PLAINTIFF'S EXHIBIT

UC-2219

Calidria ASBESTOS

THE DISCOVERY COMPANY

UNION CARBIDE CORPORATION • MINING & METALS DIVISION • P.O. BOX 579 • NIAGARA FALLS, N. Y. 14302 • TEL: 716-278-3376

September 3, 1975

Mr. A. R. Hooker
The Flintkote Company
480 Central Avenue
E. Rutherford, N.J. 07073

Dear Mr. Hooker:

To confirm our various discussions, we shall sell to you, and you shall purchase "Calidria" asbestos SG-104 under the Terms and Conditions contained in Exhibit A attached hereto and under the following provisions:

1. Delivery of a minimum of 1080 tons of SG-104 shall be made to you during the term of this agreement according to the schedule in Exhibit B attached hereto.

2. The term of this agreement shall commence on October 1, 1975 and shall terminate on June 30, 1976.

3. We reserve the right to increase prices by giving you 30 days written notice thereof and said increase shall be effective as to shipments made on and after the date specified in the written notice. If you can, within 15 days after said notice, furnish evidence that you can purchase from another responsible supplier asbestos of the ~~same quality~~* under similar conditions and at a lower delivered price, and if we do not agree within 15 days to meet said lower price, you will have the right to terminate this agreement within 10 days thereafter.

4. This offer may be terminated within 15 days after the date hereof if we have not received the signed copies of this letter indicating your agreement and acceptance.

Agreed to and Accepted:		Approved:
THE FLINTKOTE COMPANY		UNION CARBIDE CORPORATION
BY: Mr. M. L. Johnson	BY:	
TITLE: Vice-President, General Manager	TITLE:	Vice-President - Metals Divn
DATE: September 24, 1975	DATE:	October 14, 1975

* Similar quality for the use intended

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EXHIBIT A

TERMS & CONDITIONS

1. The purchase price for material sold hereunder shall be Union Carbide's standard list price in effect at the time of shipment. In addition to the purchase price, Buyer shall pay Seller the amount of all governmental taxes, excises and/or other charges (except taxes on or measured by net income) that Seller may be required to pay with respect to the production, sale or transportation of material delivered hereunder, except where the law otherwise provides. (1)

2. Terms of payment are net cash 30 days from date of invoice. In the event Buyer fails to fulfill Seller's terms of payment for the material or in case Seller shall have any doubt at any time as to Buyer's financial responsibility, Seller may decline to make further deliveries of material except upon receipt of cash or satisfactory security.

3. Delivery shall be made f.o.b. Seller's plant or warehouse and title and risk of loss of material so delivered shall thereupon pass to Buyer.

4. It is expressly understood that any technical advice furnished by Seller with reference to the use of material is given gratis and Seller assumes no obligation of liability for the advice given or results obtained, all such advice being given and accepted at Buyer's risk.

5. Buyer shall protect and indemnify Seller from and against claims, damages, judgments, expenses and loss arising from infringement or alleged infringement of any patent of the United States or any trade mark, directly or indirectly, arising out of or resulting from Seller's compliance with drawings, specifications or instructions furnished by Buyer to Seller, and Buyer shall defend or settle at its own expense any suit or proceeding brought against Seller for such infringement, provided that Buyer is notified promptly in writing of the commencement of such suit or proceeding and is given authority, information and assistance by Seller for the defense or settlement thereof.

6. Seller warrants that at the time of delivery the material will be of the Seller's standard specifications(2)**for the type and grade of the material described herein.** THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN THIS PARAGRAPH 6. NO WARRANTIES BY SELLER OTHER THAN A WARRANTY OF TITLE AS PROVIDED BY THE UNIFORM COMMERCIAL CODE SHALL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE, INCLUDING BUT NOT LIMITED TO A WARRANTY OF MERCHANTABILITY AND A WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

7. Buyer's receipt of material delivered hereunder shall be an unqualified acceptance of, and a waiver by Buyer of any and all claims (including, but not limited to, claims arising under the express warranties specified in Paragraph 6) with respect to such material unless Buyer gives Seller written notice of claims within thirty (30) days after such receipt. No claim against Seller of any kind, whether as to the material delivered or for nondelivery, and whether or not based on negligence or warranty, shall be greater in amount than the purchase price of the material with respect to which such claim is made. In no event shall Seller be liable to Buyer for any special, indirect or consequential damages, whether or not caused by or resulting from the negli-

(1) **Seller agrees that delivered price to Buyer will not exceed the price for SG-104 delivered to other floor tile customers in the same geographical area**

(2) **Union Carbide Ltr. 9-16-75 copy attached establishes standard specifications.**

Union Carbide trial exhibit UC-2219: Union Carbide to A. R. Hooker of The Flintkote Company on Supply Agreemen... Published by AsbestosClaims.Law
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gence of, or breach of warranty by, Seller hereunder.

8. Buyer assumes all risks and liability for use of the material; has full knowledge of all hazards to persons and property involved in handling and using the material; and warrants that employees, independent contractors, and others who handle and use the material for Buyer have been advised of all hazards to persons and property involved in handling and using the material. Buyer hereby assumes and agrees to hold Seller harmless from all liability resulting from the use of the material, whether or not such is in combination with other articles or substances or is used in any manufacturing process.

9. The validity, interpretation and performance of the terms hereof with respect to any material delivered (or to be delivered) hereunder shall be governed by the law of the State in which such material is manufactured.

10. No modification or waiver of the terms hereof shall be binding upon Seller unless approved in writing by a duly authorized representative of Seller, or shall be effected by the acknowledgement or acceptance of purchase order forms containing other or different terms whether or not signed by an authorized representative of Seller.

11. Neither party shall be liable for its failure to perform hereunder due to any occurrence beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental law, ordinances, rules and regulations, whether valid or invalid (including, but not limited to priorities, requisitions, allocations and price adjustment restrictions), inability to obtain material, electrical power, equipment or transportation, or any other similar or different occurrence. The party whose performance is prevented by any such occurrence shall have the right to omit during the period of such occurrence all or any portion of the quantity deliverable during such period, whereupon the total quantity deliverable hereunder shall be reduced by the quantity so omitted. If, due to any such occurrence, Seller is unable to supply the total demands for any materials hereunder, Seller shall have the right to allocate its available supply among its customers and its departments and divisions in such a manner as Seller shall deem fair and equitable. In no event shall Seller be obligated to purchase material from others in order to enable it to supply material to Buyer hereunder.

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EXHIBIT B

SUPPLY SCHEDULE FOR FLINTKOTE

Period		Approx. Tons per Month	Total Tons
September through December	1975	180	540
January through March	1976	90	270
April through June	1976	90	270
		Total	1080

UCC 004490

Calidria ASBESTOS
UNION CARBIDE CORPORATION · MINING & METALS DIVISION · P.O. BOX 579 · NIAGARA FALLS, N. Y. 14302 · TEL: 716-278-3376

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UNION CARBIDE
THE DISCOVERY COMPANY

September 16, 1975

Mr. A. R. Hooker
The Flinkote Company
480 Central Avenue
East Rutherford, NJ 07073

Dear Art:

This is in reply to your question about Paragraph (6) of the Terms and Conditions (Exhibit A) included with the supply contract for SG-104 which was recently sent to you. The inherent properties of our ore deposit and the nature of our beneficiation process limit and control the properties of the products which our plant can produce. The nature of our products, especially pelletized ones, precludes classification by standard Canadian techniques.

Our shipping specifications for SG-104 are 3% moisture (maximum), 2% magnetite (maximum), and 70% + 9 mesh (minimum). Following are typical properties obtained when you "open" the pellets in a Waring Blender or similar device:

Property	Typical Value for "Opened" Standard Grade Pellets
Kerosene Retention	526 ml/100g
Reflectance	68%
DOP Absorption	95 #/100#
Wet Bulk (10 gm/250 ml)	190
Wet Bulk (2 gm/1000 ml)	340

We do not use any of the above tests for specifications but I think you will find our product will always approximate the values shown.

Let me know if you have any further questions.

Very truly yours,

John L. Myers
Marketing Manager

JLM/ep

cc: W. C. Thurber
Enc.

THE FLINTKOTE CO.
FLOORING DIV.
SEP 19 1975
RECEIVED

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