

AGREEMENT

AGREEMENT made this 1st day of August, 1969, by and between PETER J. SCHWEITZER DIVISION, KIMBERLY-CLARK CORPORATION, with offices at 261 Madison Avenue, New York, New York 10016 (hereinafter called "Supplier"), and BROWN & WILLIAMSON TOBACCO CORPORATION, with offices at 1600 West Hill Street, Louisville, Kentucky 40201 (hereinafter called "Buyer"),

WITNESSETH:

It is hereby mutually agreed as follows:

1. The Buyer shall have produced by the Supplier, and Supplier shall produce for Buyer, reconstituted tobacco for use by Buyer during the term of this agreement in amounts set forth hereinafter. Reconstituted tobacco produced by the Supplier for the Buyer is hereinafter called "Reconstituted Tobacco."

During the first two years of this contract, Buyer will order 10,000,000 pounds and Supplier will supply up to 16,000,000 pounds of Reconstituted Tobacco. During the term of this contract or any renewal thereof, Buyer will order not less than 900,000 pounds of Reconstituted Tobacco in any one quarter, and Supplier will supply Buyer's orders for up to 2,000,000 pounds per quarter, provided that Buyer's orders for any quarter shall not, without Supplier's agreement, exceed the quantity ordered for the previous quarter by more than 25 percent, nor shall the total of such orders for any quarter be reduced by more than 20 percent from the quantity ordered and delivered for the previous quarter. The first delivery to be made by the Supplier shall be on or before September 1, 1969.

2. The Buyer shall furnish and deliver to the Supplier tobacco materials (minimum of 37-1/2 percent stem and winnowers) and Reconstituted Tobacco shall be produced therefrom by the Supplier in accordance with such formula or formulae as the Buyer shall from time to time specify. The Reconstituted Tobacco to be delivered by the Supplier to the Buyer hereunder shall contain no ingredient or constituent added by the Supplier foreign to leaf tobacco in its natural state, except for materials specified in writing by the Buyer. The Supplier will keep separate and will not commingle with the materials of others, the tobacco materials furnished to the Supplier by the Buyer. The Supplier shall produce such Reconstituted Tobacco in accordance with such specifications, including, but not limited to, those relating to moisture content, size and thickness of sheet, base weight, flex, tensile strength, and method of packaging, as, from time to time, shall be communicated by the Buyer to the Supplier and consented to by the latter, which consent shall not be unreasonably withheld.

3. Supplier guarantees that the weight of Reconstituted Tobacco which is supplied in any quarter shall be no less in weight than a minimum of 85 percent of the tobacco material supplied by the Buyer used in producing said Reconstituted Tobacco.

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4. The price for supplying Reconstituted Tobacco hereunder in the first two years of this contract shall be sixteen and one-half cents per pound, f.o.b. Supplier's factory. Notwithstanding paragraph 1 hereof, Buyer may order less than a total of 10,000,000 pounds during the term hereof (but no less than 900,000 pounds per quarter), in which event Buyer shall at the end of said term pay, in addition to the sixteen and one-half cents per pound, three quarters of a cent per pound for quantities ordered and supplied in excess of 5,000,000 pounds. Thereafter, the price, unless changed by mutual consent shall be sixteen and one-half cents per pound for each year in which the Buyer has committed itself to buy a minimum of 5,000,000 pounds and seventeen and one-fourth cents per pound if said amount is less than 5,000,000 pounds.

If the supplier shall hereafter reduce the price for making such Reconstituted Tobacco for any other domestic buyer of similar or comparable Reconstituted Tobacco, then, effective for the next ensuing quarter and thereafter so long as such reduced price is available to such other buyer, a similar reduction in price shall be applied to the Buyer's purchases.

5. The Buyer shall, on reasonable notice, be entitled to inspect and audit the inventory and records of usage of materials furnished by it to the Supplier.

6. The Buyer shall place regular orders with the Supplier at least one month in advance in respect of each calendar quarter during the term of this agreement, in which order formulae for the Reconstituted Tobacco ordered will be specified and shipping instructions (including shipping schedule) furnished. The Supplier will ship in accordance with said shipping instructions and schedule. The Buyer shall also furnish and deliver the tobacco materials required to produce the Reconstituted Tobacco so ordered in such quantities, and at such time, as the Supplier may reasonably specify.

7. The Supplier shall use its best efforts to see that all orders, formulae and specifications received by the Supplier from the Buyer under this agreement shall be kept confidential and shall not be published or disclosed to third persons without the Buyer's consent.

8. Neither the Supplier nor the Buyer shall be liable to the other by reason of delay or non-performance if and so long as such delay or non-performance is caused by acts of God, wars or armed conflicts, government restrictions, strikes, labor difficulties, fires, floods or other casualties, riots or insurrections, or other causes beyond the control of the party delaying or not performing whether similar or dissimilar to those enumerated.

9. Supplier agrees to undertake the defense of any claim, demand, suit or civil action for U.S. patent infringement which may be brought against Buyer by reason of the use or sale of Reconstituted Tobacco supplied by Supplier to Buyer, and Supplier agrees further to hold Buyer harmless from any damages, profits, sums of money and costs which may be awarded against Buyer in any such suit or civil action.

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10. The term of this agreement is effective August 1, 1969 and for a period of two (2) years from said date. This agreement shall thereafter be automatically renewed for successive one year periods unless terminated as hereafter set forth. Notice of the minimum amount to be ordered by Buyer for each such additional yearly period shall be given to Supplier at least six months prior to commencement of such period.

Either party shall have the right to terminate this agreement as of the end of the initial term or as of any succeeding anniversary of the expiration of the initial term on giving to the other party at least one year's written notice in advance.

11. The Supplier warrants that any goods shipped under this order are produced in compliance with the Fair Labor Standards Act, and the equal opportunities clause of Executive Order 11246.202, is incorporated herein by reference and made a part hereof, where required by said Executive Order or rules or regulations issued pursuant thereto.

12. This agreement shall be governed by the laws of the State of New York.

13. This agreement constitutes the entire agreement among the parties; there have been no representations or warranties by any of the parties except those in this agreement set forth; no change or modification of this agreement shall be effective as to any party hereto unless in writing and executed by such party.

14. Neither party shall assign its right under this agreement except with the consent in writing thereto by the other party to this agreement and except that this shall not be deemed to prohibit transfer by reason of merger, consolidation or by similar operation of law.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and their seals to be affixed thereto and attested by their respective officers thereunto duly authorized.

PETER J. SCHWEITZER DIVISION
KIMBERLY-CLARK CORPORATION

By 

Attest: 

BROWN & WILLIAMSON TOBACCO CORPORATION

By 

Vice President

Attest: 

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