

**STANDARD CONTRACT FOR THE SALE OF TREES IN AREAS DAMAGED BY
WINDBLOW BY WEIGHT**

**between
THE FORESTRY COMMISSION
and
< >**

(Purchaser)

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STANDARD CONTRACT

For the Sale of Trees in Areas Damaged by Windblow by Weight

between

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 (hereinafter referred to as "the Commission")

OF THE FIRST PART

and

the party whose details are set out in Part I of the Schedule (hereinafter referred to as "the Purchaser")

OF THE SECOND PART

WHEREAS:-

The Commission has offered in auction or tender or negotiation to sell and the Purchaser wishes to purchase the Products (as hereinafter defined) subject to the terms and conditions set out in this Agreement

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:-

1. INTERPRETATION

- 1.1 **"Authorised Access Routes"** means the roads which may be used by the Purchaser pursuant to this Agreement 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 Schedule;
- "Business Day"** means any day on which the clearing banks are open for business;
- "Commencement Date"** means the date specified as such in Part I of the Schedule;
- "Commission Land"** means any land placed at the Commission's 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 FASTCo 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 business of the Purchaser 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;

"Excluded Products" means the part(s) of the Products specified as such in Part I of the Schedule;

"Expiry Date" means the date specified as such in Part I of the Schedule;

"FASTCo" means the Forestry and Arboriculture Safety and Training Council, 231 Corstorphine Road, Edinburgh EH12 7AT or such other body which from time to time replaces it;

"Felling Order" means the order specified in Part IV of the Schedule any change to which must be agreed between parties;

"Felling Removal Date" means the date by which Products are to be removed from the Work Site specified in Part I of the Schedule 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 Clause 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 or other such equivalently recognised and experienced person as both parties shall agree;

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

"Instalment Dates" means those dates specified in Part I of the Schedule;

"Instalment Number" means the number of Instalments as specified in Part I of the Schedule;

"Location Map(s)" means the map annexed as Part II of the Schedule which shall indicate areas to be worked during the period of the contract;

"Pre-Commencement Meeting" means the meeting held between the Purchaser and the Commission, at the Work Site, prior to the Felling Commencement Date, to discuss the conditions contained in this Agreement and the Schedule in relation to the Work Site;

"Price" means the price as specified in or agreed pursuant to Clause 7;

"Products" means the blown or shattered trees together with such standing trees as shall be identified by the Commission being trees on the area(s) damaged by windblow (including, without prejudice to the foregoing generality, the wood and timber represented by those trees) not including the Excluded Products, details of which are set out in Part I of the Schedule and represented by hatching on the Sale Map;

"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 the Commission;

"Sale Map" means the map or maps annexed as Part IV of the Schedule;

"Schedule" means the schedule in 4 Parts annexed to this Agreement;

"Stacking Sites" means those locations adjacent to Authorised Access Routes (at all times located within the area shown by hatching (or otherwise identified) in the Sale Map on Part IV of the Schedule on which the Products will be presented;

"Total Quantity" means the total amount of the Products specified as such in Part I of the Schedule and to be removed pursuant to this Agreement;

“**Work Sites**” means those areas of land including any Authorised Access Routes shown by hatching (or otherwise identified) on the Sale Map;

“**Work Site Manager**” means the person appointed by the Purchaser to be in charge of the activities being carried out in and around the Work Site.

- 1.2 References to any of the parties hereto shall, subject to Clause 9, include their respective executors, personal representatives, and successors in title and assignees.
- 1.3 The provisions of the Interpretation Act 1978 with respect to interpretation and construction shall apply *mutatis mutandis*.
- 1.4 The headings in this Agreement and in the Schedule are inserted for convenience only and shall not be taken into account in the interpretation of them.
- 1.5 References to recitals, numbered clauses and sub-clauses are references to recitals, clauses and sub-clauses of this Agreement unless the context otherwise requires.
- 1.6 References in this Agreement to any statute or statutory or legislative provisions shall be deemed to include reference to any statute, regulation or statutory instrument which amends, extends, consolidates or replaces the same (or shall have done so) and to any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto.

2. SALE OF THE PRODUCTS

- 2.1 Pursuant to and subject to the terms and conditions of this Agreement the Commission shall sell and the Purchaser shall purchase the Total Quantity.
- 2.2 The parties may, from time to time, agree to the sale of additional products by agreeing additional Schedules to this Agreement. Unless otherwise agreed in writing, the terms of this Agreement shall apply to such sales as if each reference to the Schedule was a reference to the newly agreed Schedule. Each schedule, together with the terms of this Agreement, shall form a separate agreement between the parties.

3. REMOVAL OF THE PRODUCTS

- 3.1 For the purposes of this Agreement only and subject to Clauses 3.2 and 6.10 or as otherwise be provided in this Agreement, the Commission shall allow the Purchaser access to and egress from the Work Site using the Authorised Access Routes, to fell, cut and remove the Products, in accordance with this Agreement.

- 3.1.1 The Purchaser 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) the Purchaser, its employees, agents, contractors, sub-contractors and employees of any of them at all times will comply with all applicable road safety legislation and approved Codes of Practice, 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 The Commencement Date, Expiry Date, Felling Removal Date and Felling Order shall be as indicated in the relevant offer to sell, and Part I of the Schedule, unless otherwise agreed after consultation between the Purchaser and the Commission.
- 3.2.1 All cut timber in excess of 2 metres in length and minimum top diameter 7 cm overbark shall be removed from the site. Where windblown trees include trees suitable for conversion to such products as may require peeling or seasoning the Seller may in the absence of adequate weighing facilities permit the Purchaser to peel or season any cut trees prior to their removal provided a basis for adjusting the price per tonne as stated at Part 1 of the Schedule is agreed by both parties before the peeling or seasoning commences. All timber must be removed and weighed in accordance with Clause 3.2.5 within six weeks of it being cut by the Purchaser.
- 3.2.2 The Purchaser shall give the Commission reasonable notice of the date and time when the Purchaser will remove any of the Products.
- 3.2.3 The Purchaser shall only be entitled to remove any Products in accordance with Forestry Commission approved dispatch procedure in respect of each individual load.
- 3.2.4 If the Purchaser fails to remove the Products within six weeks from the date of felling in accordance with Clause 3.2.1, the Commission reserves the right in its sole discretion to estimate the weight of loads using volume to weight ratios determined from equivalent trees (including without prejudice to the generality of the foregoing, the wood and timber represented by those trees) which have been felled for less than six weeks. For the Purposes of this sub-clause 3.2.4, this estimate shall be regarded as the weight ticket weight.

- 3.2.5 The weight of Products purchased and sold under this Agreement shall be the net weight of Products over a weighbridge approved by the Commission. The weighing of each load shall be at the Purchaser's expense and weight tickets must be returned to the Commission together with a copy of the approved conveyance note not more than ten Business Days after collection of the load to which each weight ticket relates. Where in respect of any such load the Purchaser fails to return the weight ticket within the specified period then the Commission reserves the right to estimate the weight of the load and this estimate shall be regarded as the weight ticket weight in respect of that load.
- 3.3 The Purchaser 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. The Commission gives no warranty 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 the opinion of the Commission 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 request from the Commission;
- 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 the Commission) at all times are kept free of obstructions 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 the Purchaser's 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, the Commission shall be entitled, after consultation with the Purchaser 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 the Purchaser, its employees, agents, contractors, sub-contractors and employees of any of them, any of the Authorised Access Routes requires repair the Commission shall where practicable within ten Business Days of that fact being made known to the Commission endeavour to repair such damaged part or parts of that Authorised Access Route to the standard of the road classification as stated in the Schedule.
- 3.6 Where it appears to the Purchaser that the access within the Work Site or at the point of extraction to the Authorised Access Routes is not sufficient to enable the Purchaser to comply with the terms of the Agreement the Purchaser may apply in writing to the Commission for consent to cut, fell and remove other trees owned by the Commission, such consent shall not be unreasonable withheld and shall be confirmed (on such terms as the Commission 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 rights of the Commission the Purchaser shall be liable for any wilful, reckless or negligent damage (including without limitation damage resulting from any failure to comply with Clause 14.3) due to any act or default of the Purchaser or the Purchaser's employees, agents, contractors, sub-contractors or the employees of any of them and shall recompense or make good the same to the satisfaction of the Commission within ten Business Days where practicable of its occurrence.
- 3.8 If the Purchaser shall fell, cut, remove or damage in any way any standing tree not intended to be so felled, cut or removed pursuant to this Agreement (other than as provided in Clause 3.6) then the Purchaser shall pay to the Commission immediately on demand three times the then market value of the standing tree and, at its sole discretion, the Commission may retain the wood or timber represented by the said tree.
- 3.9 If the Purchaser shall again fell, cut or remove or damage in contravention of Clause 3.7 any standing tree not intended to be felled, cut or removed pursuant to this Agreement after having been notified of the Commission's demands under the terms of Clause 3.8 above, then the Purchaser shall be deemed to be in breach of this Agreement and the

Commission may in its absolute discretion terminate the Agreement forthwith and claim compensation in respect of any expenses, costs, losses and damages incurred by the Commission 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 the Commission's other rights or remedies under this Agreement or otherwise.

4. SPECIFICATION OF PRODUCTS, WORK SITES AND ACCESS

- 4.1 The Products in this Agreement are specified in Part I of the Schedule by species and area of trees. The said Products shall be as identified in Part I of the Schedule.
- 4.2 The Purchaser shall fell and remove the whole of the said Products. The Work Sites and Authorised Access Routes to be used by the Purchaser in accordance with this Agreement shall be as indicated in Part IV of the Schedule.

5. RISK AND PROPERTY

- 5.1 The risk in the Products shall pass to the Purchaser on the Commencement Date and the Purchaser shall be responsible to the Commission for any loss or damage to or caused by the Products from such date as a result of any act or omission by the Purchaser or its employees, agents, contractors, sub-contractors or the employees of any of them.
- 5.2 Notwithstanding the passing of risk under Clause 5.1 above, unless and until the Purchaser shall have paid the Commission all sums due pursuant to this Agreement and remove the Total Quantity, property in and title to all the Products purchased and sold shall remain with the Commission and the following provision of this Clause shall be applicable: –
 - 5.2.1 the Purchaser grants the Commission an irrevocable licence to enter the Purchaser's premises or any other premises in the occupational control of the Purchaser where the Products are or are believed by the Purchaser or the Commission to be located and to inspect and/or remove the Products at any time while they remain the Commission's property. In the event that any of the Products are no longer in the occupational control of the Purchaser or its employees, agents, contractors, sub-contractors or the employees of any of them, the Purchaser shall use its best endeavours to facilitate the inspection and/or removal of the Products by the Commission at any time while they remain the Commission's property. All costs incurred by the Commission in

repossessing the Products whether or not they are still under the control of the Purchaser shall be borne by the Purchaser; and

- 5.2.2. the Purchaser shall immediately notify the Commission if the Purchaser (or its directors) intend to present a petition for the making of an administration order or a winding-up petition or if the Purchaser (or its directors) is aware of any such intention on the part of any of the Purchaser's creditors or if any of the other circumstances specified in Clauses 6.3.1 to 6.3.5 inclusive are to the Purchaser's knowledge considered likely to arise.

6 DURATION AND TERMINATION

- 6.1 This 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 Clause 3.3.3 or Clause 3.4 except in cases where damage has resulted from the wilful, reckless or negligent actions or omissions of the Purchaser, or its employees, agents, contractors, sub-contractors or the employees of any of them, the Commission 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 Expiry Date, that party shall request in writing a meeting with the other party a minimum of ten Business Days before the Expiry Date to discuss the change. The Commission shall have an absolute discretion whether to refuse such request or grant the same on such terms as the Commission shall think fit. Agreement to change will not be unreasonably withheld;
- 6.1.3 Any change to the Expiry Date shall be recorded in an addendum to this Agreement.
- 6.2 The Commission shall be entitled forthwith to terminate this Agreement by written notice to the other if the Purchaser or any of its employees, agents, contractors, sub-contractors, or the employees of any of them commits any breach of Clauses, 3.1.1 3.2.3, 3.9, 8.1, 8.2, 8.3, 12, 14.10, 14.15, 14.16, 14.21, 14.22 of this Agreement with immediate effect.
- 6.3 Either party shall be entitled forthwith to renegotiate (in the case of 6.3.4) or terminate this 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 this Agreement); or
 - 6.3.4 that part of the forest covered by this Agreement from which the Products are to be produced is the subject of serious fire or serious windblow damage such that it cannot viably be used as a Work Site;
 - 6.3.5 that other party ceases to carry on business.
- 6.4 The Commission shall be entitled to terminate this Agreement on giving 3 months written notice in the event of a breach of any term of this Agreement, not being a breach referred to in Clauses 6.2 or 6.3 above, save that in the case of a Remediable Breach (as that expression is defined in Clause 6.5) the Purchaser 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 the Purchaser does not remedy the Remediable Breach within that period or within that period commits a second similar Remediable Breach, the Commission shall be entitled to terminate this 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 the Commission has in its absolute discretion agreed time of performance shall no longer be of the essence); or
 - 6.5.2 the Purchaser fails to comply with Clauses 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, the Purchaser shall immediately cease the felling and removal of Products but the Commission may, at its discretion, allow the Purchaser 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 the Purchaser, vest in and become the property of the Commission. The

Commission 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 the Purchaser arising in relation to the subject matter of this Agreement have been settled, the Commission shall reimburse to the Purchaser the lesser of the remainder of any sums received from the Purchaser 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 the Commission for the Retained Products the Purchaser shall on demand pay to the Commission the amount by which said costs and losses exceed said total sum.

- 6.8 Within two months of the termination of the Agreement the Purchaser shall remove any buildings, erections or equipment the Purchaser may have placed on Commission Land and in respect of which there is no occupancy agreement with the Commission. Should the Purchaser fail to remove such buildings, erections or equipment within the time specified, the Commission may retain or remove and dispose of them as it thinks fit and the Purchaser shall on demand reimburse the Commission for all costs incurred in their removal and disposal and making good any damage resulting therefrom.
- 6.9 The right to terminate this Agreement pursuant to Clause 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 the Purchaser 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 be given to create a tenancy or any relationship of landlord or tenant and shall save where terminable earlier pursuant to the terms of this Agreement or as may otherwise be agreed in writing subsist only until the expiration of the period provided in clause 6.8.

7. PRICE

- 7.1 The Price to be paid for the Products shall be as specified in Part I of the Schedule.

8. PAYMENTS

- 8.1 Payment for the Total Quantity shall be made to the Commission 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 the Commission as provided in Clause 8.2 and 8.3.

- 8.2 If Clause 8.3 does not apply the Purchaser shall be required to pay the Commission Instalments on the Instalment Dates as invoiced by the Commission and the Purchaser shall not be permitted to remove Products until after the relevant payment has been made.
- 8.3 If the Purchaser has a credit facility, the Commission shall render invoices up to the credit limit determined by the Commission from time to time at its sole discretion, being the maximum which may be owed by the Purchaser to the Commission at any time under this and any other agreement between the Purchaser and the Commission. Payment shall be made by the Purchaser in respect of each invoice not later than one calendar month following the month in which the Products were removed. If the whole or any part of the invoiced purchase money shall not be paid by the due date the Commission shall have the right to terminate the agreement forthwith or, at the Commission's discretion, the Purchaser 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 a payment is due until actual payment. Payments received by the Commission from the Purchaser shall be applied first by the Commission against accrued interest and second against sums incurred under 14.4 and then against the principal debt.
- 8.4 If the credit limit referred to in Clause 8.3 is, or is likely to be exceeded for any reason (of which the Commission shall be sole judge), then the provisions of Clause 8.5 shall apply.
- 8.5 When this sub-clause is applicable under any provision, the Commission may, without prejudice to any other remedies available to it under this Agreement or otherwise, notify the Purchaser that no Products may be removed under this or any other agreement between the Commission and the Purchaser until the Purchaser has made such payment as the Commission shall, in its sole discretion determine.
- 8.6 In the event that the Commission issues a notice to the Purchaser under Clause 8.5, the Purchaser will not thereby be relieved of any of the Purchaser's obligations under this Agreement including, without prejudice to the generality of the foregoing, the obligation to remove the Quantity before the Felling Removal Date.
- 8.7 The Commission reserves the right to demand a deposit of 10% of the estimated value. Where the Commission exercises the right to demand a deposit, the deposit shall be lodged by the Purchaser with the Commission by the latest ten Business Days prior to the Commencement Date. The said deposit will be held by the Commission until the completion of the Agreement to the satisfaction of the Commission and the payment in full of all sums due by the Purchaser to the Commission.

In the event that:

- 8.7.1 the Purchaser fails to pay in full any sums due by the Purchaser to the Commission; and/or
- 8.7.2 the Commission incurs costs or suffers losses as a result of the Purchaser not performing the Purchaser's obligations under this Agreement to the Commission's satisfaction;

notwithstanding and without prejudice to all other rights and remedies available to the Commission under this Agreement or otherwise the Commission 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 8.7.2 above and/or the sum due to it specified in 8.7.1 above. The said deposit or any balance of it remaining after the application of this Clause or otherwise under this Agreement and the payment of any outstanding interest charges payable in respect of any money owing to the Commission shall be returned by the Commission to the Purchaser without interest as soon as possible after the Purchaser shall have performed the Purchaser's obligations.

9. ASSIGNMENTS

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

10. FORCE MAJEURE

- 10.1 If either party is unable to perform all or any of their obligations under this Agreement by reason of Force Majeure then the party affected shall within 5 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 Quantity 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 Part I of the Schedule 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 Clauses 11.2 to 11.4 inclusive shall apply in relation to any dispute or difference arising between the parties which involves the interpretation or construction of this Agreement or the Price or the rights or liabilities of the parties. Any dispute or difference arising between the parties and which involves such matter as the Quantity as defined in Part I of the Schedule, the suitability of extraction routes, Specification in accordance with Clause 4, and 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 Clause.
- 11.2 Save as provided in Clause 11.1 if there is any question, difference or dispute which may arise concerning the construction, meaning or effect of this 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 clause, 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 arbitrator shall be final and binding upon the parties and the costs of the arbitration shall be within the arbitrator's award.

12. INSURANCE

- 12.1 The Purchaser shall, (and shall procure that, wherever possible, the Purchaser's 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 the Commission for the removal of the Products after the Expiry Date (without prejudice to any liability of the Purchaser to the Commission) at the Purchaser's own expense insure with an insurance company approved by the Commission against loss of Product, and 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 the acts or omissions, works, operations or processes pursuant to this Agreement of the Purchaser, its employees, agents, contractors, sub-contractors and the employees of any of them as the Commission shall, in its sole discretion, determine (acting reasonably), and shall pay or have paid all premiums and other monies necessary for said insurance. Whenever required by the Commission, the Purchaser shall produce to the Commission the policy or policies of such insurance and the receipt(s) for the then current year's premium.
- 12.2 The Purchaser shall not do or permit or suffer to be done or to be omitted on the Work Site or the Authorised Access Routes or otherwise anything that may render the policy or policies of insurance effected in accordance with Clause 12.1 void or voidable.

13. INDEMNITY

- 13.1 The Purchaser hereby undertakes to indemnify and hold harmless the Commission from and against any and all losses, costs, damages, liabilities and expenses suffered or incurred by the Commission directly or indirectly as a result of any act or omission of the Purchaser or of any of its employees, agents, contractors or sub-contractors or the employees of any of them in connection with the carrying out of this Agreement, and against any and all actions, suits, proceedings, claims, demands, assessments and judgements with respect to any of the foregoing.
- 13.2 The Purchaser is responsible for assessing any and all risks associated with and/or arising on the Authorised Access Routes and Work Site. The Commission shall provide a list of those hazards of which it is aware on the Authorised Access Routes and Work Sites from which risks may arise and these shall be given in Part III or Part IV of the Schedule. The Purchaser shall hold minimum third party liability indemnity cover of

£5,000,000 (five million pounds) unless a larger sum is specified in Part III of the Schedule.

14. CONDITIONS

- 14.1 This Agreement and the sale and purchase contemplated hereunder are subject to the following conditions, and the Purchaser shall comply and shall ensure that the Purchaser's employees, agents, contractors, sub-contractors or the employees of any of them, will comply with and observe the following conditions and shall produce to the Commission if requested such evidence as the Commission may require to show that the Purchaser has satisfied this provision.
- 14.2 The Purchaser and the Commission shall hold a Pre-Commencement Meeting and the conclusions of the meeting will be recorded.
- 14.3 The Purchaser 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 good 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 Part I and Part III of the Schedule; and
 - 14.3.4 the Products are stacked in a safe manner on the Stacking Sites as marked on Part IV of the Schedule; and
 - 14.3.5 all necessary precautions are to be 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 reasonable 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 the Purchaser shall be liable to the Commission for any damage to the Commission's property thereto due to any act or default of the Purchaser, and shall make good any such damage as soon as reasonably practicable; and
 - 14.3.8 the Purchaser must seek the agreement of the Commission 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 the Purchaser shall fail to comply with any of the provisions in Clause 14.3 above then, within ten Business Days of receiving written notice from the Commission, or after such shorter time as may be reasonable and if the proposed work is urgently required then the Commission may make good such damage and do all such necessary work. In this event the cost incurred by the Commission shall be reimbursed immediately by the Purchaser upon written demand by the Commission.
- 14.5 The Purchaser shall ensure that the Purchaser, it's 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 The Purchaser 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 FASTCo 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 FASTCo, 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 this 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 Part III of the Schedule. The Commission 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 FASTCo guide. Operators on sites that include overhead electric

lines must be in possession of the relevant, applicable FASTCo Safety Guide or the equivalent from any body that from time to time replaces it.

- 14.7 The Purchaser 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. The Commission shall in accordance with Clause 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 Part IV of the Schedule.
- 14.8 During the Pine Shoot Beetle breeding season, from May to September inclusive any pine trees felled under the Agreement shall be peeled or removed from the Commission's land by the Purchaser as soon as reasonably possible but within six weeks of the date on which they were felled failing which the Commission shall have the right to do the work and recover the costs thereof from the Purchaser.
- 14.9 Unless otherwise directed by the Commission the Purchaser shall treat with Urea or other substance specified by the Commission the stump of each conifer tree which the Purchaser fells, immediately after and in any case within 20 minutes of the felling thereof. The necessary materials will be supplied at the cost of the Commission and at such locations and in such form as specified on Part IV of the Schedule but the required application of such treatment shall otherwise be at the expense of the Purchaser.
- 14.10 The Purchaser shall not light fires on any Commission Land without the express permission of the Commission in relation to each individual fire and shall take all reasonable and proper precautions under the direction of the Commission 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 The Commission reserves 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 Commission's opinion, cause a nuisance to the general public or to local residents. When required, save in an emergency, such prohibition shall be stated in Part III of the Schedule and shall not be regarded as justifying any changes in the terms, conditions or prices in this Agreement.
- 14.12 If for some reason not foreseen at the time the Agreement was made the Commission is required to stop all felling for part or all of the time between the Commencement Date and the Expiry Date, the Commission shall, save in an emergency, write to the Purchaser requesting a meeting

to discuss an amendment to the terms of this Agreement. Any new terms reasonably agreed as a result of that or any subsequent meeting shall be incorporated in Addenda to this Agreement. Where this clause applies, the Commission 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 the Purchaser without the written consent of the Commission. Any animals employed to remove Products or brought on to Commission Land with the Commission's consent shall at all times remain the responsibility of the Purchaser 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 the written consent of the Commission.
- 14.15 The Purchaser shall at all times comply with all Environmental Law and any other regulation affecting the conduct of the Purchaser's 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 this Agreement or from the acts or omissions of the Purchaser, its employees, agents, contractors, sub-contractors and the employees of any of them in relation to this Agreement.
- 14.16 The Purchaser shall not offer any reward, emolument, inducement or incentive whatsoever, to any person in the employment or performing a contract for services on behalf of the Commission.
- 14.17 The Parties shall provide all necessary safety signs (Part IV of the Schedule details the location of the warning Signs) and ensure that at all times in relation to any Work Site all necessary safety signs are clearly visible and other necessary 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 the Purchaser shall immediately replace any such safety signs which are damaged, destroyed or removed.
- 14.18 The Purchaser 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 the Commission as to any matters relating to the activities being carried out in and around the Work Site.

- 14.19 The Commission shall be entitled upon giving 24 hours notice, save in emergencies where its entitlement will have immediate effect, to veto the use by the Purchaser of any contractor or sub-contractor which the Commission does not consider suitable to carry out the obligations in this Agreement and the Purchaser shall ensure that such contractor or sub-contractor shall immediately cease any activities and vacate the Work Site and Authorised Access Routes.
- 14.20 The Commission shall be entitled at all times to enter the Work Site and to ensure compliance by the Purchaser, its employees, agents, contractors, sub-contractors and the employees of any of them with the provisions of this Agreement or for any other reason.
- 14.21 The Purchaser shall have regard at all times to the Commission's 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 the Commission's 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 Commission's power to provide or assist in the provision of tourist, recreational or sporting facilities.
- 14.22 The Purchaser undertakes to comply and to procure the compliance of its employees, agents, contractors, sub-contractors and the employees of any of them at all times with Commission byelaws as set out in the Forestry Commission Byelaws 1982 or such other byelaws as may from time to time be in force copies of which shall be made available by the Commission at the request of the Purchaser.

15. RELATIONSHIP OF THE PARTIES

Nothing herein contained shall be deemed to constitute the Purchaser a partner, agent or representative of the Commission and accordingly the Purchaser as an independent contractor hereby agrees and undertakes not without the prior written consent of the Commission at any time or from time to time:

- 15.1 to incur or purport to incur by itself, its employees, agents, contractors, sub-contractors and the employees of any of them any liability or obligation whatsoever in name or on behalf of the Commission or in any manner of way to hold itself or themselves or himself or herself out as

agent for the Commission or otherwise to represent itself or themselves or himself or herself as having ostensible authority to act on the Commission's behalf;

- 15.2 in name of, or on behalf of the Commission to make any representation or give any warranty, whether express or implied, about the Commission or the Products in any manner of way not previously authorised in writing by the Commission; and
- 15.3 to pledge or purport to pledge the Commission's credit; and
- 15.4 to take or purport to make the Commission bound as guarantor or surety in any manner of way whatsoever.

16. CONFIDENTIALITY

Each party agrees to maintain secret and confidential all information obtained from the other both pursuant to this 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 this Agreement, and to disclose the same only to those of its employees and contractors pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purpose of this 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 this 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 this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision hereof.

19. NOTICES

Any notice or document required or permitted to be given or served under this Agreement may be given or served personally or by leaving the same or by sending the same by first class recorded delivery post or fax or email as follows: –

- 19.1 In the case of the Commission, by post at or to Forest Enterprise, < > to the address shown in Part 1 of the Schedule, marked for the attention of the Country Director, or by Fax, (fax number < >); or by email (email address< >). In the case of the Purchaser at or to their address

specified in Part I of the Schedule; or to such other address as shall have been last notified to the other party for that purpose.

- 19.2 Any notice or document given or served by post will be deemed to have been duly given or served on the second Business Day after the letter containing same was posted; 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. Any notice or document given or served by fax will be deemed to have been duly given or served 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, and 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 despatched. Any notice served on behalf of the Forestry Commission by email will be deemed to have been sent provided that no failed delivery notice is received.

20. COSTS AND EXPENSES

- 20.1 Save as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement.
- 20.2 The Purchaser will indemnify the Commission on demand in respect of all costs and expenses incurred and any value added tax thereon by the Commission in connection with the granting of any waiver or consent sought by the Purchaser or in connection with any variation, amendment, extension or modification of the Agreement requested by the Purchaser and in the enforcing, perfecting, protecting or preserving or seeking to enforce, perfect, protect or preserve any of the Commission's rights, or in suing for the recovery of any sum due from the Purchaser under this Agreement.

21. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed according to and governed by the law of [England] [Scotland] and each of the parties hereby irrevocably submits to the jurisdiction of the [English] [Scottish] courts.

IN WITNESS WHEREOF these presents on this and the preceding > pages are together with the Schedule in 4 parts annexed hereto executed in [duplicate] as follows: –

SUBSCRIBED for and on behalf of

the FORESTRY COMMISSION at < >

on the day of,

by:-

Authorised Signatory.....

Full Name

SUBSCRIBED for and on behalf of < >

At < >

on the day of,

by:-

{A: For a Company

Authorised Signatory.....

Full Name

{B: For a Partnership

Partner.....

Full Name.....

Partnership.....

Full Name

{C: For a Sole Trader

Signature.....

Full Name

Page X of Y

This Schedule is the Schedule to the Standard Contract for the sale of the Trees in Areas Damaged by Windblow by Weight between the Commission and the Purchaser (the 'Standard Contract'), words and phrases in this Schedule shall have the meanings set out in the Standard Contract, the terms of which shall apply to the sale of the Products described in this Schedule.

SCHEDULE
PART I

CONTRACT NO:

(P/Contract No /Country/District No.)

FOREST DISTRICT:

A: The Purchaser is {(1) < >

a company incorporated in < >
under the Companies Act with the number < >
and having its registered office at < >

or

(2) < >
having their principle place of business at < >

or

(3) < >
residing at < >}

fax number < >

B: For the full duration of the Agreement:-

1. the Price (excluding Value Added Tax) is £< > per tonne
2. the Commencement Date means < >
3. the Expiry Date means < >
4. the Excluded Products means the part(s) of the Products located, situated or growing beneath ground level {and also in the case of conifers, all tops of trees less than 6.5 cm diameter under bark and all branches removed from the trees, commonly called lop, top and brushwood}.
5. the number of Instalments is N/A
6. the Instalment dates are N/A>
7. the Felling Removal Date means< >

8. the Total Quantity is those Products described below which are located on the area(s) shown by hatching on the Sale Map(s)

9. Felling Order means < >

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

10 the Products and approximate weights (which are not guaranteed by the Seller, but are purely for the guidance of the Purchaser) in metric tonnes included in this Agreement shall be those trees described below, all being trees standing on the area(s) shown by hatching on the Sale Map(s):-

SPECIES	APPROXIMATE WEIGHT
---------	--------------------

SUBSCRIBED for and on behalf of
the FORESTRY COMMISSION at < >

on the day of, by:-

Authorised Signatory.....

Full Name

SUBSCRIBED for and on behalf of < >

At < >

on the day of, by:-

Authorised Signatory.....

Full Name

Page X of Y

SCHEDULE
PART II

Location Map

Page X of Y

SCHEDULE
PART III
[Site Specific Conditions]

- 1) the FASTCo Units of Competence required are < >
- 2) the trees marked shall be indicated by < >
- 3) the felling licence number obtained from the Forestry Commission < >
- 4) Timber supplied as part of this Contract is covered by Chain of Custody Certificate No
SGS-COC-0358 issued under the QUALIFOR Programme by SGS Forestry"

Page X of Y

SCHEDULE
PART IV

[Sale Map]

{Signatures on the signing page should be repeated on the very last page of the agreement;
this should be the last Sale Map if this is the last page}