

**ESSAY QUESTIONS:**

50% of exam grade; Approximately one hour to one-and-a-quarter hour.

Your client Stone Dry Supply is a California company which buys talc and soapstone from domestic and imported sources, then sells those substances to its customers. Stone Dry received an offer from Piedras Blancas, a company in Monterey, Mexico, which read as follows:

14 March 2009  
Monterey, Mexico

Dear Sir/Madam,  
We are offering up to 1,000 metric tons per year of talc in lump-rock form, at US\$2,000.00 per ton, F.O.B. Matamoros, Mexico. All talc is "cosmetic grade AAA," with purity of 97%.

Sincerely,  
Rene Rodriguez-Cardoso  
Export Manager

Stone Dry responded as follows:

17 April 2009  
Modesto, California  
USA

Dear Mr. Rodriguez-Cardoso

In response to your offer of 14 March 2009, we would like to purchase 50 metric tons of talc per month for twelve months, beginning June 1, 2009. In addition to price F.O.B. (INCOTERMS) Matamoros, Mexico, please quote price C.I.F. (INCOTERMS) Port of Los Angeles, California. Pre-delivery inspection will be done by our agent International Verification Laboratories (IVL) at your facility in Monterey. California law shall apply to this transaction, and not the Convention on Contracts for the International Sale of Goods.

Regards,  
Martin Morrison  
Operations Director

Piedras Blancas replied, quoting a price of US\$2,650.00 per metric ton C.I.F. (INCOTERMS) Port of Los Angeles, California. There were no further communications, but Piedras Blancas has now contacted Dry Stone, asking that an inspection by International Verification Laboratories be scheduled.

Exam No. \_\_\_\_\_

Due to the decline in the economy generally, cosmetic producers have significantly reduced their production, and the price of talc has dropped sharply. Dry Stone could now purchase the same quality talc in Los Angeles for US\$1,800.00 per metric ton. The company's question for you is whether it is bound to a contract for monthly purchases of talc from Piedras Blancas. Please note in your analysis that Mexico is a signatory to the Convention on Contracts for the International Sale of Goods.

**CONTRACT ANALYSIS:**

30% of exam grade; Approximately 45 minutes to one hour.

Dry Stone has received numerous inquiries and offers from suppliers in Pakistan, and it is considering acting as a dealer in the U.S. and Canada for Hi-Lite (Pty) Ltd., a supplier of talc and soapstone from Pakistan. Dry Stone wants to provide Hi-Lite with a draft agreement for this relationship. To make your work easier and less costly, Dry Stone has sent you an agreement that it uses in its relations with a Vermont talc mine.

Please review the following agreement and comment on it, paragraph by paragraph, if necessary. You should point out any areas in which changes or additions are needed to accommodate the international nature of the proposed sales. Please also note those areas in which you will need clarification of the client's intent, any additional areas to research, and try to assign some level of priority to the questions you raise.

**YOUR ANSWERS TO THIS QUESTION WILL BE GRADED PRIMARILY ON YOUR ABILITY TO IDENTIFY ISSUES AND SET FORTH AN INITIAL ANALYSIS, NOT ON YOUR FINAL CONCLUSIONS REGARDING ANY PARTICULAR ISSUE.**

**DEALER AGREEMENT**

This Agreement, effective as of November 17, 2006, is between Yankee Cutters ("Mine"), located in Colchester, Vermont, and Dry Stone Supply ("Dealer"), located in Modesto, California.

1. Dealer will serve as Mine's Dealer in the territory of the United States ("Territory") for the talc and soapstone produced by Mine ("Products"). Mine will have the right to appoint other Dealers in the Territory.
2. Dealer will buy and resell Products and will maintain those stocks of Products that are necessary to promote sale of the Products in the Territory and fulfill the needs of its customers.
3. Dealer will use its best efforts and facilities to promote, maintain and increase the sale of Products in the Territory.
4. Dealer shall not sell the Products to any person located outside the Territory. Dealer shall promptly notify Mine of any inquiry received from a potential customer located outside the Territory.
5. Unless otherwise agreed to in writing by Mine, all expenses and cost incident to Dealer's activities will be borne solely by Dealer.
6. From time to time and at Mine's request, Dealer and Mine will fix minimum amounts of Products which Dealer will purchase during specified periods of time

7. Dealer will make appropriate expenditures for marketing, advertising and promoting of Products in the Territory. For each year of this agreement, Mine agrees to contribute \$\_\_\_\_\_.00 toward the cost of attending trade shows and other promotional activities designed to increase sales of the Products, subject to Mine's reasonable approval of the type, form and content of the expenditures and materials.

8. Mine hereby grants to Dealer the right to use Mine's trademarks in the promotion and sale of the Products within the Territory.

9. Dealer shall be entitled to purchase the Products from Mine at a 20% discount from Mine's list prices. All Products will be shipped by Mine to Dealer F.O.B. Modesto, California, or directly from Mine to Dealer's customer, as specified by Dealer in its purchase order.

10. Mine warrants that all Products sold to Dealer will be free from defects at the time of the sales transaction, and shall meet the standards of quality and purity stated for each Product. ALL OTHER GUARANTEES, WARRANTIES, CONDITIONS AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WHETHER ARISING UNDER ANY STATUTE, LAW, COMMERCIAL USAGE OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED. In no event will Mine be liable to Dealer for any business expenses, loss of profits, or incidental or consequential damages, however caused.

11. The term of this agreement is three (3) years from the date hereof, but either party may terminate this Agreement, with or without cause, upon ninety (90) days' prior written notice to the party. A party may terminate this Agreement immediately on written notice to the other party if the other party fails to perform any material obligation in this Agreement or becomes insolvent, makes an assignment for the benefit of creditors, or files a petition in bankruptcy or if a receiver or trustee is appointed to take possession of its assets.

12. Dealer agrees that on termination of this Agreement (with or without cause) Mine will not be liable for any termination compensation whatsoever, whether based on good will established or investments made by Dealer or otherwise.

13. The validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Vermont, and any disputes relating thereto shall be resolved in the Courts of the State of Vermont.

14. Mine will have no liability to Dealer with respect to any order for the Products placed by Dealer which Mine is unable to fill for any reason beyond its reasonable control, including without limitation, war, hostilities, fire, explosion, transportation interruptions, labor strikes, work slowdowns or stoppages.

15. Any notices under this agreement shall be in writing and shall be deemed given when properly deposited in the first-class mail, postage prepaid, addressed to the parties' respective

business address.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

MINE

By: \_\_\_\_\_

Title: \_\_\_\_\_

DEALER

By: \_\_\_\_\_

Title: \_\_\_\_\_