

FALCONBRIDGE NICKEL MINES LIMITED

INTER-OFFICE MEMORANDUM

DATE: January 9, 1978

TO: P.J. Raleigh

GEN. ENGR.

JAN 10 1978

COPIES TO: T.J. Desanti, D.N. Zeraldo

FROM: E.A. Seth

SUBJECT: Draft of proposed agreement between
Koppers Company Inc. and Giant for sale
of crude arsenic trioxide.

Further to our meeting on Friday, January 5th, with respect to the above matter, I am attaching a copy of a revised draft of the proposed agreement between Koppers and Giant for the sale of arsenic trioxide contained in the concentrate residue from Giant's mine.

I shall be pleased to discuss any comments you may have thereon.



E. A. Seth

EAS:mp
encl.

Mr. J. D. Hite,
Vice-President and General Manager,
Specialty Wood Chemicals Division,
Koppers Company Inc.,

PITTSBURGH, Pa., 15219,
U. S. A.

Dear Mr. Hite:

This will acknowledge receipt of your letter of November 2, 1978, addressed to Mr. D. Emery, in which you outlined Koppers' proposal for an agreement covering the sale to Koppers of Giant Yellowknife arsenic trioxide. We have carefully reviewed your proposed terms, and while we are agreeable to some of them, we wish to provide you with what we consider to be a fair basis on which to conclude a sales contract.

We therefore suggest the following terms and conditions form the basis of the agreement between Giant Yellowknife Mines Limited ("Giant") and Koppers Company Incorporated ("Koppers").

Koppers shall buy and Giant shall sell arsenic trioxide contained in crude arsenic trioxide (the "product" as hereinafter defined) on the following terms and conditions:

1. DEFINITIONS

- (a) the term "ton" shall mean a ton of 2,000 pounds avoirdupois dry basis;

(b) amounts of money stated in "Dollars" (\$) and "Cents" (¢) are stated in the lawful money of the United States of America.

2. MATERIAL

Products shall mean crude arsenic trioxide, assaying approximately 88% to 92% As_2O_3 , produced by Giant as a by-product from roasting gold bearing concentrate in the fluosolids roaster in its plant located at its mine (the "mine") near the City of Yellowknife, Northwest Territories and which product is subsequently captured in the baghouse without further processing by Giant.

3. DURATION

The term of this Agreement shall be for a period of three years commencing January 1, 1979 and ending December 31, 1981 and shall continue thereafter from year to year unless and until terminated by either party giving written notice to the other at least one calendar year in advance of the date of termination.

4. QUANTITY

(a) Annual Minimum Quantity

Koppers shall, during each of the undermentioned periods, purchase the following annual minimum quantities

of arsenic trioxide contained in the product:

<u>Periods</u>	<u>Annual Minimum Quantity of Arsenic Trioxide</u>
Jan. 1/79 - Dec. 31/79	1500 tons
Jan. 1/80 - Dec. 31/80	2000 tons
Jan. 1/81 - Dec. 31/81	2000 tons
thereafter on a calendar year basis	2000 tons

(b) Additional Quantities

- (i) Koppers shall, in addition to purchasing the aforesaid minimum quantities of arsenic trioxide, endeavour to purchase during each year the balance (the "additional quantity") of arsenic trioxide contained in Giant's annual production of product being approximately 3000 tons per year of contained arsenic trioxide.

Kopper shall give Giant at least 90 days' notice, prior to January 1 of each year, of the additional quantity of arsenic trioxide it will purchase during such year. If Koppers fails to give such notice or to purchase the additional quantity of arsenic trioxide, Giant shall have the right to sell or otherwise dispose of such additional quantity elsewhere.

- (ii) If Koppers require quantities in excess of Giant's annual production of arsenic trioxide contained in the product (the "excess quantity") Giant shall endeavour but shall not be obligated to obtain such excess quantity of arsenic trioxide from alternate sources (the "substituted product") and supply Koppers with such excess quantity.

If the arsenic trioxide purity of substituted product, supplied by Giant hereunder, is different from that of Giant's product, the costs if any of upgrading the substituted product shall be reviewed by the parties hereto.

5. PRICE

- (a) The initial price for product, applicable to the first calendar month during the term of this Agreement, expressed in cents per pound of As_2O_3 contained in the product shall be 25.82 cents per pound (the "Tacoma Price"). The price applicable to the second and each succeeding calendar month shall be determined by increasing or decreasing the price for the immediately preceding month by the corresponding increase or decrease, if any, from the prior month to the then current month, in the monthly average Tacoma Price for As_2O_3 as quoted

in United States Funds and published in "Metals Week". For the purposes hereof, the Tacoma Price shall mean the price of As_2O_3 sold by Asarco's Tacoma smelter f.o.b. Tacoma plus cost of freight from Tacoma to Conley, Georgia, currently 23.25 and 2.57 cents per pound respectively for a total current price of 25.82 cents per pound.

In the event that the Tacoma price ceases for any reason whatsoever to be published in Metals Week, Koppers and Giant shall review other As_2O_3 prices published in Metals Week or other applicable trade journals to arrive at a mutually acceptable price escalator/de-escalator formula.

- (b) The amount payable by Koppers to Giant for product sold and purchased during a particular month shall be computed by multiplying the quantity of As_2O_3 contained in product received by Koppers at its Conley, Georgia plant (the "plant") during such month by the price, determined as aforesaid, applicable to such month and deducting from the result thereof the following:

- (i) all direct costs incurred by Koppers in transporting product purchased hereunder from the

mine to its plant and, subject to Clause 15 hereof, in disposing of the residual sludge.

- (ii) additional direct costs which may be incurred by Koppers in utilizing Giant's product instead of a similar quantity of Tacoma As_2O_3 grade feedstocks.
- (iii) the annual depreciation of Koppers' capital investment (as hereinafter defined) pro rated on a per ton basis on the number of tons of As_2O_3 contained in product purchased by Koppers during such month. For the purpose of this subparagraph (iii) of paragraph 5(b) of this Agreement, capital investment shall mean the actual investment required to enable Koppers to utilize Giant's product, such investment not to exceed \$350,000 in the aggregate. Such investment shall be depreciated evenly over the first 3 years during the term of this Agreement.
- iv) an amount equal to a 50% return (before income taxes) to Koppers on its average yearly investment over a 3 year period for capital investment made by Koppers in order to utilize the product,

Koppers average net yearly investment shall be determined by calculating the arithmetic mean of its current year end investment and the corresponding investment for the immediately prior year. Schedule "A", attached hereto and made part hereof, illustrates the manner in which aforementioned return on investments shall be calculated.

- (v) Koppers shall provide evidence, satisfactory to Giant, of the deductions and bases therefor, of the costs and amounts referred to in subparagraphs (i) to (iv) of this subparagraph 5(b).
- (vi) In the event that the amount, calculated as aforesaid, payable by Koppers for any quotational period is less than zero, the amount so payable shall be deemed to be zero.
- (vii) The product may contain arsenic compounds which may not react with the chemicals used by Koppers in the treatment process. The insoluble arsenic resulting therefrom will remain in the process residue.

A credit equal to the computed weight of the arsenic trioxide equivalent of the insoluble

arsenic contained in the said residue will be deducted from the shipments received by Koppers in the month in which such residue is shipped.

The determination will be made on samples prepared by Koppers prior to the residue being disposed of by Koppers or returned to Giant at its option. Sampling procedure shall be as described in Article 6.

6. SAMPLING, ASSAYING AND MOISTURE DETERMINATIONS

Samples and moisture determination of each lot of product shall be carried out by Giant at its mine at its own expense in accordance with standard practices and the samples and moisture determinations so obtained shall govern final settlement.

*Subject Koppers
if not in dispute*
The samples from each truck load shall be divided into three portions; one for Giant, one for Koppers and one for reserve. The Koppers and reserve portions shall be carefully sealed and retained by Giant.

Koppers shall have the right to be represented at the sampling and moisture determinations at its own expense.

Giant's assays for As_2O_3 shall be deemed the final settlement assays, however, Koppers shall have the right to check any or all of Giant's assays at its own expense.

7. WEIGHING

if we don't agree

Final weighing of each lot of product delivered hereunder shall be carried out by Koppers at its Conley Georgia plant at its own expense according to standard practices. Giant shall have the right to be represented at the weighing at its own expense. Koppers' weights shall be used for final settlement.

8. DELIVERY

Product to be supplied hereunder during each year shall, except during freeze-up/break-up periods (usually November and April), be delivered in approximately equal monthly quantities f.o.b. trucks at the mine.

9. SHIPMENT

Koppers shall make all arrangements for shipment of product to its plant at Conley Georgia and shall comply with all federal, provincial or other laws and regulations with respect to the handling and transportation of the product with respect to minimizing handling and intransit losses.

10. QUOTATIONAL PERIOD

The quotational period shall be the month of arrival of product at Koppers' Conley Georgia plant.

11. All taxes or other duties which may be exigible on the product in Canada shall be for Giant's account and all such taxes or duties which may be exigible thereon in the U.S. shall be for Koppers' account.

12. PAYMENT

All accounting and payments hereunder shall be in United States funds.

Final determination of the Sales Price to be paid by Koppers to Giant for product delivered hereunder shall be made in accordance with the terms hereof as soon as all settlement weights, moisture determinations, assays and prices are known. Payment of the amount due to Giant under paragraph 5(b) hereof shall be made promptly by Koppers on receipt of Giant's invoices therefor.

13. TITLE AND RISK

Title to product and risk of loss thereof shall pass from Giant to Koppers at the moment product is loaded into trucks at the mine.

14. DATE OF ARRIVAL

Product delivered hereunder shall be deemed to have arrived at Koppers' plant on the date such material is weighted at Koppers' Conley Georgia plant.

Handwritten note:
Product delivered hereunder shall be deemed to have arrived at Koppers' plant on the date such material is weighted at Koppers' Conley Georgia plant.

15. TITLE TO RESIDUAL SLUDGE

Title to the residual sludge derived from the product and produced by Koppers from its purification process, will remain with Giant. Giant shall, at its option, either:

- (a) direct Koppers to dispose of such sludge and incorporate the costs of such disposal in its direct costs referred to in paragraph 5(b)(i) hereof; or
- (b) take delivery of such sludge suitably packaged f.o.b. trucks at Koppers' Conley Georgia plant.

16. ARBITRATION

In case of disputes or differences arising under this Agreement which are not settled within a reasonable time and not exceeding three (3) months, the parties hereto shall refer such disputes and differences to arbitration under the Arbitration Act of Ontario.

17. JURISDICTION

This Agreement shall be governed by and interpreted according to the laws of the Province of Ontario, Canada.

18. FORCE MAJEURE

If at any time(s) either party is delayed in or prevented from exercising its rights or performing its obligations under this Agreement, which delays or preventions are caused

by a cause beyond the reasonable control of such party (including, without limiting the generality of the foregoing, Acts of God, strikes, lockouts or other labour or industrial disturbances, interruptions by government or court orders, future orders of any regulatory body having jurisdiction, acts of the public enemy, wars, riots, sabotage, blockages, embargoes, failure or inability to secure fuel, power, materials, contractors or labour, failure of machinery and equipment, snowslides, landslides, lightning, weather conditions materially preventing or impairing work, fires, storms, floods, washouts and explosions), the period of all such delays resulting from such causes or any of them shall be excluded in computing and shall extend the time within which such party may exercise its rights or perform its obligations hereunder, provided that such affected party shall promptly advise the other party of the occurrence and cessation of such cause in writing, and provided further that if the delay or prevention extends or is reasonably anticipated to extend beyond 60 days, the party not affected may cancel the tonnage so delayed, or if beyond 120 days, either party may cancel the tonnage so delayed, without any liability for payment of penalty or damages. This clause shall not affect Koppers' liability to pay for products in which title has already passed to Koppers.

19. ECONOMIC CLAUSE

In the event that Giant decides to cease operations at the mine because of either:

- (a) the depletion of its ore reserves; or
- (b) metal prices which, in Giant's opinion, render mining operations at the mine uneconomic,

Giant may, notwithstanding anything herein contained to the contrary, terminate this Agreement upon giving Koppers at least six months' written notice thereof. In the event of such termination, Giant shall not be liable in any manner whatsoever to Koppers.

20. NOTICES

Any notice to be given to Giant pursuant to or concerning this Agreement shall be in writing and may be given by prepaid registered mail addressed to:

Giant Yellowknife Mines Limited
P.O. Box 40
Commerce Court West
Toronto, Ontario

or by delivering the same to it at said address, and any such notice to Koppers shall be in writing and may be given by mailing by prepaid registered mail addressed to:

Koppers Company Incorporated
Pittsburgh, Pennsylvania

or by delivering the same to it at said address. If mailed, such notice shall be deemed to have been received not later than the tenth day after the mailing thereof.

If the foregoing represents your understanding of the Agreement between us and is satisfactory to you, please so signify by signing and returning the enclosed copy of this letter.

Yours very truly,

GIANT YELLOWKNIFE MINES LIMITED

by: _____

AGREED TO AND ACCEPTED
this day of , 1979.

KOPPERS COMPANY INCORPORATED

by: _____

by: _____

SCHEDULE "A"

The table below shows how Koppers will depreciate its initial capital investment over a 3-year period and the basis on which it will earn a 50% return on its net capital investment in each year of such period. For the calculation on initial capital investment of U.S.\$360,000,000 has been assumed.

		<u>YEAR I</u>		<u>YEAR II</u>		<u>YEAR III</u>	
		<u>Dec. 31/78</u>	<u>Jan. 1.79</u> <u>Dec. 31/79</u>	<u>Jan. 1/80</u> <u>Dec. 31/80</u>	<u>Jan. 1/81</u> <u>Dec. 31/81</u>		
1.	Annual Poundage		3,000,000	4,000,000	4,000,000		
	Initial Capital Investment	\$360,000					
	Depreciation	-	<u>\$ 120,000</u>	<u>\$ 120,000</u>	<u>\$ 120,000</u>		
2.	Depreciation Deduction \$/lb.		4.0¢/lb.	3.0¢/lb.	3.0¢/lb.		
	Year End Net Investment	\$360,000	\$ 240,000	\$ 120,000	\$ 0		
	Average Yearly Net Investment (AYNI)		\$ 300,000	\$ 180,000	\$ 60,000		
	50% Return on AYNI		<u>\$ 150,000</u>	<u>\$ 90,000</u>	<u>\$ 30,000</u>		
3.	50% Return on AYNI Deduction ¢/lb.		5.0¢/lb.	2.25¢/lb.	0.75¢/lb.		