Asbestos - General

UNION CARBIDE CORPORATION
270 PARK AVENUE, NEW YORK, N. Y. 10017
LAW DEPARTMENT

PLAINTIFF'S EXHIBIT
UC-2255

October 6, 1971

Mr. J. W. Rawlings
38th Floor

cc: Mr. J. L. Myers
Mr. G. E. Grayson/File

Re: M & M - Sale of Asbestos -
Conwed Corporation

Dear Mr. Rawlings:

I have reviewed and initialed for signature two copies of the subject requirements contract, which were forwarded to you by John Myers. The agreement is on a form prepared by Mr. Grayson for use by Mr. Myers with buyers who are purchasing their requirements of asbestos products.

Very truly yours,

Patrick J. Morgan

PJM:ld
Enclosure

returned 2 executed copies to J. L. Myers 10/11/71.
G. E. Grayson

RECEIVED
OCT 7 1971

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ACL Doc 17251 · Page 1 of 4
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AGREEMENT made as of the 2nd day of January, 1971 between UNION CARBIDE CORPORATION, a New York corporation having an office at 270 Park Avenue, New York, New York 10017 (hereinafter called "Seller"), and CONWED CORPORATION, having an office at Cloquet, Minnesota (hereinafter called "Buyer");

W I T N E S S E T H:

1. Seller shall sell and Buyer shall purchase from Seller and pay for upon the terms and conditions hereinafter set forth, Buyer's manufacturing requirements of Calidria Asbestos High Purity Pellets (hereinafter referred to as the "Product"), but in no event less than 2,000,000 pounds (1000 tons) of the Product.

2. Delivery shall be f.o.b. Seller's plant at King City, California, in carload lots of sixty (60) tons. Title and risk of loss shall pass to Buyer upon shipment from King City, California.

3. Prior to the last day in each calendar month within the effective term of this Agreement, Buyer shall notify Seller of Buyer's requirements of the Product for the following calendar month and Seller shall schedule deliveries accordingly; provided, however, that deliveries shall be made in approximately equal monthly quantities.

4. The purchase price for the Product sold hereunder shall be 5.3¢/pound ($106 per ton). Seller may increase the purchase price as to deliveries on and after the first day of any calendar quarter during the term of this Agreement by delivering or mailing written notice to Buyer not less than thirty (30) days prior to such date. If within fifteen (15) days after the giving of such notice Buyer shall submit evidence satisfactory to Seller that the Product, in like quantity, of like quality, and for like delivery, can be purchased by Buyer at a price lower than such revised price, and if, within fifteen (15) days after the submission of such evidence, Seller will not agree to forego said price revision or meet such lower price, Buyer may, within thirty (30) days thereafter, terminate this Agreement by giving to Seller at least ten (10) days prior written notice of such termination.

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ACL Doc 17251 · Page 2 of 4 asbestosclaims.law/library/17251/2

5. The effective term of this Agreement shall commence on January 2, 1971, and shall continue until terminated on December 31, 1971 or on any anniversary thereof by either party upon at least thirty (30) days prior written notice to the other party.

6. (a) Terms of payment shall be net 10th proximo, billed upon shipment from King City, California.

(b) Seller reserves the right at all times, either generally or with respect to any specific order by Buyer, to vary, change or limit the amount or duration of credit to be allowed to Buyer. Without limiting the generality of the foregoing, all deliveries hereunder are subject to the condition that all indebtedness of Buyer to seller due before the date of shipment shall first be paid.

7. Seller warrants that at the time of shipment Product delivered hereunder will meet Seller's applicable standard specifications for such Product in effect at the time of shipment or such other specifications as have been expressly agreed upon with Buyer in writing. Seller further warrants that Product will be adequately contained, packaged and labeled, and will conform to the promises and affirmations of fact made on the container and label. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO ANY PRODUCT DELIVERED HEREUNDER WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY IN OTHER RESPECT THAN AS EXPRESSLY SET FORTH AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

8. Buyer's receipt of the Product delivered hereunder shall be an unqualified acceptance of, and a waiver by Buyer of any and all claims with respect to said Product unless Buyer gives Seller written notice of claim within thirty (30) days after such receipt. Buyer assumes all risks and liability for the results obtained by the use of any Product delivered hereunder in manufacturing processes of Buyer or by the use of such Product in combination with other substances. No claim against Seller of any kind, whether as to Product delivered or for nondelivery of Product, and whether or not based on negligence, shall be greater in amount than the purchase price of the Product in respect of which such claim is made. In no event shall Seller be liable for any special, indirect or consequential damages, whether or not caused by or resulting from the negligence of Seller.

9. Neither party shall be liable for its failure to perform hereunder (other than its failure to pay money) caused by circumstances beyond its control, including but not limited to acts of God, fire, floods, wars, sabotage, accidents, labor disputes or shortages, government actions (including but not limited to priorities, requisitions, allocations and price adjustment restrictions), inability to obtain material, equipment or transportation and any other similar or different occurrence. If, due to any such occurrence, Seller is unable to supply the total demands for Product specified in this Agreement, Seller shall have the right to allocate its available supply among any or all purchasers as well as departments, divisions and subsidiaries of Seller. In no event shall Seller be obligated to purchase Product from others in order to enable it to deliver Product to Buyer hereunder.

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ACL Doc 17251 · Page 3 of 4 asbestosclaims.law/library/17251/3

10. This Agreement contains all of the representations and agreements between the parties hereto. Any assignment of this Agreement by either party without prior written consent of the other party shall be void. No modification of this Agreement or waiver of the terms and conditions thereof shall be binding upon either party unless approved in writing by an authorized representative of such party, or shall be effected by the acknowledgement or acceptance of purchase order forms or releases containing other or different terms or conditions whether or not signed by an authorized representative of such party.

11. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of New York.

12. It shall be a sufficient giving of any notice or other communication hereunder if the party giving the same shall deposit a copy thereof in the Post Office in a registered or certified envelope, postage prepaid, properly addressed to the other party at the address hereinabove set forth or at such other address as the other party shall have heretofore in writing designated. The date of giving any such notice or other communication shall be the date on which such envelope was deposited as above provided. The Post Office receipt showing the date of such deposit shall be prima facie evidence of these facts.

13. This Agreement supersedes and cancels effective the date of this Agreement any existing agreement between the parties with respect to the sale and purchase of Calidria Asbestos Products.

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

UNION CARBIDE CORPORATION
MINING AND METALS DIVISION

By _____

Title Division Vice-President

By _____
W. E. Walsh

Title Manager of Purchasing & Traffic

UCC 004719

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ACL Doc 17251 · Page 4 of 4 asbestosclaims.law/library/17251/4