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TO A REQUEST FOR CONFIDENTIAL TREATMENT.  
  
  
  
  
  
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 A&M PRODUCTS MANUFACTURING COMPANY  
  
 AND  
  
 OIL-DRI CORPORATION OF AMERICA  
  
 MEMORANDUM OF AGREEMENT  
 #1450  
 "FRESH STEP"  
  
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 MEMORANDUM OF AGREEMENT # 1450  
 ("AGREEMENT")  
 As of March 12, 2001  
  
1. BUYER. A & M Products Manufacturing Company, 0000 Xxxxxxxx, Xxxxxxx,  
Xxxxxxxxxx 00000, hereinafter "BUYER".  
  
2. SELLER. Oil-Dri Corporation of America, 000 X. Xxxxxxxx Xxxxxx, Xxxxxxx,  
Xxxxxxxx, 00000 hereinafter "SELLER".  
  
3. PRODUCT. Fresh Step(R) Traditional Coarse Clay Cat Litter, or any variant  
thereof that contains more than twenty-five percent (25%) coarse clay, bearing  
the Fresh Step trademark or any finished traditional coarse clay cat litter that  
BUYER or BUYER's Affiliates (as defined herein) may substitute for Fresh Step(R)  
Traditional Coarse Clay Cat Litter that meets the Product Specifications (as  
defined herein), from time to time, in the United States and Canada (hereinafter  
collectively, "FINISHED PRODUCT"), which Finished Product is described in more  
detail in SCHEDULE I.  
  
 a. BUYER has the right to solicit bids for and buy from third parties any  
traditional coarse clay cat litter bearing the Fresh Step trademark that is less  
than twenty-five percent (25%) coarse clay. \*\*  
  
 b. To the extent BUYER markets any Fresh Step (R) Traditional Coarse Cat  
Litter that contains a substrate in addition to coarse clay and the total amount  
of coarse clay is over twenty-five percent (25%)("COMBINATION PRODUCT"), BUYER  
shall either (i) purchase such finished Combination Product from SELLER and the  
parties shall follow the procedures for Specification Changes set forth in  
SECTION 10(c), or (ii) purchase BUYER's coarse clay (i.e., Seller's Xxxxx Xxxx)  
needs for such Combination Product from SELLER. If BUYER elects option (ii)  
above, BUYER shall not be required to purchase finished Combination Product from  
SELLER. Should BUYER choose to purchase its coarse clay needs from SELLER, the  
price of such coarse clay delivered to BUYER shall be the Base Price, as defined  
herein, less SELLER's actual costs for packaging and manufacturing the  
non-combination Finished Product. Notwithstanding the foregoing, if the coarse  
clay used in the Combination Product is not of the same type and quality used in  
the non-combination Finished Product, the parties shall negotiate in good faith  
for thirty (30) days to determine the price of the coarse clay, and if, at the  
conclusion of such thirty (30) days the parties cannot agree on such a price,  
such dispute shall be resolved according to the provisions of SECTION 23. The  
terms and conditions of this Agreement shall apply to purchases made by BUYER  
under this paragraph.  
  
4. QUANTITY. SELLER shall produce and deliver Finished Product as  
ordered by BUYER as set forth in SCHEDULE I.  
  
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5. QUALITY.  
 a. Finished Product shall be made and packaged in accordance with BUYER's  
applicable specifications as more fully described on Schedule II (collectively,  
"PRODUCT SPECIFICATIONS"). Subject to the provisions of SECTION 10(c), BUYER may  
subsequently add or alter the Product Specifications.  
  
 b. Unless otherwise specifically stated herein, the standards and  
requirements in the Contract Manufacturing Manual ("MANUAL") dated September  
1999 attached hereto and incorporated herein as SCHEDULE III, including without  
limitation any subsequent restatements, replacements, additions or alterations  
thereto, \*\*.  
  
 c. BUYER may inspect the Finished Product at its destination. \*\* BUYER  
provides SELLER with written notice that the Finished Product does not meet the  
Product Specifications. In such event, SELLER shall be responsible for the  
reasonable and actual costs of rework or replacement for Finished Product that  
does not meet the Product Specifications. SELLER also shall reimburse BUYER for  
BUYER's actual costs of segregating the non-conforming Finished Product and  
other reasonable costs and charges, including without limitation, costs in  
inspection, receipt, transportation and care and custody of non-conforming  
Finished Product, incurred by BUYER as the result of SELLER supplying  
non-conforming Finished Product. If BUYER, in its sole discretion, deems it  
necessary to use Finished Product that does not conform to the Product  
Specifications in order to meet BUYER's customer's demand for the Finished  
Product or to prevent a shortage of Finished Product available in the  
marketplace, BUYER and SELLER shall meet and mutually agree on the terms and  
conditions of such usage of Finished Product that does not conform to the  
Product Specifications and such failure to perform shall not be deemed a breach  
of this Agreement to the extent such failure to meet Product Specifications is  
discovered by BUYER.  
  
 d. Any Finished Product supplied by SELLER that does not comply with the  
Product Specifications and that BUYER rejects, shall be held for SELLER's  
account for thirty (30) days after BUYER's notification to SELLER of such  
defects. If written instructions for disposition are not furnished by SELLER to  
BUYER within that thirty (30) day period, BUYER may dispose of the rejected  
Finished Product and may deduct from any amount owed to SELLER's account the  
delivered cost of such Finished Product and any handling and/or disposal costs  
incurred by BUYER. Any such deduction may be applied to current or future  
invoices submitted by SELLER.  
  
 e. SELLER warrants that industry standard Statistical Quality Control  
("SQC") methods and procedures will be employed throughout the SELLER's  
facility(ies) for the Finished Product and that all data sent to BUYER will be  
in SQC format. BUYER hereby acknowledges that SELLER currently employs  
  
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industry standard SQC methods throughout its facility(ies) for the Finished  
Product as of March 12, 2001. SELLER hereby acknowledges that SQC methods and  
procedures change from time to time and that SELLER will change its application  
of such SQC methods and procedures as is reasonably required to conform to  
industry standard SQC.  
  
6. TERM. See SCHEDULE I.  
  
7. PRICE. See SCHEDULE I.  
  
8. PAYMENT AND FREIGHT. See SCHEDULE I.  
  
9. SHIPMENTS.  
SELLER shall ship Finished Product to BUYER'S designated warehouses as required  
by BUYER.  
  
10. SPECIAL CONDITIONS.  
  
 a. DISCONTINUANCE. BUYER shall have the right to discontinue purchase of  
Finished Product made hereunder upon one hundred and twenty (120) days written  
notice to SELLER, in the event BUYER or any BUYER Affiliate ceases marketing or  
selling either the Finished Product or any other traditional coarse clay cat  
litter product containing more than twenty-five percent (25%) coarse clay that  
meets the Product Specifications for any reason ("DISCONTINUANCE"), provided,  
however, BUYER and any BUYER Affiliate shall not re-enter the traditional coarse  
clay cat litter market with either the Finished Product or any other traditional  
coarse clay litter product containing more than twenty-five percent (25%) that  
meets the Product Specifications during the Term without first giving SELLER the  
opportunity to supply Finished Product and/or Seller's Xxxxx Xxxx (either "RENO  
XXXXX XXXX" or "XXXXXXX XXXXX CLAY", collectively "SELLERS XXXXX XXXX") in  
accordance with all of the terms of this Agreement including, but not limited  
to, price.  
  
 b.\*\*  
  
 c. SPECIFICATION CHANGES. The Product Specifications are subject to  
change from time to time during the Term by written agreement signed by both  
SELLER and BUYER and any such changes to the Product Specifications shall be  
noted on a revised SCHEDULE II, signed and dated by BUYER and SELLER. If, at any  
time during the Term, BUYER and SELLER are unable to agree upon a change or an  
addition to the Product Specifications or any pricing thereof, BUYER shall  
notify SELLER in writing ("BUYER NOTIFICATION DATE") and SELLER shall have sixty  
(60) days from the Buyer Notification Date ("SELLER NOTIFICATION DATE") to  
notify BUYER in writing (i) that SELLER can and will meet the revised Product  
Specifications immediately, or (ii) providing BUYER with a plan detailing how  
and when SELLER will be able to meet the revised Product Specifications  
  
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("SELLER'S PLAN") within thirty (30) days of the Seller Notification Date or  
(iii) offering to meet with the BUYER for thirty (30) days to develop a mutually  
agreeable plan detailing how and when SELLER will meet the revised Product  
Specifications ("MUTUALLY AGREEABLE PLAN").  
  
 (1) FAILURE TO MEET REVISED SPECIFICATIONS. If the SELLER fails to respond  
with a plan to meet the new Product Specifications on the Seller's Notification  
Date or SELLER responds on the Seller's Notification Date but states SELLER will  
not meet the revised Product Specifications, then BUYER shall have the right to  
purchase the Finished Product as revised by the new Product Specifications from  
third parties who can meet such revised Product Specifications and the  
obligations of BUYER and SELLER for the purchase of the Finished Product without  
the revised Product Specifications shall be reduced accordingly and BUYER shall  
have the right to terminate this Agreement, either in whole or in part. If BUYER  
terminates this Agreement in its entirety pursuant to this Section, BUYER must  
comply with the Premature Termination section detailed below in SECTION 10(f)  
  
 (2) DISAGREEMENTS ABOUT SELLER'S PLAN, THE MUTUALLY AGREEABLE PLAN AND/OR  
CHANGES IN PRICE DUE TO REVISED PRODUCT SPECIFICATION. In the event (i) BUYER  
disagrees with Seller's Plan, or (ii) the parties cannot reach a Mutually  
Agreeable Plan, or (iiii) the SELLER and/or BUYER disagrees to any proposed  
change to the price to the Finished Product as a result of the revised Product  
Specifications, such disputes shall be resolved according to the provisions of  
SECTION 23.  
  
 d. \*\* During the Term of this Agreement, SELLER agrees not to \*\*,  
in the United States and Canada, directly or indirectly, for itself  
or to any third party any \*\* that contains \*\*.  
  
 e. \*\*  
  
 f. PREMATURE TERMINATION ACTIONS. BUYER may terminate this Agreement in\  
its entirety pursuant to SECTIONS 10(b) and 10(c)(1) above only after BUYER (i)  
purchases SELLER's existing inventory of Finished Product (not SELLER's stores  
or inventory of Seller's Xxxxx Xxxx) conforming to the Product Specifications as  
of the date BUYER notifies SELLER of its intention to terminate, (ii) makes full  
payment of all invoices owed by BUYER to SELLER, unless the amounts of such  
invoices are in dispute, (iii) purchases and takes delivery of SELLER's existing  
inventory of chemical additives and packaging materials unique to the Finished  
Product, at cost, and \*\*.  
  
11. MANUFACTURING, INVENTORY AND WAREHOUSE REQUIREMENTS.  
  
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 a. FORECASTS, ORDERS AND RELEASES: BUYER will provide a three (3) month  
rolling forecast. Only the first month will be firm. BUYER's complete forecast  
will be available to SELLER by using the inventory tracking system chosen by  
BUYER ("MRP SYSTEM"). BUYER will submit firm orders (the forecast for the first  
month of each rolling forecast, the "FIRM ORDERS") for each calendar month to  
SELLER at least ten (10) days prior to the first day of such calendar month.  
BUYER and SELLER may mutually agree in writing on other levels of Finished  
Product as well as chemical additives and packaging materials. BUYER hereby  
agrees to use commercially reasonable efforts to place orders in quantities that  
are consistent with the quantities provided for in its forecasts. Subject to the  
terms of this Agreement, BUYER agrees to purchase from SELLER all Finished  
Product that meets the Product Specifications manufactured by SELLER to fill  
Firm Orders. Notwithstanding the quantity of Finished Product forecasted or  
ordered by BUYER and subject to BUYER's rights under SECTION 12, SELLER will  
guarantee the availability of up \*\* of Finished Product per \*\* period \*\* during  
the Term of this Agreement.  
  
 b. DAILY TRANSACTIONS: SELLER agrees to enter all daily transactions  
into BUYER's MRP System and make commercially reasonable efforts to use the most  
 recent standards listed in the Manual, including product structures and  
reconciliation activities for maintaining data.  
  
 c. MANUFACTURING AUTHORITY: Subject to the provisions set forth in  
SECTION 5(b) hereof, manufacturing authority will be issued in accordance with  
the established order procedures in the Manual. \*\*  
  
 d. PALLETS: \*\*  
  
  
 e. WAREHOUSE REQUIREMENTS: \*\*  
  
  
 f. BUYER SUPPLIED MATERIALS. Unless otherwise mutually agreed upon in  
writing by the SELLER and BUYER, SELLER shall use and BUYER shall furnish all  
chemical additives and packaging components specified by BUYER for use in and to  
package the Finished Product. SELLER will release such chemical additives and  
packaging components from suppliers designated by BUYER in accordance with  
procedures mutually agreed upon by BUYER and SELLER. SELLER will report monthly  
the receipt, usage, loss, and inventory information required by BUYER. A maximum  
shrinkage or loss factor as reflected in SCHEDULE I will be allowed on materials  
furnished to SELLER by BUYER. In the event the shrinkage or loss factor exceeds  
the allowance per the procedure outlined in SCHEDULE I, SELLER will reimburse  
BUYER for losses in excess of the allowance, provided BUYER and SELLER agree  
that such losses are properly for SELLER's account. Reimbursement is due within  
thirty (30) days of the end of each Contract Year (as defined in SCHEDULE I  
hereto).  
  
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 g. BUYER OWNED EQUIPMENT: Title to any equipment or machinery currently  
owned by BUYER that is currently on SELLER's premises that is used by SELLER to  
manufacture or package the Finished Product (the "EQUIPMENT") is hereby  
transferred by BUYER to SELLER, in its AS IS, WHERE IS condition without any  
representation or warranty, express or implied, as to condition thereof. BUYER  
shall have no obligation to maintain or replace such equipment or machinery.  
BUYER represents and warrants it has good title to the Equipment and the  
Equipment is free from liens and encumbrances. BUYER shall transfer title to the  
Equipment to SELLER pursuant to a Xxxx of Sale dated as of the date hereof and  
executed by BUYER in favor of SELLER. Furthermore, BUYER agrees to execute all  
such other documents, certificates or instruments and take all such other action  
that is commercially reasonably necessary to effectuate transfer of good title  
in the Equipment to SELLER.  
  
 h. COST REDUCTION: SELLER and BUYER shall work together in all areas  
of the operation to achieve and maintain a consistent, high quality Finished  
Product, and to strive to continuously improve the operation. Both SELLER and  
BUYER commit to using commercially reasonable efforts to take costs out of the  
supply chain to ensure that BUYER remains competitive in the marketplace. Cost  
reduction projects will be assessed for business benefits as well as the  
cost/efforts to implement the project. Any cost savings derived from such mutual  
efforts shall accrue \*\*, unless mutually agreed otherwise. \*\*  
  
12. PRODUCTION GUARANTEES.  
  
 a. Subject to the provisions of this Agreement, SELLER guarantees timely  
production of BUYER's requirements of the Finished Product. SELLER's timely  
production hereunder may be tolled for any delay proximately caused by the  
negligence or willful misconduct of BUYER's designated supplier.  
  
 b. Notwithstanding SECTION 12(a), if BUYER's requirements for Finished  
Product significantly \*\* beyond BUYER's forecasted amount set forth in SECTION  
11(a), and such increased requirements will cause SELLER to incur overtime,  
BUYER will \*\*.  
  
 c. In addition to any other remedies provided by law or equity, if, in  
BUYER's reasonable estimation, SELLER's future capacity to manufacture Finished  
Product appears insufficient to meet BUYER's forecasted production requirements,  
BUYER may, \*\*. Prior to \*\*, BUYER shall notify SELLER in writing of such  
intention, and SELLER shall have an opportunity to provide reasonable assurances  
to BUYER, within five (5) days of receipt of such notice, that \*\*. BUYER shall  
have\*\*. If BUYER chooses to purchase Finished Product \*\*, BUYER will only \*\*.  
Unless extenuating mechanical or quality circumstances are the cause of BUYER's  
concern, BUYER will use SELLER's average run rates for calculating SELLER's  
capability to meet BUYER's forecasted needs. Notwithstanding the foregoing, if  
BUYER has made a  
  
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determination of SELLER's potential shortfall for any given month under this  
SECTION 12(c), \*\*. If at any time during such month SELLER produces enough  
Finished Product to eliminate the potential shortfall, BUYER shall \*\*.  
  
 d. Except as the result of BUYER's negligence or willful misconduct and  
for Force Majeure Events (as defined below), if for any reason SELLER is unable  
to provide \*\* of Finished Product per \*\* period \*\* as set forth in SECTIONS  
11(a) and 12(a), and BUYER must, therefore, purchase Finished Product or  
substantially similar product from third parties and/or ship Finished Product to  
its plant(s) from other locations, SELLER shall reimburse BUYER for the  
reasonable difference, if any, in costs of the product purchased plus any  
differential freight costs for the transportation of such product.  
  
13. TITLE AND RISK OF LOSS.  
Title to the Finished Product and risk of loss of the Finished Product shall  
pass from SELLER to BUYER when the Finished Product leaves SELLER's designated  
production facilities or point of storage.  
  
14. DISCOUNTS.  
On all invoices subject to discount, the discount period shall be calculated  
from the date of shipment.  
  
15. REPRESENTATIONS, WARRANTIES AND INDEMNITIES.  
a. SELLER'S REPRESENTATION AND WARRANTIES. SELLER represents and warrants to  
BUYER that (i) the Finished Product will conform to the Product Specifications  
and shall be free from defects in materials and workmanship, (ii) SELLER  
provided materials used in the Finished Product will be of good and  
merchantable quality, (iii) SELLER provided materials used in the Finished  
Product will be free and clear of all liens and encumbrances, (iv) SELLER has  
not placed any liens and/or encumbrances on the Finished Product (v) SELLER will  
have good and merchantable title to SELLER provided materials used in the  
Finished Product, (vi) no materials manufactured by SELLER in the Finished  
Product, and the use thereof \*\*, shall infringe upon any United States patent  
rights; provided, however, this clause shall not apply to the extent the  
Finished Product or ingredients thereof cover basic raw materials or basic  
structural material that are unpatented and unpatentable, (vii) SELLER has  
complied in all material respects, and will during the Term comply in all  
material respects with, all applicable federal, state and local laws, codes,  
regulations, rules and orders, including without limitation, the Xxxxxxxx-Xxxxxx  
Act, federal and state environmental and health safety laws, laws restricting  
heavy metal content, and employment and labor laws (and all reporting  
requirements of those laws, which reports SELLER shall make available to BUYER  
on request), the Fair Labor Standards Act, and Executive Orders 11246  
(Sections 202 and 203) and 11701 and (vii) any person or entity purporting to  
have the authority to enter into this Agreement on behalf of or for the  
benefit of SELLER has such authority.  
  
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\*\*  
  
\*\*  
  
b. SELLER'S INDEMNITY. SELLER shall indemnify, defend, and hold harmless  
BUYER and BUYER's Affiliates, of, from and against any loss, damages, claims,  
liabilities, costs and expenses, including without limitation reasonable  
attorneys' fees (collectively, "Claims"), which BUYER or any of BUYER's  
Affiliates (as defined herein) shall incur, suffer or be required to pay  
resulting from the breach of SELLER's representations and warranties in this  
Section; provided, however, such indemnity obligation will be subject to the  
limitations on warranties set forth above in SECTION 15(a) above and to the  
extent BUYER has agreed to accept in writing non-conforming Finished Product  
pursuant to SECTION 5(c) above. Notwithstanding the foregoing, SELLER shall not  
be responsible to indemnify, defend or hold harmless BUYER or any of BUYER's  
Affiliates if the Finished Product at issue in such Claims does not conform with  
the Product Specifications as a result of being altered or tainted after the  
Finished Product has left the possession or control of SELLER. BUYER shall  
promptly notify SELLER of any such Claims, shall cooperate with SELLER in the  
defense of such Claims and shall permit SELLER to control the defense and  
settlement of such Claims with counsel of SELLER's choice, provided, however,  
that SELLER shall not resolve any such Claim without notice to BUYER, and shall  
not enter into any claim resolution or settlement that would have a material  
adverse effect on the name or reputation of BUYER or its products, or would  
require an admission of liability or wrongdoing by BUYER. This Section shall  
survive the termination of this Agreement for five (5) years.  
  
c. BUYER'S INDEMNITY: BUYER will indemnify and hold harmless SELLER and any  
corporation controlling, controlled by or under common control with SELLER (a  
"SELLER AFFILIATE"), of, from, and against any and all Claims which SELLER or  
any SELLER Affiliate, shall incur, suffer or be required to pay resulting from  
(A) injuries or deaths caused by any Finished Product manufactured by SELLER  
once such Finished Product has left the possession or control of SELLER, except  
to the extent such injuries or deaths are caused by the failure of such Finished  
Product to conform to the applicable Product Specifications and such Finished  
Product has not been altered or tainted after such Finished Product has left  
possession or control of SELLER; (B) United States patent and/or trademark  
infringement claims related to the chemical additives and/or packaging provided  
to SELLER by BUYER, or (C) any tort, personal injury, or substantially similar  
claims by any employee, agent or representative of BUYER for occurrences at any  
plant or facility of SELLER. SELLER shall promptly notify BUYER of any such  
Claims, shall cooperate with BUYER in the defense of such Claims and shall  
permit BUYER to control the defense and settlement of such Claims with counsel  
of BUYER's choice, provided, however, that BUYER shall not resolve any such  
Claim without notice to SELLER, and shall not enter into any claim resolution or  
settlement that would have a material  
  
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adverse effect on the name or reputation of SELLER or its products, or would  
require an admission of liability or wrongdoing by SELLER. This Section shall  
survive the termination of this Agreement for five (5) years.  
  
d. Notwithstanding the foregoing, in no event shall SELLER or BUYER be  
required hereunder to indemnify or hold harmless the other party to the extent  
any involved injuries or deaths are caused by the negligence or willful  
misconduct of such other party. This section shall survive the termination of  
this Agreement for five (5) years.  
  
16. TRADEMARKS, CONFIDENTIALITY AND INTELLECTUAL PROPERTY.  
a. SELLER will not in any way whatsoever make use of or reference BUYER's name  
or any trademark or trade dress of BUYER, except (i) when use of or reference to  
BUYER's name is legally required, or (ii) with the prior written permission of  
BUYER. Notwithstanding the foregoing, in its communications to the investor  
community, its corporate annual report and any filings with the Securities and  
Exchange Commission, SELLER may use BUYER's name and the trademarked name "Fresh  
Step" to identify, respectively, that SELLER makes Finished Product for BUYER or  
to identify the brand name of the Finished Product that SELLER makes for BUYER.  
In such instances, SELLER shall refer to BUYER as either "A&M Products  
Manufacturing Company" or "A&M Products Manufacturing Company, a subsidiary of  
The Clorox Company" and shall properly identify "Fresh Step" as the registered  
trademark of The Clorox Pet Products Company.  
  
b. Neither party shall issue any news or informational releases, including  
public announcements or confirmation of same, regarding the existence of this  
Agreement or any part of the subject matter of this Agreement without the prior  
written consent of the other party. Notwithstanding the preceding, either party  
may include the name of the other and a factual description of the work  
performed under this Agreement whenever necessary to meet legal requirements, if  
the disclosing party, at least five (5) business days (or less if required by  
law) before making such disclosure, informs the other party of the nature and  
content of the intended disclosure.  
  
c. \*\*  
  
d. Each party hereto acknowledges that it will disclose to one another  
valuable information of a technical and/or non-technical nature that is not  
generally known to the trade or public, including without limitation, the  
pricing, the contents of this Agreement, Product Specifications, product  
formula, packaging specifications, production process and process  
specifications, production volumes both current and forecasted, business and  
financial information, marketing and promotion plans ("CONFIDENTIAL  
INFORMATION"). Such Confidential Information is the confidential and proprietary  
information of  
  
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the disclosing party. SELLER acknowledges that it provides goods and/or services  
and conducts business with one or more of BUYER's competitors, including Branded  
Products and retailers and their private label/store brands ("BUYER'S  
COMPETITORS"). Each party hereto agrees that neither it nor its respective  
affiliates will, and shall cause its officers, employees and agents not to,  
disclose the Confidential Information of the other party to any third party,  
including to BUYER's COMPETITORS, or use it for its own benefit or the benefit  
of a third party, including BUYER's Competitors, the Confidential Information of  
the other party, and shall take all reasonable measures to protect the  
confidentiality of such Confidential Information and prevent its disclosure to  
others, including BUYER's Competitors. Upon any termination of this Agreement,  
each party shall return to the disclosing party, and shall confirm to the  
disclosing party in writing that all such Confidential Information has been  
provided to the disclosing party, and that all copies thereof have been  
destroyed. The foregoing shall not apply to any information (i) that is in the  
public domain, (ii) that the receiving party can demonstrate was known to the  
receiving party prior to receipt from the disclosing party, (iii) that was  
subsequently legally received by the receiving party from a third party not  
under an obligation to the disclosing party to hold the same in confidence, (iv)  
that is independently developed by the personnel of the receiving party who have  
no access to the Confidential Information referred to herein at the time of or  
prior to their independent development of such information, or (v) that is  
required to be disclosed pursuant to a judicial process, court order or  
administrative request, or that is otherwise required by law for any regulatory  
filing, provided the receiving party provides the disclosing party with five (5)  
business days (or if the receiving party receives less than five (5) business  
days notice of the date of compliance with any judicial process, court order or  
administrative request or other disclosure that is otherwise required by law for  
any regulatory filing, as soon as reasonably practicable prior to such  
disclosure), written notice prior to such disclosure to object or otherwise seek  
relief from such disclosure as may be required. This section shall survive the  
termination of this Agreement.  
  
17. INSURANCE.  
a. SELLER represents and warrants that it has insurance coverage (which may  
be a comprehensive policy covering other insured items) in the aggregate of  
$10,000,000 in comprehensive general liability coverage, including, but not  
limited to product liability insurance covering SELLER's obligations herein, and  
agrees to maintain said comprehensive general liability insurance in full force  
and effect at all times during the Term of this Agreement and for five (5) years  
after SELLER's last production of Finished Product hereunder.  
  
b. \*\*  
  
18. ASSIGNMENT.  
a. Except as stated below in SECTION 18(b), neither party may transfer or  
assign any portion of that party's obligations under this Agreement, including  
  
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without limitation, a transfer of assets or stock, merger, share exchange, joint  
venture, license or any other transaction in which ownership or control of a  
party will pass from that party to a third party, without the prior written  
approval of the non-transferring party, which approval shall not be withheld if  
the assignee or transferee has a Dun & Bradstreet credit rating of 5A2 or  
better.  
  
b. With respect to any proposed transfer or assignment of any portion of  
SELLER's obligations under this Agreement, including a sale, as discussed above,  
of SELLER's assets in the Ochlocknee Plant and/or Reno Plant, \*\* (collectively  
"TOP CAT LITTER COMPANIES"), SELLER cannot transfer or assign any portion of  
SELLER's obligations under this Agreement \*\* without the prior written approval  
of BUYER, which cannot be withheld if SELLER \*\* provides BUYER with reasonable  
assurances that (i) BUYER's Confidential Information will be protected according  
to the provisions of SECTION 16 and that Confidential Information will only be  
used by \*\* in accordance with SECTION 16 and not used \*\* on any other cat litter  
product, (ii) BUYER's timely supply of Finished Product will not be interrupted,  
(iii) the \*\* manufacture Finished Product with the same quality as SELLER, (iv)  
the \*\* use commercially reasonable efforts to take costs out of the supply chain  
to ensure that BUYER remains competitive in the marketplace as set forth in  
SECTION 11(h) above, and (v) the \*\* other obligations under this Agreement. If  
during the Term, SELLER should enter into bona fide negotiations to sell its  
business as described above \*\* SELLER shall notify BUYER of such negotiations as  
soon as reasonably practicable, but only to the extent permitted by law and as  
deemed reasonable by SELLER's Board of Directors.  
  
c. Both parties agree that any breach of this SECTION 18 by any other party  
hereto would be likely to result in irreparable harm to the non-breaching party  
for which money damages would be inadequate. The parties therefore agree that  
any party who is the beneficiary of a right of approval pursuant to this SECTION  
18 shall be entitled to injunctive relief to enjoin any attempted transfer in  
violation of such right.  
  
d. Subject to the terms of this Section, this Agreement shall be binding on  
the parties, successors and assigns and any agreement to sell a party's business  
and/or assets shall include an express provision that the sale is subject to  
this Agreement and that the purchaser agrees to be bound by the terms and  
conditions hereof.  
  
19. FORCE MAJEURE.  
a. If either party cannot perform its obligations under this Agreement  
because of fire, flood, earthquakes, epidemic, natural disaster or other acts of  
God, strikes, lock-out, accident, war, electrical power or gas outages,  
governmental treaty (or agreement, law, act, ordinance, order, rule or  
regulation) which restricts, prevents or prohibits the manufacture or sale of  
the Finished Product or other causes beyond the reasonable control of the  
parties (collectively, "FORCE MAJEURE EVENTS"), then such party shall promptly  
notify the other party  
  
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in writing of the occurrence of such event and while the  
Force Majeure Event continues, the performance of both parties shall be  
suspended, except for BUYER's payment obligations under this Agreement for  
Finished Product shipped to BUYER prior to such Force Majeure Event.  
Notwithstanding the foregoing, to the extent a Force Majeure Event of BUYER  
effects BUYER's ability to make payments from its general offices in Oakland,  
California, BUYER shall pay its obligations under this Agreement as soon as  
reasonably practicable.  
  
b. To the extent BUYER is required to obtain Finished Product or  
substantially similar product from an alternative source, including another  
plant of SELLER, during a Force Majeure Event, BUYER shall \*\* and SELLER shall  
reimburse BUYER \*\* in obtaining the Product from an alternative source ("COVER  
COSTS"); provided, however, SELLER shall not be required to \*\*. To the extent a  
Force Majeure Event continues \*\*, SELLER shall have the option to \*\*.  
  
c. Notwithstanding the foregoing, it is BUYER's expectation that should SELLER  
not be able to produce Finished Product at either the Reno plant or the  
Ochlocknee plant because of Force Majeure Event, SELLER shall produce Finished  
Product at an unaffected plant (either the Reno plant or the Ochlocknee plant)  
and provide such Finished Product in a timely fashion in accordance with this  
Agreement and at no additional cost to BUYER (including without limitation, no  
additional freight and no Reno Surcharge, in the case of Reno Product shipped to  
cover for Ochlocknee Product). To the extent a Force Majeure Event continues in  
excess of a six (6) month period, SELLER shall have the option to continue to  
supply Finished Product from an unaffected plant as stated above until it is  
able to perform its obligations hereunder or terminate this Agreement on one  
hundred and twenty (120) days written notice to BUYER.  
  
20. TERMINATION.  
a. In addition to any other available rights or remedies provided herein,  
this Agreement may be terminated at any time prior to the expiration of the Term  
as follows:  
  
 i. either party may terminate this Agreement if the other party fails to  
cure any material breach in any representation or warranty or the performance of  
any material covenant or obligation under this Agreement within forty-five (45)  
days after written notice from the other party of such breach as provided in  
SECTION 24 below (the "CURE PERIOD"), provided, however, that with respect to  
any default that cannot be reasonably cured within the Cure Period, the default  
shall not be deemed to be uncured if the breaching party promptly commences to  
cure within the Cure Period and the breaching party continues to prosecute  
diligently the curing thereof to completion within another forty-five (45) days  
unless otherwise agreed to in writing by the parties.  
  
 ii. by mutual written consent of the BUYER and SELLER;  
  
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 xxx.xx BUYER on not less then \*\* months written notice to SELLER  
("NOTIFICATION DATE") if BUYER decides to produce Finished Product (with or  
without Seller's Xxxxx Xxxx) in BUYER's own manufacturing facilities; provided,  
however, \*\*:  
  
 \*\*  
  
 iv. by (A) SELLER in the event that BUYER fails to pay the price  
for the Product delivered to BUYER hereunder as and when the same becomes due  
and payable in accordance with terms hereof; provided, however, SELLER shall  
first give BUYER twenty (20) business days' written notice thereof and  
opportunity to cure within such time; or (B) by either party in the event the  
other party or its parent company applies for or consents to the appointment of  
a receiver, trustee or liquidator for all or a substantial part of its assets;  
admits in writing its inability to pay its debts generally as they mature; makes  
a general assignment for the benefit of creditors; is adjudicated a bankrupt,  
submits a petition or an answer seeking an arrangement with creditors; takes  
advantage of any insolvency law except as a creditor; submits an answer  
admitting the material allegations of a petition in a bankruptcy or insolvency  
proceeding; has an order, judgment or decrees entered by any court of competent  
jurisdiction approving a petition seeking reorganization of such party or  
appointing a receiver, trustee or liquidator for such party or its parent  
company, or for all or a substantial part of its assets and such order, judgment  
or decree shall continue unstayed and in effect for a period of sixty (60)  
consecutive days; or files a voluntary petition in bankruptcy or fails to remove  
an involuntary petition in bankruptcy filed against it within sixty (60)  
consecutive days of the filing thereof  
  
b. PREMATURE TERMINATION: Except as otherwise provided in this Agreement,  
if, for any reason, this Agreement is terminated prior to its expiration, BUYER  
shall (i) purchase and take delivery of SELLER's existing inventory of chemical  
additives and packaging materials unique to the Finished Product, at cost, (ii)  
purchase Finished Product conforming to the forecast referenced in SECTION 11  
conforming to the Product Specifications, (iii) purchase any additional existing  
inventory of SELLER of Finished Product (not SELLER's stores or inventory of  
SELLER's Xxxxx Xxxx) conforming to the Product Specifications as of the date of  
such Termination, and (iv) make full payment of all invoices owed by BUYER to  
SELLER, unless the amounts of such invoices are in dispute.  
  
c. \*\*  
  
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21. AUDIT RIGHT.  
  
a. SELLER shall keep accurate books and records sufficient to enable BUYER,  
or a third party as discussed below, to determine SELLER's calculation of any  
price adjustments, loss allowances, rebates, credits and the formula under  
SECTION 20(a)(iii) for the Termination Fee, made pursuant to the terms of the  
Agreement, including without limitation those included in SCHEDULE I. Unless  
otherwise agreed to in writing, the parties must use an Outside Auditor, as that  
term is defined below, to calculate the Termination Fee.  
  
b. Unless otherwise agreed to in writing, in the event the parties need to  
calculate the Termination Fee and in the event of any dispute between BUYER and  
SELLER regarding the calculation of any price adjustments, rebates, loss  
allowance and/or credits provided herein, BUYER may designate a nationally  
recognized, independent certified public accounting firm ("Outside Auditor"),  
approved by SELLER, which approval shall not be unreasonably withheld or  
delayed, to audit SELLER's books and records. The Outside Auditor must (i) agree  
to comply with the terms of this Section, and (ii) conduct the audit at  
reasonable times during SELLER's regular business hours and on reasonable prior  
notice to SELLER of no less than five (5) business days. The Outside Auditor  
shall provide BUYER and SELLER with a report regarding the SELLER's calculation  
of the applicable price adjustments, rebates, loss allowance and/or credit as  
discussed above (the "Audit Report"), but shall not disclose, and shall maintain  
the confidentiality of, any confidential financial information of SELLER,  
including SELLER's cost of raw materials. If either party has any questions on,  
or disagrees with, the Audit Report, the questioning party shall notify the  
other party and the Outside Auditor in writing no later than thirty (30) days  
from the questioning party's receipt of the Audit Report. As soon as reasonably  
possible after the questioning party's notice (but in no event longer than  
fifteen (15) days thereafter), BUYER's and SELLER's finance and accounting  
officers or employees shall discuss and review the Audit Report and attempt to  
resolve any disagreements. If the parties cannot promptly resolve any  
disagreement over the Audit Report, the parties shall promptly contact the  
Outside Auditor who shall meet with BUYER and SELLER to review the report and  
assist in resolving any disagreements. The parties shall resolve any such  
disagreements in good faith and in a prompt and reasonable manner; however, if  
they are unable to do so, any such disagreements shall be submitted to  
arbitration in accordance with SECTION 23(b). SELLER shall cooperate with the  
Outside Auditor in connection with such audit. If the audit shows that SELLER  
incorrectly calculated any of the price adjustments, rebates, loss allowances or  
credits, SELLER shall make an appropriate adjustment in its books and records.  
In the case of a credit due BUYER, BUYER may take such credit against the next  
payment or payments due SELLER until the credit is exhausted. In the case of a  
sum due SELLER, BUYER shall pay such amount to SELLER with BUYER's next regular  
payment to SELLER. If the audit reveals that SELLER's books and records are  
inaccurate by more than $10,000, the cost of the audit shall be borne  
  
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by SELLER; otherwise, BUYER shall incur the audit at its own expense. BUYER  
shall pay for the Outside Auditor in connection with the In-House Termination  
Fee.  
  
22. PLANT INSPECTION RIGHTS.  
Upon reasonable notice and during normal business hours, BUYER's authorized  
representatives and employees shall be permitted access to SELLER's plants and  
facilities during the Term to inspect the manner in which ingredients, chemical  
additives, packaging and units of the Finished Product are being produced,  
stored, processed, inspected and tested. SELLER's records relating to shipment  
and receipt of chemical additives and packaging will be available for BUYER's  
inspection upon request.  
  
23. DISPUTE RESOLUTION.  
a. In the event that a controversy, difficulty, claim or dispute (each, a  
"Dispute") arises out of or in connection with this Agreement, or in relations  
between the parties with respect to the subject matter hereof, any party may  
notify the other party in writing of the substance of the Dispute and of its  
desire to attempt to reach an amicable settlement, in which event the parties  
shall endeavor for a period of thirty (30) days after the date of such notice to  
reach an amicable settlement of the Dispute.  
  
b. Subject to the aforementioned thirty-day period, all Disputes arising out of  
or in connection with this Agreement, or in relations between the parties with  
respect to the subject matter hereof, for any reason or under any circumstances,  
shall be finally settled by binding arbitration in accordance with the Rules of  
Arbitration ("Rules") of the American Arbitration Association ("AAA") in force  
at the time of the Dispute. The arbitration shall be conducted by one  
arbitrator, if the amount in dispute is two million dollars ($2,000,000) or  
less, and by three arbitrators, if the amount in dispute is more than two  
million dollars ($2,000,000), selected pursuant to AAA rules. The arbitrator(s)  
shall be familiar with Delaware law and the Uniform Commercial Code for sale of  
goods. The place of arbitration shall be Oakland, California, or any other place  
selected by mutual agreement of the parties. Any award or decision rendered in  
such arbitration shall be final and binding on all parties, and judgment may be  
entered thereon in any court of competent jurisdiction if necessary.  
  
c. Nothing in this Agreement to arbitrate shall prohibit the right to seek  
provisional or equitable relief from any court having jurisdiction over the  
parties, including injunctive relief, pending a final award issued by the  
arbitrator(s); provided, however, this paragraph is not intended to nor shall it  
usurp the obligation of the parties to otherwise resolve the Dispute in  
accordance with Paragraph b above.  
  
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24. NOTICE.  
 a. All notices between BUYER and SELLER pursuant to this Agreement shall  
be deemed to have been delivered on the earlier of the date actually received  
or, if delivered by nationally recognized overnight courier, on the day  
following the business day the courier confirms to the sending party that  
delivery has occurred. Delivery shall not be deemed to have occurred by any of  
the above methods unless made to the following street addresses:  
  
If to BUYER: A & M Products Manufacturing Company  
 0000 Xxxxxxxx  
 Xxxxxxx, XX 00000-0000  
Attention: Procurement Contracts Manufacturing Manager  
  
If to SELLER: Oil Dri Corporation of America  
 000 X. Xxxxxxxx Xxxxxx  
 Xxxxxxx, XX 00000  
Attention: Vice President and Chief Financial Officer  
  
 b. Any party may change its above street address or portion thereof by  
delivering written notification of the change to the other party in accordance  
with this Section.  
  
 c. In the event that relief is entered, whether at the request of SELLER,  
or BUYER or at the request of third parties against SELLER or BUYER, as the case  
may be, under any federal or state case or proceeding for liquidation,  
reorganization, receivership, conservatorship or similar relief, the party  
against whom relief is sought agrees to list or schedule BUYER or SELLER, as the  
case may be, as a creditor and/or party in interest in any such case or  
proceeding, and agrees further to add BUYER or SELLER, as the case may be, to  
any special notice list or similar list of creditors or parties in interest who  
specifically request notice in such case as if such request for special notice  
were made of BUYER or SELLER, as the case may be, following commencement of such  
case or proceeding. Each party hereto acknowledges that free and continuing  
access to information provided and agreed to be provided to by the other party  
during the Term is a material inducement to such party in entering into this  
Agreement and that such party would not enter into this Agreement without a  
continuing right to such information, whether the other party operates its  
business outside of or under the protection of any judicial proceeding referred  
to above.  
  
25. MISCELLANEOUS.  
This Agreement shall be governed by and construed in accordance with the laws of  
the State of Delaware without reference to the principles of conflicts of laws.  
In the event of any dispute over the terms of this Agreement, the prevailing  
party shall be entitled to reasonable attorneys' fees, costs and expenses. All  
of the schedules, referred to in this Agreement are incorporated herein by  
reference. This Agreement is the complete and exclusive statement of the mutual  
  
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understanding of the parties and supersedes and cancels all previous written and  
oral agreements and communications relating to the subject matter of this  
Agreement. No failure to exercise, and no delay in exercising, on the part of  
either party, any privilege, any power or any rights hereunder (including  
without limitation the right to terminate this Agreement pursuant to SECTION 20  
above), will operate as a waiver thereof, nor will any single or partial  
exercise of any right or power hereunder preclude further exercise of any other  
right hereunder. The remedies provided herein, including without limitation  
those regarding termination, shall be cumulative and in addition to any other  
remedies provided by law or equity. If any provision of this Agreement shall be  
adjudged by any court of competent jurisdiction to be unenforceable or invalid,  
that provision shall be limited or eliminated to the minimum extent necessary so  
that this Agreement shall otherwise remain in full force and effect and  
enforceable. In the event of any conflict between the terms of this Agreement  
and any Schedule (except the Manual), the Schedule shall control the  
interpretation thereof; however, in the event of any conflict between the terms  
of this Agreement (including any Schedule) with the Manual, the Agreement  
(including any Schedule) shall control the interpretation of the Manual. This  
Agreement may only be modified or amended by a written modification or amendment  
signed by both parties. No agency, partnership, joint venture or employment  
relationship is created between the parties by this Agreement. To the degree  
that either or both of the parties hereto find it convenient to employ their  
standard forms of purchase order or acknowledgment of order in administering the  
terms of this Agreement, the party may do so but none of the terms and/or  
conditions printed or otherwise appearing on the back of such form shall be  
applicable to the sale of the Product.  
  
26. BUYER'S AFFILIATES.  
The parties acknowledge and agree that this Agreement is intended and shall  
apply to BUYER's Affiliates. As used herein, "BUYER'S AFFILIATES" shall mean any  
entity in the United States and Canada now existing or hereafter organized,  
created or acquired during the Term, controlling, controlled by or under common  
control with a BUYER.  
  
27. SCHEDULE LIST.  
  
SCHEDULE I: QUANTITY, TERM, RENEWAL TERM, PRICE, OTHER TERMS  
SCHEDULE II: PRODUCT SPECIFICATIONS  
SCHEDULE III: CONTRACT MANUFACTURING MANUAL SEPTEMBER 1999  
SCHEDULE IV: ILLUSTRATION OF TERMINATION FEE CALCULATION  
  
 [SIGNATURES FOLLOW]  
  
  
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IN WITNESS WHEREOF, BUYER and SELLER have executed this Agreement as of the date  
first written above.  
  
BUYER: A & M Products Manufacturing Company,  
a Delaware corporation  
  
By:  
 --------------------------  
  
Its:  
 --------------------------  
  
Date:  
 --------------------------  
  
  
SELLER: Oil Dri Corporation of America,  
a Delaware corporation  
  
By:  
 --------------------------  
  
Its:  
 --------------------------  
  
Date:  
 --------------------------  
  
  
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 SCHEDULES TO MEMORANDUM OF AGREEMENT  
Entered into as of March 12, 2001 by and between BUYER and SELLER.  
  
 SCHEDULE I  
  
A. QUANTITY. BUYER shall purchase from SELLER and SELLER shall produce and  
deliver as ordered by BUYER, at the prices set forth below, all of BUYER's  
requirements of Finished Product \*\* per Contract Year. BUYER does not guaranty  
to purchase a specific quantity of Finished Product from SELLER. BUYER's  
requirements are currently estimated to be \*\* per Contract Year. Except as  
permitted by law and as expressly stated in this Agreement including, without  
limitation, SECTIONS 10(b), 10(c), 12(c), 12(d), 19 and 20(a)(iii), BUYER  
covenants and agrees that it will not purchase Finished Product from any person  
other than SELLER or produce Finished Product in BUYER's own manufacturing  
facilities during the Term until it has purchased at least \*\* of Finished  
Product in any Contract Year hereunder from SELLER. BUYER reserves the right to  
purchase any Finished Product volumes in excess of \*\* in any Contract Year from  
other suppliers provided that BUYER shall first allow SELLER to sell to BUYER  
such excess to the extent that SELLER matches the lowest price for which the  
BUYER may purchase such excess from third parties.  
  
(1) Subject to SCHEDULE I(F)(7), SELLER will make available and BUYER will  
accept for its West Coast volume Finished Product manufactured at SELLER's Reno  
plant after construction on SELLER's Reno plant is completed. Upon written  
notification from SELLER that the Reno plant is operating and capable of  
producing sufficient Finished Product, BUYER may purchase up to \*\* of its  
Finished Product requirements from the SELLER's Reno plant. BUYER can purchase  
up to \*\* of its Finished Product requirements from SELLER's Reno plant after  
providing SELLER with twelve (12) months written notice of its intent to  
increase its requirements from the Reno plant. If BUYER provides SELLER with  
such notice, both parties will meet in good faith to negotiate how to allocate,  
as necessary, any capital costs that may be needed to meet such increased  
demand. If the parties are unable to agree on such allocation, BUYER cannot  
increase its requirements from the Reno plant beyond \*\*. BUYER hereby  
acknowledges that the Reno plant will not contain dedicated lines of equipment  
for the manufacture and packaging of Finished Product, but instead will have  
common lines of equipment, including without limitation, common equipment to  
apply additives for the manufacture of Finished Product and other clay cat  
litter products.  
  
B. TERM. The term of this Agreement ("TERM") shall be for a  
period of \*\* commencing as of a Commencement Date of March 12, 2001 and  
expiring on \*\* unless sooner terminated pursuant to this Agreement.  
  
C. EXTENSION OF TERM. BUYER may extend this Agreement on all of the same  
terms and conditions herein for any period between six (6) months to twenty  
  
 22  
  
four (24) months from the date of expiration of the Term, provided BUYER  
notifies SELLER in writing thereof not less than one hundred eighty (180) days  
prior to the expiration of the initial Term specified in SECTION B above. Should  
BUYER extend the Term, the meaning of "Term" in this Agreement shall apply to  
such extension as well.  
  
D. DEFINITIONS. Capitalized terms used in this Agreement and the Schedules  
attached hereto shall have the following respective meanings (defined in this  
Agreement or such Schedules):  
  
 (a) "Adjusted \*\* Index" is the percentage determined by the  
 following formula:  
  
 ((\*\*Index / Previous \*\* Index)- 1) X \*\*  
  
 (b) "Base Price" means \*\* as of March 12, 2001, and shall adjust at the  
 beginning of each Contract Year on the Price Adjustment Date based on the  
 Price Adjustment Mechanism.  
  
 (c) "Commencement Date" means March 12, 2001.  
  
 (d) "Contract Year" means each twelve-month period beginning on the  
 Commencement Date and ending on the day prior to each anniversary thereof.  
  
 (e) "Ochlocknee Product" means Finished Product manufactured at  
 SELLER's Ochlocknee, Georgia Plant.  
  
 (f) "\*\* Index" means the estimated \*\* number published in the \*\* prior to  
 the Price Adjustment Date.  
  
 (g) "Previous \*\* Index" means \*\*Index for the immediately preceding  
 Contract Year to be used in determining the Adjusted \*\* Index. The parties  
 agree that the \*\* Index for the first Contract Year shall be \*\*. This  
 number shall be used as the Previous \*\* Index on the first Price Adjustment  
 Date of April 1, 2002.  
  
 (h) "Price Adjustment Date" means April 1.  
  
 (i) "Reno Commencement Date" means the mutually agreed upon date on which  
 SELLER shall begin shipments to BUYER from its Reno plant. The parties  
 shall mutually agree upon a startup time line for the Reno  
  
 23  
  
 plant, which shall include the Reno Commencement Date, within six (6)  
 months of the Xxxx Xxxx Notification Date, as defined below.  
  
 (j) "Reno Product" means Finished Product manufactured at SELLER'S Reno,  
 Nevada plant as discussed further below in SCHEDULE I(F)(7).  
  
 (k) "ton" means a short ton of two thousand (2000) pounds.  
  
E. PRICE  
  
(1) Price for Finished Product will be \*\* (which must be invoiced pursuant to  
SECTION F(3) below), bags, and chemical additives unique to BUYER's formulation.  
The price also does not include charges for outbound freight, transit insurance,  
sales taxes or any duties payable, all of which shall be borne solely by BUYER.  
Pursuant to SECTION 11(f), BUYER shall supply SELLER with bags and chemical  
additives unique to BUYER's formulation.  
  
(2) OCHLOCKNEE PRODUCT: The price for Ochlocknee Product shall be the Base  
Price.  
  
(3) RENO PRODUCT: The price for Reno Product shall be the Base Price \*\* for a  
period of \*\* ("RENO SURCHARGE") commencing on the Reno Commencement Date;  
provided, however, the Reno Surcharge shall \*\* by \*\* per ton on each anniversary  
of the Reno Commencement Date \*\*. Once the Reno Surcharge has ended, the price  
for Reno Product shall be the Base Price. \*\*  
  
 (a) If SELLER does not make available for shipment Reno Product within  
 \*\* of the Reno Commencement Date, SELLER shall pay BUYER \*\* up to \*\* ("RENO  
 DELAY CHARGE") on Ochlocknee Product ordered by BUYER after such date until  
 such time as Reno Product becomes available for shipment.  
  
(4) PRICE ADJUSTMENT MECHANISM: The following Price Adjustment Mechanism shall  
be used to adjust the Base Price and shall be made on a per ton basis only and  
will not be inflation adjusted.  
  
 (a) The Base Price for Product shall be adjusted each Contract Year, as  
either an increase or a decrease, pursuant to the Price Adjustment Mechanism on  
the Price Adjustment Date.  
  
 (b) The Price Adjustment Mechanism is as follows:  
  
 \*\*  
  
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 (c) SELLER must provide BUYER with the Adjusted Base Price at least \*\*  
prior to the Adjusted Base Price taking effect. Once the Adjusted Base Price  
takes effect, it shall become the Base Price for the new Contract Year.  
Commencing on April 1, 2002, and for the Price Adjustment Dates on April 1, 2003  
and April 1, 2004, the Adjusted Base Price shall be \*\* by \*\* and shall  
thereafter become the Base Price for the new Contract Year.  
  
 (d) The parties reserve the right to change the Base Price in  
accordance with the Price Adjustment Mechanism above at any time other than as  
described paragraph (a) above in the event that the \*\* Index increases or  
decreases during any Contract Year by \*\*, or in aggregate of \*\* thereafter in  
such Contract Year.  
  
F. OTHER TERMS.  
  
 (1) PAYMENT TERMS. \*\*  
  
 (2) FREIGHT TERMS. F.O.B. SELLER's Dock in Ochlocknee or Reno.  
  
 (3) BILLING AND INVOICING REQUIREMENTS.  
  
 (a) Invoices must meet BUYER's invoicing requirements, including  
without limitation accurately reflecting all required data free of accounting  
errors; and clear and accurate invoice numbers reflected on statements.  
  
 (b) SELLER shall not invoice BUYER for any costs, either for goods or  
services, not agreed to herein without prior written approval. Any such written  
approval must contain BUYER's Account Code. Without such written approval  
containing the Account Code, BUYER will not be responsible for any costs  
incurred by SELLER.  
  
 (4) LOSS ALLOWANCES. Inventory and usage control of BUYER supplied  
materials is SELLER's responsibility and will be managed and reconciled as  
outlined in the Loss Allowance Agreement. The Loss Allowance Agreement is  
attached hereto as ATTACHMENT A and incorporated herein by reference.  
  
 (5) PRIOR AGREEMENTS: This Agreement supercedes and restates the terms and  
conditions of all prior Agreements, amendments, schedules and attachments for  
Product between the parties, including the Letter Agreement dated January 12,  
1981 between Oil-Dri Corporation of America and The Clorox Company, and its  
successors and assigns, and all amendments, schedules and attachments thereto.  
  
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 (6) WRENS EQUIPMENT: Subject to SCHEDULE I(E)(3)(b), BUYER will make  
equipment at its Wrens plant ("WRENS EQUIPMENT") available to SELLER in its AS  
IS, WHERE IS condition without any representation or warranty, express or  
implied, as to condition thereof.  
  
 (a) SELLER shall bear all costs to break down, transport and install  
 the Wrens Equipment at either its Reno or Ochlocknee plants.  
  
 (b) \*\*  
  
 (c) The Wrens Equipment shall exclude two palletizers of BUYER's choice  
 and the mining equipment on wheels (trucks, front end loaders, etc.)  
  
 (d) Within thirty (30) days of the signing of this Agreement, both  
 parties agree \*\* and determine, in good faith, whether there should be a  
 \*\*. If the parties cannot agree \*\* within thirty (30) days of this signing  
 of this Agreement, \*\*.  
  
 (e) BUYER shall transfer title to the Wrens Equipment to SELLER  
 pursuant to a Xxxx of Sale executed by BUYER in favor of SELLER.  
 Furthermore, BUYER agrees to execute all such other documents, certificates  
 or instruments and take all such other action that is commercially  
 reasonably necessary to effectuate transfer of good title in the Wrens  
 Equipment to SELLER. In such Xxxx of Sale, BUYER shall represent and  
 warrant that it has good title to the Wrens Equipment and that the Wrens  
 Equipment is free from liens and encumbrances.  
  
  
 (7) XXXX XXXX: Within \*\* of BUYER's receipt of samples of the Reno Xxxxx  
Xxxx ("XXXX XXXX NOTIFICATION DATE"), BUYER will notify SELLER in writing one of  
the following options:  
  
 (a) \*\*: BUYER will \*\* and the parties will negotiate in good faith to  
develop a new clay Product Specification for Reno Product; or,  
  
 (b) \*\* BUYER \*\*. If BUYER does not accept Reno Xxxxx Xxxx, BUYER is under  
no obligation to purchase Reno Product. If BUYER does not purchase Reno Product,  
under this provision, then BUYER shall purchase and SELLER shall sell BUYER's  
requirements as provided in this Agreement from SELLER's Ochlocknee Plant; or  
  
 (c) \*\* BUYER will \*\*. The parties will negotiate in good faith to develop a  
new Product Specification (including, without limitation the clay Product  
Specification) for \*\*. SELLER agrees that to the extent \*\* to the current  
Product Specifications to make \*\* SELLER shall \*\*.  
  
  
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 ATTACHMENT A  
  
 LOSS ALLOWANCE AGREEMENT  
  
Below are loss allowances:  
  
 - Loss Allowance Level -  
  
Chemicals \*\*  
Ancillary \*\*  
Bags \*\*  
  
  
Procedure To Establish Loss Allowances  
  
ON-GOING  
Physical inventories will be conducted on a quarterly basis. Other mutually  
agreeable alternatives, e.g. cycle counting, are acceptable. However, at a  
minimum, a year ending physical inventory will be required. Financial liability  
for losses (or gains) within a category will occur within thirty (30) days after  
the end of each year's business. This allows losses (or gains) within a  
category. BUYER will invoice SELLER for any losses within a category (chemicals  
vs. packaging) at years end which exceed agreed to acceptable loss allowance  
levels. The loss allowance agreement will pertain to all existing Uniform  
Product Codes (UPC's). Category losses for any special projects, new project  
efforts, etc., will need to be tracked and kept independent of normal activity  
by mutual consent as agreed to prior to project initiation at SELLER's plant.