

THE FORESTRY COMMISSION

TERMS AND CONDITIONS FOR PERIOD PURCHASE OF STANDING TREES BY LUMP SUM

You have offered in auction or tender or negotiation to purchase standing trees from Us. Acceptance of that offer will be subject to the following terms and conditions.

1 INTERPRETATION

- 1.1 **"Agreement"** means the agreement to purchase the Products from Us, which will include these Terms and Conditions and which will be created by Our acceptance of Your Bid, all as more fully described in condition 2 below;

"Authorised Access Routes" means the roads to be used by You pursuant to the Agreement as specified by Us from time to time, and for the first Period of the Agreement those roads marked as such on the Sale Map and are subject to the appropriate parts of the Road Traffic Act and should comply with the classification and associated specification as stated in the Lot Information and Conditions;

"Bid" means the offer by You to purchase the Products from Us, either by tender, auction or negotiation and in the event of the Bid being in relation to tender or auction, the style of the Bid will be as prescribed by Us and as set out from time to time on Our Website. Where the Bid follows negotiation, the style of the Bid shall be in such form as We may agree;

"Business Day" means any day on which the clearing banks are open for business;

"Commencement Date" means the date specified as such in the Lot Information and Conditions;

"Commencement Date of the Period" means the day after the end of the previous Period, or if it is the first Period, then it is the Commencement Date;

"Commission Land" means any land placed at Our disposal by the Minister under his powers under the Forestry Act 1967;

"Dangerous Substances" means any radioactive or other emissions and any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable (in each case) of causing harm to man or any other living organism or damaging the environment or public health or welfare including (without limitation) any controlled, special, hazardous, toxic,

radioactive or dangerous waste whether or not such emission, substance or waste is referred to specifically in or regulated under any Environmental Law;

"Employment Law" means and includes all European Community, national or local laws, regulations, codes of practice, guidance notes and the like issued by statutory bodies or FISA in the United Kingdom each as in existence or formally proposed at the date hereof and any statute, regulation, statutory instrument or legislative provision which amends, extends, consolidates or replaces the same from time to time (or shall have done so) and any other regulation, statutory instrument or other subordinate legislation made hereunder or pursuant thereto concerning the health, safety, training and competence of any person engaged in work on forest land and/or to do with a tree or roundwood directly derived from a tree on forest land which are applicable either directly or indirectly to the Your business and judicial or administrative interpretation of each of the foregoing;

"Environmental Law" means and includes all European Community, national or local laws, regulations codes of practice, circulars, guidance notes and the like issued by statutory bodies in the United Kingdom each as in existence or formally proposed at the date hereof and any statute, regulation, statutory instrument or legislative provision which amends, extends, consolidates or replaces the same from time to time (or shall have done so) and any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto concerning the protection of man or any other living organisms or welfare or the environment or the conditions of the workplace or the generation, transportation, storage, treatment or disposal of Dangerous Substances and judicial and administrative interpretation of each of the foregoing;

"Estimated Volume" means the estimate of standing, over bark, cubic metres of the Products obtained using the procedure of measurement and calculation stated in the Lot Information and Conditions.

"Excluded Products" means the part(s) of the Products specified as such in the Lot Information and Conditions;

"Expiry Date " means the date specified as such in the Lot Information and Conditions (or otherwise agreed) being the last day of the last Period;

"FISA" means the Forest Industry Safety Accord at, 59 George Street, Edinburgh EH2 2JG or such other body which from time to time replaces it;

"Felling Commencement Date" means the date in each Period specified by Us in writing from time to time for the commencement of felling of the Products and for the first Period of this Agreement, the date specified in the Lot Information and Conditions;

"Felling Order" means the order in each Period specified in writing by Us from time to time in which the Work Sites are to be worked by You and, for the first Period of this Agreement, the order specified in the Lot Information and Conditions any change to which must be agreed between the parties;

"Felling Period" means the number of days between the Felling Commencement Date and the Felling Removal Date within any Period;

"Felling Removal Date" means the date in each Period specified in writing by Us from time to time by which the Products are to be removed from the Work Site and, for the first Period of this Agreement, the date specified in the Lot Information and Conditions any change to which must be agreed between the parties;

"Force Majeure" means in relation to either party, any circumstances beyond the reasonable control of that party (including without limitation, any fire, explosion, flood, act of God, strike, lock-out or other industrial action) other than fire or windblow damage as provided in Condition 6.3.4;

"Inspector" means a person acceptable to both parties with at least ten years' relevant experience in forestry matters or in the timber trade and with relevant, recognised qualifications who may from time to time be appointed, at the request of either of the parties. In the event of failure by either party to agree the Inspector to be appointed then the Inspector will be independently appointed by the President for the time being of the Institute of Chartered Foresters;

"Instalment" means an amount equivalent to the Price (plus VAT) divided by the number of Instalments;

"Instalment Dates" means those dates specified by Us from time to time and, for the first period of the Agreement, those dates as specified in the Lot Information and Conditions;

"Instalment Number" means the number of Instalments as specified in the Lot Information and Conditions;

"Location Map(s)" means the map headed 'Location Map' as shown as part of the Lot Information and Conditions which shall indicate the areas to be worked during the currency of the Agreement;

"Lot" means an individual quantity of the Product which is made available for sale by tender, auction or negotiation;

"Lot Information and Conditions" means the detailed information and conditions relating to a Lot, of which these Terms and Conditions form part, which will be accessible on the appropriate page of the Website relating to that Lot;

"Minimum Quantity" means 10% less than the Quantity for the relevant Period;

"Period" means the period of months stated in the Lot Information and Conditions or such other subsequent periods of months as the Parties may agree;

"Pre-Commencement Meeting" means the meeting held between the parties, at the Work Site, prior to the Felling Commencement Date, to discuss the conditions contained in this Agreement and the Lot Information and Conditions in relation to the Work Site;

"Price" means the price applying from time to time as specified in or agreed pursuant to Condition 7.

"Products" means the trees marked from time to time by the Us with the method of marking specified on the Sale Map and located in the Work Site (including, without prejudice to the foregoing generality, the wood and timber represented by those trees) not including the Excluded Products and for the first Period means those trees details of which are set out in the Lot Information and Conditions;

"Quantity" means the amount of the Products in each Period of this Agreement as specified by Us in accordance with Condition 4.1 and, for the first Period, the amount specified in the Lot Information and Conditions;

"Road Haulage of Round Timber Code of Practice" means the document published by the Forestry Contracting Association Ltd on behalf of the Roundwood Haulage Working Party, which may be updated from time to time, and which is approved by Us;

"Sale Map" means for the first Period the map or set of maps shown as part of the Lot Information and Conditions and in succeeding Periods, the map or set of maps provided in accordance with condition 4.1

"Shortfall" means the amount by which the amount of Products made available or taken has fallen short of the Minimum Quantity for a particular Period;

"Stacking Sites" means those locations adjacent to Authorised Access Routes (at all times located within the area shown by hatching, or otherwise identified, on the Location Map) as specified by Us from time to time, and for the first Period of the Agreement, those areas of land shown by hatching (or otherwise identified) in the Sale Map in the Lot Information and Conditions on which the Products will be presented;

"Total Estimated Volume" which means the total amount of the Products specified as such in the Lot Information and Conditions and to be removed pursuant to the Agreement plus or minus 10%;

"We" means the Forestry Commission acting in exercise of the powers contained in the Forestry Act 1967 and having its principal place of business at 231, Corstorphine Road, Edinburgh, EH12 7AT acting through Forest Enterprise, its forestry business organisation, having its principal place of business at the same address. **"Our"** and **"Us"** have a corresponding meaning;

"Website" means the part of the Forestry Commission website dedicated to electronic sales. The address of the timber sales homepage being www.forestry.gov.uk/auctions

"You" means the party accessing and using this website to purchase trees from Us by way of auction or tender, whose details are set out in the Bid. **"Your"** has a corresponding meaning;

"Work Sites" means those areas of land (at all times located within the area(s) shown by hatching, or otherwise identified, on the Location Map) as specified by Us from time to time and for the first Period of the Agreement those areas of land shown by hatching, or otherwise identified, on the Sale Map.

"Work Site Manager" means the person appointed by You to be in charge of the activities being carried out in and around the Work Site.

2 SALE OF THE PRODUCTS

- 2.1 The Agreement to sell the Products to You shall be created by the acceptance by Us of Your Bid, such acceptance being by electronic mail. The Agreement will constitute a valid contract for sale, which will be subject to these terms and conditions, together with the remaining Lot Information and Conditions and such other terms and conditions as We may agree between Us.

In the event that We are unable, for whatever reason, to send such acceptance by electronic mail, acceptance shall be sent by first class recorded delivery post to the address stated in Your user profile section of the Website;

- 2.2 Pursuant to the Agreement We shall sell and You shall purchase the Total Estimated Volume, with effect that in each Period We shall sell and You shall purchase the Quantity for the relevant Period.
- 2.3 Neither party will be deemed to be in breach of their obligations where the amount of Products made available, purchased or uplifted in each and every Period is within plus or minus 10% of the Quantity.
- 2.4 If We should make available or You should uplift from Us in any Period less than the Minimum Quantity for the relevant Period then the provisions of Condition 2.4 shall apply.
- 2.5
- 2.5.1 In the Period ending with the Expiry Date then the party not responsible for the Shortfall shall have the right to change the Expiry Date in accordance with Condition 6.1.3, or to invoke either Condition 3.9, 3.10 or Conditions 6.6 and 6.7 (whichever is the relevant condition/s), or to hold the responsible party to be in breach of the Agreement. If Condition 6.1.3 is invoked the price to be paid for the Shortfall shall be determined in accordance with Condition 7.8 hereof.
- 2.5.2 For any other Period of the Agreement the party not responsible for the Shortfall shall have the right to require that the Shortfall shall be made up in the following Period (the price to be paid for the Shortfall made up in a succeeding Period being determined in accordance with Condition 7.9 hereof) or to invoke either Condition 3.9 or 3.10 (whichever is the relevant condition).
- 2.6 The Quantity, the proportions of different species and the range of the tree sizes within the Quantity will be approximately the same for each Period unless otherwise agreed.
- 2.7 Within 1 month after the end of each Period the parties shall record in writing the amount of Products made available and taken in that Period. If the parties fail to agree on the amount made available or taken, either party may refer the matter to the Inspector in accordance with Condition 11.1, who shall, within 2 months after the end of the said Period, prepare a report showing the total amount of the Products which We have made available and/or You have taken from Us in that Period.

3 REMOVAL OF THE PRODUCTS

- 3.1 For the purposes of the Agreement only and subject to Conditions 3.2 and 6.10 and save as otherwise be provided in this Agreement, We shall allow You access to and egress from the Work Sites using the Authorised Access Routes, to fell, cut and remove the Products, in accordance with the Agreement.
- 3.1.1 You shall ensure that (so far as the design of individual vehicles permit in which case every effort shall be made to ensure they are driven correctly) You, Your employees, agents, contractors, sub-contractors and employees of any of them at all times will comply with all applicable road safety legislation including but not limited to the Road

Traffic Act which may be in force from time to time and the Road Haulage Of Round Timber Code Of Practice whilst accessing and egressing from the Work Sites and whilst using any Authorised Access Routes.

- 3.2 We shall in each Period after consultation with You notify You in writing of the Felling Commencement Date, the Felling Removal Date and the Felling Order.
- 3.3 You shall procure that:-
- 3.3.1 all vehicles use only the Authorised Access Routes and are, when loaded, within the weight limits defined by the road classification or as otherwise specified on the Sale Map. No warranty is given by the Us that any other road is suitable for use by vehicles;
 - 3.3.2 all vehicles are driven and used with all proper care and driven at such speed as shall be reasonable in all the circumstances including without limitation the nature of the route and vehicular load, and the prevailing weather and road conditions;
 - 3.3.3 every reasonable precaution is taken to prevent any damage to the Authorised Access Routes including, without prejudice to the generality of the foregoing or the following, ensuring they are not used after exceptionally heavy rains or during or after a thaw, until suitable for use without causing damage;
 - 3.3.4 the use of any machine or method of working which in Our opinion is causing, or is likely to cause, avoidable damage to standing trees, any road, path, track or drain, or to other property, is stopped on Our request;
 - 3.3.5 the Authorised Access Routes and all roads in and around the Work Site (including, for the avoidance of doubt all public rights of way and access, unless specifically agreed by Us) at all times are kept free of obstructions arising from Your operations which would prevent free flow of traffic except for a minimum of delay, except where agreement has been reached for temporary closure to facilitate harvesting;
 - 3.3.6 no unauthorised or unlawful discharges are made as a result of Your operations to any drains, sewers, controlled waters or other waters either in contravention of Environmental Laws or which may cause damage to man, any other living organism or the environment.
- 3.4 In the event that all or part of the Authorised Access Routes require to be repaired or maintained We shall be entitled, after consultation with You, save in an emergency, to close all or part of the Authorised Access Routes while the work is carried out.
- 3.5 Where through no fault of yours, Your employees, agents, contractors, sub-contractors and employees of any of them, any of the Authorised Access Routes requires repair We shall where practicable within ten Business Days of that fact being made known to Us endeavour to repair such damaged part or parts of that Authorised Access Route to the standard of the road classification as stated in the Lot Information and Conditions.
- 3.6 Where it appears to You that the access within the Work Site or at the point of extraction to the Authorised Access Routes is not sufficient to enable You to comply with the terms of the Agreement You may apply in writing to Us for consent to cut, fell and remove other trees owned by Us, such consent shall not be unreasonably withheld and shall be confirmed (on such terms as We may determine which will include payment at the agreed market value) or denied in writing within ten Business Days of application.

- 3.7 Without prejudice to any other of Our rights, You shall be liable for any wilful, reckless or negligent damage (including without limitation damage resulting from any failure to comply with Condition 14.3) due to any act or default of yours or Your employees, agents, contractors, sub-contractors or the employees of any of them and shall recompense or make good the same to Our satisfaction within ten Business Days where practicable of its occurrence.
- 3.8 If You shall fell, cut, remove or damage in any way any standing tree not intended to be felled, cut or removed pursuant to this Agreement (other than as provided in Condition 3.6) then You shall pay to Us immediately on demand three times the then market value of the standing tree and, at Our sole discretion, We may retain the tree or timber represented by the said tree.
- 3.9 If You shall again fell, cut or remove or damage in contravention of Condition 3.7 any standing tree not intended to be felled, cut or removed pursuant to this Agreement after having been notified of Our demands under the terms of Condition 3.8 above, then You shall be deemed to be in breach of this Agreement and We may in Our absolute discretion terminate the Agreement forthwith and claim compensation in respect of any expenses, costs, losses and damages incurred by Us as a consequence of any standing tree being felled, cut, removed or damaged which was not intended to be felled, cut or removed pursuant to this Agreement without prejudice to any of Our other rights or remedies under this Agreement or otherwise.
- 3.10 If You fail to remove the Minimum Quantity from Commission Land in any Period then We will be entitled to either retain the Shortfall or resell the Shortfall both on an open market basis which has been paid for and shall reimburse to You the lesser of the remainder of any sums received from You for the Shortfall and/or any sums received on reselling the Shortfall less all costs, expenses, fees and losses directly and naturally resulting in the ordinary course of events. In the event of such costs and losses exceeding the total sum received by Us for the Shortfall You shall on demand pay to Us the amount by which said costs and losses exceed said total sum.
- 3.11 If We fail to provide the Minimum Quantity from Commission Land in any Period or the Shortfall before a new Expiry Date determined by Condition 6.1.3, then You may purchase the Shortfall from another supplier at the current open market price and We shall, upon demand, reimburse You for any additional purchase cost incurred for the Shortfall minus any other claims against You arising in relation to the subject matter of this Agreement, and all reasonable costs, expenses, fees and losses directly and naturally resulting in the ordinary course of events that have been incurred by You.

4 PERIOD SPECIFICATION OF PRODUCTS, STACKING SITES AND ACCESS

- 4.1 At least 2 months before each Period during the continuance of the Agreement We shall provide You with a Sale Map, showing the Authorised Access Routes and Work Sites for the succeeding Period of the Agreement and shall specify to You the Quantity of the Products to be purchased and removed in that Period (together the "Period Specification").
- 4.2 You shall have a period of fifteen Business Days following upon their receipt of the Period Specification within which to notify Us in writing whether or not You approve the Period Specification and in the event of You failing to notify Us in writing within such period of fifteen Business Days that You do not approve the Period Specification You shall be held to have approved it.
- 4.3 In the event that You notify Us within the fifteen Business Day period that You do not approve the Period Specification You shall forthwith advise Us of the amendments to the Period

Specification which You consider necessary before You can approve it and We shall specify a date within ten Business Days when We shall meet with You to try to agree the Period Specification and then within 5 Business Days of that meeting We shall submit an amended Period Specification to You for approval in terms of Condition 4.2 and You shall comply with and be bound by the provisions of Condition 4.2 in respect of the amended Period Specification save that five Business Days shall be substituted for fifteen Business Days where it appears in that Condition and such procedure as set out in Conditions 4.2 and 4.3 shall be repeated until the earlier of:-

- 4.3.1 the date that the Period Specification is approved unconditionally; and
 - 4.3.2 the date 2 months after the first submission to You of a Period Specification in terms of Condition 4.1 (the earlier of such dates being hereafter referred to as the "Approval Date").
- 4.4 In the event that You have not approved a Period Specification in accordance with the terms of Condition 4.2 and 4.3 on or before the Approval Date then the matter shall be referred to the Inspector pursuant to Condition 11.1 to specify any part of the Period Specification not agreed upon.

5 RISK AND PROPERTY

- 5.1 The risk in Products shall pass to You on the Felling Commencement Date and You shall be responsible to Us for any loss or damage to or caused by the Products from such date as a result of any act or omission by You or Your employees, agents, contractors, sub-contractors or the employees of any of them.
- 5.2 Notwithstanding the passing of risk under Condition 5.1 above, unless and until You shall have paid Us all sums due pursuant to the Agreement and removed the Quantity for a particular Period in question property in and title to all the Products purchased and sold in the relevant Period as represented by each separate instalment shall remain with Us and the following provision of this Condition shall be applicable:-
 - 5.2.1 You grant to Us an irrevocable licence to enter the Your premises or any other premises in Your occupational control where the Products are or are believed by You or the Us to be located and to inspect and/or remove the Products at any time while they remain Our property. In the event that any of the Products are no longer in Your occupational control or the occupational control of Your employees, agents, contractors, sub-contractors or the employees of any of them, You shall use Your best endeavours to facilitate the inspection and/or removal of the Products by Us at any time while they remain Our property. All costs incurred by the Us in repossessing the Products whether or not they are still under Your control shall be borne by You; and
 - 5.2.2 You shall immediately notify Us if You (or Your directors) intend to present a petition for the making of an administration order or a winding-up petition or if You (or Your directors) are aware of any such intention on the part of any of the Your creditors or if any of the other circumstances specified in Conditions 6.3.1 to 6.3.5 inclusive are to Your knowledge considered likely to arise.

6 DURATION AND TERMINATION

- 6.1 The Agreement shall come into force on the Commencement Date and time is of the essence.
- 6.1.1 In the event that access and/or egress to or from the Work Site and or Authorised Access Routes has been curtailed as a consequence of circumstances pertaining to Condition 3.3.3 or Condition 3.4 except in cases where damage has resulted from Your wilful, reckless or negligent actions or omissions or those of Your employees, agents, contractors, sub-contractors or the employees of any of them, We will agree to such extension of the duration of the Agreement and applicable timescales provided for in the Agreement as is reasonable and a new Expiry Date.
- 6.1.2 If either party wishes to change the Felling Commencement Date, Felling Removal Date or the Expiry Date, that party shall request in writing a meeting with the other party a minimum of ten Business Days before the Felling Commencement Date, Felling Removal Date or Expiry Date as appropriate to discuss the change. We shall have an absolute discretion whether to refuse such request or grant the same on such terms as We shall think fit taking into account any increment caused by extra growth as determined according to the formula set out in Forestry Commission Booklet Number 49 (Yield Class will be determined using the most recent survey data, which is most likely to be the volume per hectare derived from a tariff, the age and management history of the site). Agreement to change will not be unreasonably withheld.
- 6.1.3 If condition 2.4.1 is invoked the party not responsible for the Shortfall under Condition 2.4.1 shall have the right to request a change to the Expiry Date to allow the Shortfall to be supplied or removed. If both parties cannot agree a new Expiry Date then the date shall be calculated by dividing the number of days in the Felling Period to which the Shortfall relates by the Quantity, multiplying by the Shortfall and adding the result to the existing Expiry Date. If the Shortfall is not supplied or removed within the new Expiry Date, then the party responsible for the remaining Shortfall shall be held to be in breach of the Agreement.
- 6.1.4 Any change to the Felling Commencement Date, Felling Removal Date or Expiry Date shall be recorded in an addendum to the Agreement.
- 6.2 We shall be entitled forthwith to terminate the Agreement by written notice to You if You or any of Your employees, agents, contractors, sub-contractors or the employees of any of them commits any breach of Conditions 3.9, 8.2, 8.3, 12, 14.10, 14.15, 14.16, 14.21 or 14.22 with immediate effect.
- 6.3 Either party shall be entitled forthwith to renegotiate (in the case of 6.3.4) or terminate the Agreement by written notice to the other if:-
- 6.3.1 the holder of any security takes possession or a receiver is appointed over any of the property or assets of that other party;
- 6.3.2 that other party makes any voluntary arrangement with its creditors or becomes subject to any administration order;
- 6.3.3 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively

- agrees to be bound by or assume the obligations imposed on that other party under the Agreement); or
- 6.3.4 that part of the forest covered by the Agreement from which the Products are to be produced the subject of serious fire or serious windblow damage such that it cannot be viably be used as a Work Site;
- 6.3.5 that other party ceases to carry on business.
- 6.3.6 that other is considered to be in breach of this Agreement under condition 2.4.1 or condition 6.1.3.
- 6.4 We shall be entitled to terminate the Agreement on giving 3 months written notice in the event of a breach of any term of the Agreement, not being a breach referred to in Conditions 6.2 or 6.3 above, save that in the case of a Remediable Breach (as that expression is defined in Condition 6.5) You shall, following receipt of a written notice giving particulars of the Remediable Breach and requiring it to be remedied within a stated period, so remedy that Remediable Breach; if You do not remedy the Remediable Breach within that period or within that period commits a second similar Remediable Breach, We shall be entitled to terminate the Agreement forthwith.
- 6.5 A breach shall be considered to be a Remediable Breach if:-
- 6.5.1 the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that in respect of that matter We have in Our absolute discretion agreed time of performance shall no longer be of the essence); or
- 6.5.2 You fail to comply with Conditions 13.2, 14.3, 14.6, 14.7, 14.8, 14.9, 14.11, 14.13, 14.14, 14.17 and 14.18.
- 6.6 Upon termination of the Agreement whether by written notice or expiry of time, You shall immediately cease the removal of Products but We may, at Our discretion, allow You a further period in which to remove any Products felled prior to such termination on payment for them.
- 6.7 On the later of termination or expiry of any further period granted, any Products remaining on Commission Land shall, if title has passed to You, vest in and become Our property. We will be entitled either to retain or resell any Products both on an open market basis which have been paid for ("the Retained Products") and provided that any other claims against You arising in relation to the subject matter of the Agreement have been settled, We shall reimburse to You the lesser of the remainder of any sums received from You for any Retained Products and/or received on reselling any Retained Products less all costs, expenses, fees and losses directly and naturally resulting in the ordinary course of events. In the event of such costs and losses exceeding the total sum received by Us for the Retained Products You shall on demand pay to Us the amount by which said costs and losses exceed said total sum.
- 6.8 Within two months of the termination of the Agreement You shall remove any buildings, erections or equipment You may have placed on Commission Land and in respect of which there is no occupancy agreement with Us. Should You fail to remove such buildings, erections or equipment within the time specified, We may retain or remove and dispose of them as it thinks fit and You shall on demand reimburse Us for all costs incurred in their removal and disposal and making good any damage resulting therefrom.

- 6.9 The right to terminate the Agreement pursuant to Condition 6 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 6.10 It is hereby agreed that You will have access to the Work Site as a licensee only and it will not at any time take possession or occupation nor acquire any rights to security over said areas. This licence shall not create a tenancy or any relationship of landlord or tenant and shall save where terminable earlier pursuant to the terms of the Agreement or as may otherwise be agreed in writing subsist only until the expiration of the period provided in condition 6.8.

7 PRICE

- 7.1 The Price to be paid for the Products in the first Period of this agreement shall be the price accepted by Us in Your successful Bid, which price be shown in the "My contracts" section of the Website.
- 7.2 The Price shall be subject to review to be effective from each Commencement Date of the Period such reviewed Price being hereinafter referred to as "the Revised Price".
- 7.3 In negotiating the Revised Price in each Period for the purposes of Condition 7.2 the parties shall consider the open market price for the Products in the relevant part of Great Britain taking account of the distribution of sizes and species composition, quality, location, working costs and Quantity to be made available in the forthcoming Period:
- 7.4 If the parties are unable to agree a Revised Price before the Commencement Date of the Period (or before any mutually agreed date not more than 6 months after the relevant Commencement date) then a temporary price shall be determined by the following formula:

$$BP \times ((0.75 \times \text{Index} / B \text{ Index}) + 0.25) \text{ Estimated Volume (for the subsequent Period)}$$

Where :-

BP = the price at the Commencement Date divided by the Estimated Volume

Index = the appropriate latest index published in the Forestry Commission Standing Sales Price Index for the relevant part of Great Britain.

B Index = the same index immediately prior to the Commencement Date.

The temporary price so determined above shall be no more than 10% higher or lower than the Price that applied immediately prior to the review.

- 7.5 When applying the formula referred to in Condition 7.4 the calculations shall be to the nearest two decimal places.
- 7.6 If Condition 7.4 applies then either party dissatisfied as a consequence may within three months request a meeting with the other party to agree the Revised Price. If the parties are able at that stage to agree a Revised Price it shall be applied retrospectively to the relevant Commencement Date of the Period or such other date as may be mutually agreed.

7.7 In the absence of any agreement on a Revised Price as described in Condition 7.2 and 7.6 above the temporary price (as determined in accordance with Condition 7.4) shall apply for the relevant Period unless either party remains unsatisfied in which case either party may refer the matter to Arbitration in accordance with Condition 11.

7.8 For the purposes of Condition 2.4.1 the Price to be paid for the Shortfall shall be either:-

7.8.1 the Price payable in terms of the Agreement in respect of the Period when the Shortfall occurred; or

7.8.2 a revised Price negotiated by taking into consideration the change in standing sale prices during the period in which the Shortfall occurred. If a revised Price cannot be agreed within ten Business Days of the previous Expiry Date then the matter shall be referred to Arbitration under Condition 11.

which option shall be at the instance of the party not responsible for the Shortfall.

7.9 For the purposes of Condition 2.4.2 the price to be paid for the Shortfall shall be, either:-

7.9.1 the Price payable in terms of the Agreement in respect of the Period when the Shortfall occurred; or

7.9.2 the Price payable in terms of the Agreement in respect of the Period immediately succeeding the Period referred to in 7.8.1 above,

which option shall be at the instance of the party not responsible for the Shortfall.

8 PAYMENTS

8.1 Payment of the Price for the Products shall be made to Us in immediately cleared funds, without deduction for or on account of any set off or counterclaim or (other than as required by law) any tax to such account as may be specified by Us as provided in Condition 8.2 and 8.3.

8.2 You shall be required to pay the Instalments in advance of felling on the Instalment Dates as invoiced by Us and You shall not be permitted to fell or remove Products until after the relevant Instalment has been paid.

8.3 If the whole or any part of any Instalment shall not be paid by the due date We shall have the right to terminate the agreement forthwith or, at Our discretion, You shall pay interest on the sums due at the current UK Government base lending rate plus 1.5 per cent from the date upon which such Instalment was due until the date of actual payment in full of the Instalment. Payments received by Us from You shall be applied first by Us against accrued interest and second against sums incurred under 3.10 and 14.4 and then against the principal debt.

8.4 In the event of an extension to the Felling Removal Date being agreed You may request Us to reschedule such Instalments as may be outstanding, subject to 8.2.

8.5 We reserve the right to demand a deposit of 10% of the Price. Where We exercise the right to demand a deposit, the deposit shall be lodged by You with Us by at the latest ten Business Days prior to the Commencement Date. The said deposit will be held by Us until the completion of the Agreement to the satisfaction of Us and the payment in full of all sums due by You to Us.

In the event that:

- 8.5.1 You fails to pay in full any sums due by You to Us;
 - 8.5.2 We incur costs or suffers losses as a result of You not performing Your obligations under this Agreement to Our satisfaction; and/or
- 8.6 notwithstanding and without prejudice to all other rights and remedies available to Us under this Agreement or otherwise We shall be entitled to appropriate the said deposit or so much thereof as may be required in or towards meeting its costs or losses as specified in 8.5.2 above and/or the sum due to it specified in 8.5.1 above. The said deposit or any balance of it remaining after the application of this Condition or otherwise under this Agreement and the payment of any outstanding interest charges payable in respect of any money owing to Us shall be returned by Us to You without interest as soon as possible after You shall have performed Your obligations.

9 ASSIGNATION

- 9.1 In the event that We reorganise or in the event of a reorganisation of any of Our commercial trading activities that results in Our business and activities being implemented, performed, carried out, effected or undertaken by a new body ("the Reorganised Commission") We shall, on giving written notice to You, be entitled to assign all of Our rights and/or transfer all of Our obligations under the Agreement to the Reorganised Commission which shall be entitled to enforce those rights as if the Agreement were made between You and the Reorganised Commission.
- 9.2 You shall not assign Your rights or liabilities under the Agreement without Our consent in writing, which consent shall not unreasonably be withheld for the purposes of this Condition but without limitation it would be reasonable for the Us to withhold Our consent where the Assignee appears to Us in Our reasonable opinion to be a person or organisation to be unlikely to be able to fulfil Your obligations under the Agreement if assigned.

10 FORCE MAJEURE

- 10.1 If either party is unable to perform all or any of their obligations under the Agreement by reason of Force Majeure then the party affected shall within five Business Days of the event or circumstance giving rise to Force Majeure give written notice to the other of its inability to perform the Agreement and the reasons for the same.
- 10.2 On the giving of such notice by either party then the liability of the party serving notice to make available or take the Products as appropriate in accordance with this Agreement shall be suspended and that party shall not be liable to meet the obligation to make available or accept the Total Estimated Volume but shall continue to make available or accept such Products in such amounts as can be made available or accepted in the circumstances. As soon as circumstances permit the full provisions of the Agreement shall be resumed and the time provided for between the Commencement and Expiry Dates as set out in the Lot Information and Conditions shall be extended for a period equivalent in working hours and conditions to the period of delay or suspension thereby caused.

11 ARBITRATION

- 11.1 Conditions 11.2 to 11.4 inclusive shall apply in relation to any dispute or difference arising between Us which involves the interpretation or construction of the Agreement or the Price or Our rights or liabilities. Any dispute or difference arising between Us and which involves such matter as the Quantity, the suitability of extraction routes, Period Specification in accordance with Condition 4.4 or Force Majeure, shall be referred to the Inspector. In deciding any question referred to him hereunder the Inspector shall act on his own skilled judgement after making any inspection or enquiries which he may think necessary. The Inspector's decision on any such question shall be final and binding on both parties. The costs and charges of the Inspector shall be paid by the parties in equal shares. Both parties shall provide the Inspector with any documentation or assistance he may require to discharge his functions under this Condition.
- 11.2 Save as provided in Condition 11.1 if there is any question, difference or dispute which may arise concerning the construction, meaning or effect of the Agreement or concerning the rights and liabilities of the parties, then they shall use all reasonable efforts to settle it by way of negotiations.
- 11.3 If the parties fail to settle the matter within a reasonable period, then either party may refer it to a single arbiter or arbitrator who shall be agreed between the parties. If the parties fail to agree on the appointment of an arbiter or arbitrator in accordance with this condition, then within 1 month of the request by one party to the other that the matter be referred to arbitration either party may apply to President for the time being of the Chartered Institute of Arbitrators to make an appointment.
- 11.4 The decision of the arbiter or arbitrator shall be final and binding upon the parties and the costs of the arbitration shall be within the arbiter or arbitrator's award.

12 INSURANCE

- 12.1 You shall, (and shall procure that, wherever possible, Your employees, agents, contractors, sub-contractors or the employees of any of them shall) throughout the term of this Agreement, and during any further period granted by Us for the removal of the Products after the Expiry Date (without prejudice to any liability of either party) at Your own expense insure with an insurance company approved by the Us against all loss, damage and insurable risks of third party liability up to a minimum of £5,000,000 (five million pounds) per claim arising out of Your acts or omissions, works, operations or processes pursuant to this Agreement, or the acts, omissions, works, operations or processes of Your employees, agents, contractors, sub-contractors and the employees of any of them, as We shall, in Our sole discretion, determine (acting reasonably), and shall pay or have paid all premiums and other monies necessary for said insurance. Whenever required by Us, You shall produce to Us the policy or policies of such insurance and the receipt(s) for the then current year's premium.
- 12.2 You shall not do, or omit to do, or permit or suffer to be done, or to be omitted from the Work Site or the Authorised Access Routes or otherwise anything that may render the policy or policies of insurance effected in accordance with Condition 12.1 void or voidable.

13 INDEMNITY

- 13.1 You hereby undertakes to indemnify Us and hold Us harmless from and against any and all losses, costs, damages, liabilities and expenses suffered or incurred by Us directly or indirectly

as a result of any act or omission of You or of any of Your employees, agents, contractors or sub-contractors or the employees of any of them in connection with the carrying out of the Agreement, and against any and all actions, suits, proceedings, claims, demands, assessments and judgements with respect to any of the foregoing.

- 13.2 You are responsible for assessing any and all risks associated with and/or arising on the Authorised Access Routes and Work Site. We shall provide list of those hazards of which We are aware on the Authorised Access Routes and Work Sites from which risks may arise and these shall be shown on the location site. You shall hold minimum third party liability indemnity cover of £5,000,000 (five million pounds) unless a larger sum is specified in the Lot Information and Conditions.

14 CONDITIONS

- 14.1 You shall comply and shall ensure that Your employees, agents, contractors, sub-contractors or the employees of any of them, will comply with and observe the following conditions and shall produce to Us, if requested such evidence as We may require to show that You have satisfied this provision.
- 14.2 Parties shall hold a Pre-Commencement Meeting and the conclusions of the meeting will be recorded.
- 14.3 You shall adopt a reasonable method of working such that:-
- 14.3.1 all trees felled shall be severed close to the ground in accordance with common forestry practice; and
 - 14.3.2 the work of felling and extraction is carried out in an orderly and workmanlike manner utilising best available techniques not entailing excessive cost; and
 - 14.3.3 all brushwood and lop and top is treated in accordance with methods as specified in the Lot Information and Conditions; and
 - 14.3.4 the Products are stacked in a safe manner on the Stacking Sites as marked on the Lot Information and Conditions; and
 - 14.3.5 all necessary precautions are taken to prevent wilful, reckless or negligent damage to any and all standing trees remaining on the Work Site or in any neighbouring woods or plantations; and
 - 14.3.6 all necessary precautions are taken to prevent wilful, reckless or negligent damage without limitation to any and all buildings, archaeological sites, walls, gates, fences, hedges, drains, watercourses including groundwater, roads, rides, tracks, vegetation, man, living organisms or the environment; and;
 - 14.3.7 You shall be liable to Us for any damage to the Our property due to any act or default of yours, and shall make good any such damage as soon as reasonably practicable; and
 - 14.3.8 You must seek Our agreement prior to the construction or use of any additional extraction routes or Stacking Sites involving the breaking of ground which agreement shall not be unreasonably withheld.

- 14.4 If You shall fail to comply with any of the provisions in Condition 14.3 above then within ten Business Days of receiving written notice from Us, or after such shorter time as may be reasonable and if the proposed work is urgently required, We may make good such damage and do all such necessary work. In this event the cost incurred by Us shall be reimbursed immediately by You upon Our written demand.
- 14.5 You shall ensure that You, Your agents, contractors, sub-contractors and respective employees are at all times the persons responsible for complying with all aspects of The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, 1995 (RIDDOR).
- 14.6 You shall at all times comply with all Employment Law and additionally the following:-
- 14.6.1 Chainsaw operators working on Commission Land must be in possession of either, a current Certificate(s) of Competence issued by an approved awarding body or the current equivalent units or qualifications within a recognised National or Scottish Vocational Qualification. During consolidation training prior to full assessment against a national standard a valid "Record of Training and Achievement" or qualifications issued by FISA or the equivalent from any body which from time to time replaces it is an acceptable interim confirmation of competence.
- 14.6.2 Harvesting, extraction and processor machine operators or other equivalent or related operator working on Commission Land must possess wherever and whenever available, a current certificate(s) confirming competence which is derived from the appropriate, recognised National or Scottish Vocational Qualification or other approved qualification which from time to time replaces it. During consolidation training prior to full assessment against a national standard a valid "Record of Training and Achievement" or the equivalent issued by FISA, or the equivalent from any body which from time to time replaces it is an acceptable interim confirmation of competence.
- 14.6.3 Any overhead electric lines in the area covered by the Agreement, will be indicated on the Sale Map. The agent responsible for any overhead electric line indicated on the Sale Map shall be listed in the Lot Information and Conditions. We shall have the right at all times to demand that anyone working within 2 tree lengths of an overhead electric line shall stop work immediately unless they possess either a valid Site Safety Document or Permit to Work, both as specified in the relevant FISA guide. Operators on sites that include overhead electric lines must be in possession of the relevant, applicable FISA Safety Guide or the equivalent from any body that from time to time replaces it.
- 14.7 You shall undertake best available practices not entailing excessive cost in respect of any activities which may endanger the general public at all times whilst on Commission Land and in and around the Authorised Access Routes and Work Site. We shall in accordance with Condition 13.2, estimate the potential frequency of incursions to the Authorised Access Routes and Work Site by the general public and this shall be indicated in the Lot Information and Conditions.
- 14.8 During the Pine Shoot Beetle breeding season, from May to September inclusive in any year any pine trees felled under the Agreement shall be peeled or removed from the Our land by You as soon as reasonably possible but at the latest within six weeks of the date on which they were felled failing which We shall have the right to do the work and recover the costs thereof from You.
- 14.9 Unless otherwise directed by Us, You shall treat with Urea or other substance specified by Us the stump of each conifer tree which You fell, immediately after and in any case within 20

minutes of the felling thereof. The necessary materials will be supplied at Our cost and at such locations and in such form as specified in the Lot Information and Conditions but the required application of such treatment shall otherwise be at Your expense.

- 14.10 You shall not light fires on any Commission Land without Our express permission in relation to each individual fire and shall take all reasonable and proper precautions to prevent the risk of fire on the Work Site or their operations causing fires on or spreading to any adjoining or surrounding ground.
- 14.11 We reserve the right to prohibit the use of chain saws or any other machines on Commission Land in any emergency or at times when their use would, in the Our opinion, cause a nuisance to the general public or to local residents. When required, save in an emergency, such prohibition shall be stated in the Lot Information and Conditions and shall not be regarded as justifying any changes in the terms, conditions or prices in the Agreement.
- 14.12 If for some reason not foreseen at the time the Agreement was made We are required to stop all felling for part or all of the time between the Commencement Date and the Expiry Date, We shall, save in an emergency, write to You requesting a meeting to discuss an amendment to the terms of the Agreement. Any new terms reasonably agreed as a result of that or any subsequent meeting shall be set out in writing. Where this Condition applies, We shall be deemed not to be in breach of the Agreement.
- 14.13 No animal, except those employed to remove Products, shall be taken or allowed on Commission Land by You without Our written consent. Any animals employed to remove Products or brought on to Commission Land with the Our consent shall at all times remain Your responsibility and shall be kept under control at all times so as to prevent any injury to any person, property, any living organism or the environment.
- 14.14 No caravans, mobile homes, campervans or equivalent vehicle or tent shall be brought on Commission Land without Our written consent.
- 14.15 You shall at all times comply with all Environmental Law and any other regulation affecting the conduct of the Your business and ensure that no harm to any person, property, any living organisms or the environment may result from its acts or omissions in relation to the Agreement or from the acts or omissions of You, Your employees, agents, contractors, sub-contractors and the employees of any of them in relation to this Agreement.
- 14.16 You shall not offer any reward, emolument, inducement or incentive whatsoever, to any person in the employment or performing a contract for services on Our behalf.
- 14.17 Parties shall provide all necessary safety signs (the Lot Information and Conditions detail the location of the safety signs) and ensure that at all times in relation to any Work Site all necessary safety signs are clearly visible and other measures are taken to warn the public of dangerous works being carried out in the vicinity and to prevent the public from being exposed to any danger emanating from any Work Site with particular regard being had to likely presence of children and You shall immediately replace any such safety signs which are damaged, destroyed or removed.
- 14.18 You shall ensure that in relation to each Work Site a person shall be appointed who shall be in charge of the activities being carried out in and around the Work Site ("the Work Site Manager") and the name of each such person appointed shall be notified to the [Forest District Manager/Harvesting Manager] within whose area of responsibility the Work Site falls prior to commencing any activity in or around the Work Site in accordance with this Agreement. The

Work Site Manager shall be available as and when necessary to receive and implement instructions from Us as to any matters relating to the activities being carried out in and around the Work Site.

- 14.19 We shall be entitled upon giving 24 hours notice, save in emergencies where its entitlement will have immediate effect, to veto the use by You of any contractor or sub-contractor which We do not consider suitable to carry out the obligations in the Agreement and You shall ensure that such contractor or sub-contractor shall immediately cease any activities and vacate the Work Site and Authorised Access Routes.
- 14.20 We shall be entitled at all times to enter the Work Site to ensure compliance by You, Your employees, agents, contractors, sub-contractors and the employees of any of them with the provisions of the Agreement or for any other reason.
- 14.21 You shall have regard at all times to Our powers and duties under the Forestry Act 1967 as amended from time to time and other applicable legislation including without limitation the National Parks and Access to the Countryside Act 1959 and the Countryside Act 1968 and any relevant Local Acts and in particular without limitation Our duty in respect of the conservation and enhancement of natural beauty, the conservation of flora and fauna and geological or physiographical features of special interest, the protection against pollution of any water (including groundwater) and the Our power to provide or assist in the provision of tourist, recreational or sporting facilities.

15 RELATIONSHIP OF THE PARTIES

Nothing herein contained shall be deemed to constitute You Our partner, agent or representative and accordingly You, as an independent contractor, hereby agree and undertake not without Our prior written consent at any time or from time to time:

- 15.1 to incur or purport to incur by yourself, Your employees, agents, contractors, sub-contractors and the employees of any of them any liability or obligation whatsoever in Our name or on Our behalf or in any manner of way to hold yourself out as Our agent or otherwise to represent yourself as having ostensible authority to act on Our behalf;
- 15.2 in Our name of or on Our behalf to make any representation or give any warranty, whether express or implied, about Us or the Products in any manner of way not previously authorised in writing by Us;
- 15.3 to pledge or purport to pledge Our credit; nor
- 15.4 to take or purport to make Us bound as guarantor or surety in any manner of way whatsoever.

16 CONFIDENTIALITY

- 16.1 Subject to Condition 16.2, each party agrees to maintain secret and confidential all information obtained from the other both pursuant to the Agreement and prior to and in contemplation of it, to respect the other's rights in terms of the Agreement, to use the same exclusively for the purposes of the Agreement, and to disclose the same only to those of its employees and contractors pursuant to the Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purpose of the Agreement.

- 16.2 The parties acknowledge that We may receive requests from third parties to disclose certain information in terms of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. Where We feel that such disclosure is necessary to enable Us to meet Our obligations under the Act or the Regulations, We will endeavour to advise You prior to disclosing the information to the relevant third party. You acknowledge that any disclosure by Us under the Act or Regulations will not constitute a breach of Condition 16.1 or of any of Our other obligations under the Agreement.

17 SPIRIT, AIMS AND INTENT

The parties hereto hereby undertake to execute all documents and do all acts and things necessary or expedient for the purpose of giving full force and effect to the provisions of the Agreement and the parties further agree to co-operate in and implement the spirit, aims and intent of the arrangements contemplated hereunder.

18 WAIVER

Any waiver by either party of a breach of any provision of the Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision hereof.

19 NOTICES

- 19.1 Any notice or document required or permitted to be given or served under the Agreement should where possible be given by email, failing which by first class recorded delivery post, personal delivery or by fax, as follows:-
- 19.1.1 in Your case, to the Internal User Contact as specified in the Bid or to the person listed from time to time on the Website as the relevant contact; and
 - 19.1.2 in Our case, to the email address, postal address or fax number specified in Your user profile section of the Website; or to such other address as shall have been last notified to Us for that purpose;
- 19.2 Any notice or document shall be deemed to have been duly given or served if sent by first class recorded delivery post on the second Business Day after the letter containing same was posted; if by fax at the time of despatch or, if that is not during normal business hours on a Business Day, at 0900 hours on the first Business Day following the date of despatch; if hand delivered at the time of delivery and if sent by email when sent, provided that no failed delivery notice is received. In proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and posted/despached/sent.

20 COSTS AND EXPENSES

- 20.1 Save as otherwise stated in the Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of the Agreement.

- 20.2 You will indemnify Us on demand in respect of all costs and expenses (and any value added tax thereon) incurred by Us in connection with the granting of any waiver or consent sought by You or in connection with any variation, amendment, extension or modification of the Agreement requested by You and in the enforcing, perfecting, protecting or preserving or seeking to enforce, perfect, protect or preserve any of Our rights, or in suing for the recovery of any sum due from You under the Agreement.

21 GOVERNING LAW AND JURISDICTION

- 21.1 The Agreement shall be construed according to and governed by the law of Scotland and each of the parties hereby irrevocably submits to the jurisdiction of the Scottish courts.

Lot Information and Conditions – Standing Trees by Lump Sum Period

Lot details

CONTRACT NO.>

FOREST DISTRICT>

LOCATION>

LOCATION MGR>

A: For the full duration of the Agreement:-

- 1. the Commencement Date means >
- 2. the Excluded Product means the part(s) of the Product located, situated or growing beneath ground level {and also in the case of conifers, all tops of trees less than 7.0 cm diameter under bark and all branches removed from the trees, commonly called lop, top and brushwood}.
- 3. the Expiry Date means >
- 4. the Instalment Number is >
- 5. the Total Estimated Volume is >
- 6. the number of Periods is >
- 7. the number of months in each Period is>

B: For the first Period of the Agreement:

- 1. the Felling Commencement Date means >
- 2. the Felling Removal Date means >
- 3. the Felling Order means as determined by Us after consultation with You.
- 4. the Instalment Dates are:-
- 5. the Quantity is {trees):-
- 6. the Products in the first year of the Agreement shall be those trees described below which are standing on the area(s) shown by hatching on the sale map(s)-

Thinning – and for which method of thinning will be:

.....
.....
.....
.....

OR

Clear Felling – those trees described below being all the trees standing in the area(s) shown by hatching on the accompanying map.

SPECIES	NUMBER	ESTIMATED VOLUME	MEASUREMENT PROCEDURE
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Lot Information and Conditions – Standing Trees by Lump Sum Period

Location Map

Lot Information and Conditions – Standing Trees by Lump Sum Period

Site Specific Conditions

1. The FISA Units of Competence required are >
2. The felling licence number obtained from the Forestry Commission is >
3. Timber supplied as part of this Contract is covered by Forest Management/Chain of Custody Certificate No SGS-FM/COC-010301 issued under the QUALIFOR Programme by SGS Qualifor.

Lot Information and Conditions – Standing Trees by Lump Sum Period

Sale Map