco, Jersey City, Manville, Maurer, Rutherford.
NEW YORK—Fulton, Niagara Falls, Tonawanda.
OHIO—Carthage, Cleveland, Franklin, Lockland.
PENNSYLVANIA—Erie, Philadelphia, York.
TEXAS—Port Neches.
UTAH—Salt Lake City.

For purpose of freight equalization on Group B products *only*, the following points of manufacture are added to the above list:

ALABAMA—Birmingham and Woodward.
ILLINOIS—Cicero.
MASSACHUSETTS—Boston, Cambridge, Everett, and Chelsea.
MINNESOTA—Duluth.
NEW JERSEY—Kearney, Newark.
OHIO—Cincinnati, Youngstown.
WEST VIRGINIA—Chester.

**7** **Factory Zones:**

These factory points shall include in addition to the corporate limits of the factory points, such territory as may be embraced in the following areas:

1. Chicago, Illinois.
The Metropolitan District bounded by and included in Cook County, Illinois, the townships of:

| | | |
|---|---|---|
| Evanston | Proviso | Calumet |
| Leyden | Worth | Rich |
| Stickney | Bremen | Maine |
| Bloom | Norwood Park | Palos |
| Niles | Lyons | Thornton |

and in Lake County, Indiana, the townships of:

| | | |
|---|---|---|
| North | Calumet | St. John |

2. Cincinnati, Ohio.
The Cincinnati Metropolitan District bounded by and including in Hamilton County, Ohio, the townships of:

| | | |
|---|---|---|
| Anderson | Colerain | Miami |
| Sycamore | Green | Delhi |
| Columbia | Springfield | |

and including the town of Milford, Ohio, and in Kenton County, Kentucky, the First Magisterial District of Rushs and in Campbell County, Kentucky, the precincts of Highlands, Bellevue, Dayton and Newport.

3. Cleveland, Ohio.
The corporate limits of Cleveland, Ohio, and of any immediate suburbs which do not have freight stations or published tariffs, or switching rates from Cleveland terminals.

4. Buffalo, New York.
This zone may include Niagara County, the corporate limits of the city of Buffalo, and the townships in Erie County of Clarence, Lancaster, West Seneca, Cheektowago, Amherst and Tonawanda.

5. East St. Louis, Illinois.
The corporate limits of the cities of: In St. Clair County, Illinois:

| | |
|---|---|
| East St. Louis | Brooklyn |
| Edgemont | Fairmont City |

In Madison County, Illinois:

| | | |
|---|---|---|
| Madison | Venice | Granite City |

In St. Louis, County, Missouri:

| | | |
|---|---|---|
| St. Louis | Maplewood | Richmond Heights |
| Gratiot | Clayton | Jennings |
| Wellston | University City | |

and any towns or villages included within the area bounded by the above listed cities.

6. Kansas City, Missouri.
The corporate limits of: In Jackson County, Missouri:

| | | |
|---|---|---|
| Kansas City | Raytown | Sugar Creek |
| Dodson | Independence | Cement City |

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In Clay County, Missouri:

North Kansas City Avondale

In Wyandotte County, Kansas: Kansas City, including Fairfax Industrial District and Turner.

In Johnson County, Kansas: Merriam, Overland Park, Shawnee, South Park and any towns or villages included within the area bounded by the above listed cities.

7. Minneapolis, Minnesota.

   The corporate limits of Minneapolis and the suburbs of Robinsdale, Columbia Heights and St. Louis Park and Fort Snelling.

   NOTE: Rail and/or water shipments from Factory Points to the suburbs of Robinsdale, Columbia Heights and St. Louis Park may be on the basis of freight equalization with Minneapolis or St. Paul rates, whichever are lower.

8. New Jersey Zone.

   All of Bergen County, that portion of Passaic County lying east and south of the line of the New York, Susquehanna and Western R. R., at Pompton Lakes, New Jersey, all of Essex County, all of Hudson County, all of Union County and the area of Middlesex, Monmouth and Ocean Counties lying north and east of a line drawn from Monmouth Junction, Jamesburg, and Englishtown, Freehold, Adelphia, Port Plains, Southard, Lakewood, Toms River, Beachwood to Seaside Park.

9. Philadelphia, Pennsylvania.

   The corporate limits of Philadelphia, Pennsylvania, and of Camden and Gloucester, New Jersey.

10. St. Paul, Minnesota.

    The corporate limits of St. Paul and the suburbs of West St. Paul and South St. Paul.

    NOTE: Rail and/or water shipments from Factory Points to the suburbs of West St. Paul and South St. Paul may be on basis of freight equalization with Minneapolis or St. Paul rates, whichever are lower.

11. Savannah-Port Wentworth, Georgia.

    The corporate limits of Savannah and Port Wentworth, Georgia.

**8** **Freight Equalizations:**

(a) Carload shipments via rail and/or water. On group A, B, D, and E products we will, upon presentation of paid freight bill, showing that the material has been delivered to the destination indicated on the order, equalize freight with the nearest factory point.

NOTE: On carload water shipments to port cities and towns, to customers located on a railroad siding, we will make an allowance to cover the actual cost of delivery from steamer to customer's warehouse; that is, cost of loading from steamer to cars, if any, plus published switching charges. This allowance shall not apply on all rail shipments, or when the water rate includes delivery at destination.

(b) Less carload shipments via rail and/or water. On group A, B, D, and E products we will equalize the less carload freight with the nearest factory point.

(c) Pickups at our factory by customers' own or hired trucks—no transportation allowance will be made.

(d) Deliveries by our own or hired trucks. On deliveries in our own or nearby factory points or factory zones, we will not make any transportation charge if delivered to one customer's warehouse or warehouses within said factory points or factory zones, but such shipments must be at less carload prices.

NOTE: We do not deliver to outside points or to specific jobs wherever located.

(e) Stopover car shipments. If first and subsequent stopover points and destination are outside points, freight charges on the tonnage unloaded at each stopover point, and the final destination, shall be not less than the carload freight rate from the factory point having the lowest carload rate to each stopover point, and to final destination; (stopover charges are for buyers' accounts).

**9** **Quantity Discounts:**

On shipments made, as set forth hereafter up to and including December 31, 1933, we will allow the following quantity discounts, such discounts to be credited customer only after December 31, 1933, and as soon thereafter as it is possible to verify such credits:

| | |
|---|---|
| On 25 to 49 cars . . . . . | 2% |
| On 50 to 74 cars . . . . . | 3% |
| On 75 to 99 cars . . . . . | 4% |
| On 100 cars and over . . . | 5% |

These discounts will only be allowed on carload shipments of asphalt roofing and shingles shipped into dealers' stock on or after June 1, 1933, up to and including December 31, 1933.

While discounts will only apply on asphalt roofing and shingles, group A products shipped into dealers' stocks in carload quantities after June 12, 1933, in computing tonnage for weight, all carload and less carload shipments of asphalt roofing and shingles into dealers' stocks between January 1, 1933, and December 31, 1933, may be used.

Purchases made by dealers for stock from other manufacturers, in accordance with the above, will also be allowed in computing tonnage for weight.

As of December 31, 1933, a dealer claiming discounts in accordance with the above shall make certified statements, showing the amount of each class of material purchased from each manufacturer, naming such manufacturers in the statements.

**10** **Territories:**

The provisions of this plan are operative, and shall apply in all territories of the United States *except* the Pacific Coast Zone, defined as follows:

The states of California, Oregon, Washington, Idaho, Utah, Arizona and Nevada; in the state of New Mexico, the county of McKinley; in the state of Montana, the counties of Flathead, Powell, Granite, Ravalli, Lincoln, Saunders, Lake, Missoula and Mineral; the territory of Hawaii.

**Subject to Change Without Notice.**



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