FILE NAME: Mahoning Valley Supply (MVS)

DATE: 1969 Dec 16

DOC#: MVS005

DOCUMENT DESCRIPTION: Distributor Sales Contract with Johns Manville

FOR PURCHASE OF

Johns-Manville Insulation Materials

BY PRIMARY MATERIALS DISTRIBUTOR

AGREEMENT

ENTERED INTO THIS 16th. DAY OF December, 19 69

between JOHNS-MANVILLE SALES CORPORATION, hereinafter called "Johns-Manville", and [redacted]

with a place of business at [redacted]
street address, town or city and state

hereinafter called "Distributor".

WITNESSETH:

[redacted] **WHEREAS** Distributor solicits business from users of [redacted] Products, listed in the attached Schedule "A" in the territory described in this agreement; and

[redacted] **WHEREAS** Johns-Manville sells Johns-Manville [redacted] Products, listed in the attached Schedule "A", as said Schedule "A" may be amended from time to time by Johns-Manville, hereinafter referred to as "Products" and

WHEREAS Johns-Manville desires, in the territory described in this agreement, to have Distributor solicit business for the Products from users; such as [redacted],

NOW, THEREFORE, during the existence of this agreement, Johns-Manville agrees to sell to Distributor, and Distributor agrees to buy from Johns-Manville, the Products, at Johns-Manville's then current prices, terms and conditions of sale to Primary Materials Distributors, subject to the following terms and conditions:

G0027

1. Distributor agrees to purchase and maintain on hand during the existence of this agreement, a stock of the Products sufficient in quantity to supply the normal and probable demands of said users in the following territory, referred to hereinafter in this agreement as "said territory":

[redacted]

2. The prices, terms and conditions of sale to Distributor may be changed by Johns-Manville without prior notice to Distributor, although it will be the practice of Johns-Manville to give advance notice to Distributor of any such change or changes.

In the event of an increase or decrease in price, all orders shall be invoiced at the price in effect at the time of shipment.

3. All orders accepted by Johns-Manville are subject to its ability to ship, and in the event Johns-Manville is unable to make shipment prior to the effective date of a price advance, Distributor shall be invoiced at prices in effect at time of shipment, unless order is previously canceled by Distributor.

4. Any new tax, or any increase in an existing tax, upon or incident to the sale, delivery, manufacture or processing of the Products covered by this agreement, imposed by any statute, ordinance or regulation shall be for Distributor's account, and, where permitted by law, shall be separately stated by Johns-Manville on each invoice.

5. The sale of the Products shall be fully and vigorously promoted by Distributor and Distributor's employees, both at Distributor's established place of business and by traveling representatives throughout said territory and by correspondence and other available means.

6. Johns-Manville reserves the right to sell the Products to anyone located in said territory or to anyone for use in said territory without any obligation to pay Distributor any compensation of any kind whatsoever upon said sales.

7. Distributor is in no way restrained or prohibited from selling the Products anywhere, but it is understood however that the support and cooperation of Johns-Manville is available to Distributor only within said territory.

8. Johns-Manville agrees to furnish to Distributor a reasonable amount of catalogs and other literature by Johns-Manville.

G0028

SCHEDULE "A" PRODUCTS

This Agreement covers the following classification of Johns-Manville Products normally used by Refractory Trades and Industrial Plants.

Refractory Trades and Industrial Plants

Materials: Insulating Fire Brick - REFRACTORIES
Refractory Felts
Superex 1900
Core Plates
Marinite Board
Asbestos Paper & Millboard

Terms of payment, prices and all conditions of sale as listed in the Johns-Manville Price Book have been reviewed and are understood to be a part of this Agreement, subject to the provisions of this Agreement.

Mahoning Valley Supply Co
(Distributor)

By J. D. Forward

G0029

9. Johns-Manville warrants its title and that all Products sold hereunder are free from defect in material and workmanship. Subject to the preceding sentence, JOHNS-MANVILLE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, EITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS, whether used alone or in combination with other materials. Johns-Manville shall not be liable for, and Distributor assumes responsibility for, all personal injury and property damage resulting from the handling, possession or use of the Products by Distributor. Every claim on account of defective Products, shortage or other cause shall be deemed waived by Distributor unless made in writing and received by Johns-Manville within 90 days from the date of delivery of Products to which such claim relates. Distributor's exclusive remedy and Johns-Manville's limit of liability for any and all losses or damages resulting from defective Products or from any other cause shall be replacement of Products returned and found to be defective, or the make up of any shortage, without charge, F.O.B. Johns-Manville plant point, full freight allowed to prior destination. In no event shall Johns-Manville be liable for incidental or consequential damages. Transportation charges for the return of Products shall not be paid unless authorized *in advance* by Johns-Manville.

10. Johns-Manville agrees to defend and to protect Distributor against loss or damage arising out of any legal action for patent infringement in connection with the manufacture of any of the Products sold to Distributor hereunder; provided, however, that Distributor shall forward immediately to Johns-Manville every written notice or charge of infringement of any said patent, and every subpoena, summons or other process or writ served upon Distributor in connection with any such charge of infringement and shall take no action with respect to any such notice or charge of infringement without first receiving Johns-Manville's written approval; and provided, further, that Johns-Manville shall have the right of intervening as a party defendant in any such suit or action and of conducting the defense thereof by counsel of Johns-Manville's own selection and of effecting any and all settlements of any such suit or action on such terms as Johns-Manville alone deems advisable.

11. It is understood and agreed that all orders of Distributor shall be subject to approval of the Johns-Manville Credit Department. Johns-Manville agrees to fill all accepted orders of Distributor with reasonable promptness, it being understood, however, that Johns-Manville shall not be responsible for delays or for defaults where occasioned by causes of any kind or extent beyond its control, including, but not limited to, armed conflict or economic dislocation resulting therefrom; embargoes, shortages of labor, raw materials, production facilities or transportation; labor difficulties; civil disorders of any kind; action of any civil or military authorities (including priorities and allocations); fires; floods and accidents.

12. The term of this agreement shall be continuous except that either party hereto may terminate it upon thirty (30) days' notice in writing to the other. In the event Distributor shall be adjudicated a bankrupt, or become insolvent in the sense of being unable to meet Distributor's current obligations as they mature, or in the event a receiver should be appointed of the properties and assets of Distributor, Johns-Manville may terminate this agreement forthwith.

13. Distributor agrees that, regardless of any terms or conditions printed, stamped, written or typewritten on its orders, the provisions of this agreement shall apply to the sale of the Products to it by Johns-Manville; terms and/or conditions in any order of Distributor to Johns-Manville which are contrary to, or different from, this agreement shall be void and of no effect.

14. It is hereby agreed that no action or proceeding on a claim arising under this agreement shall be instituted or started by either party more than one (1) year after the date on which the cause of action arose. This provision shall survive any termination of this agreement, however arising.

15. This writing constitutes the entire agreement between the parties hereto in respect to the subject matter hereof, and it is understood that Distributor is not in any manner or to any extent constituted or appointed an agent of Johns-Manville.

16. Effective upon execution of this agreement by both parties, all prior agreements with Johns-Manville, or any company subsidiary to, affiliated with, or under common ownership with, Johns-Manville, involving the purchase and sale of the Products listed in Schedule "A", or any of them, shall be canceled and terminated.

17. This agreement shall not be binding upon Johns-Manville until a copy thereof, duly executed by Distributor and by the General Sales Manager, Distributor Insulation Products Sales Department, Industrial Insulations Division of Johns-Manville, has been delivered to Distributor, and shipment of a stock order hereunder has been made to Distributor.

18. This agreement shall be interpreted and construed in accordance with and shall be governed by the laws of the State of New York.

19. No change in this agreement shall be binding upon either party except as the same may be subsequently set forth in writing and executed by a duly authorized person for the party to be bound thereby.

This agreement supersedes previous agreements and especially the original agreement signed on January 27, 1960.

IN WITNESS WHEREOF the parties hereto have duly executed or caused to be duly executed in duplicate this Agreement as of the day and year first above written.

Mahoning Valley Supply Co
Distributor

By J. D. Forward

Johns-Manville Sales Corporation

By
District Sales Manager

General Sales Manager
Distributor Insulation Products Sales Dept.
Industrial Insulations Division

G0031