

## THE FORESTRY COMMISSION

### TERMS AND CONDITIONS FOR STANDARD PURCHASE OF SMALL ROUNDWOOD

You have offered in auction or tender or negotiation to purchase small roundwood 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 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;

**"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 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 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;

**"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;

**"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;

**"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 Total Quantity multiplied by the Price (plus VAT) divided by the number of Instalments;

**"Instalment Dates"** means those dates 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 areas to be worked during the period 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 Total Quantity;

**“Price”** means the price applying from time to time as specified in or agreed pursuant to Clause 7.

**“Products”** means the small roundwood located on the Stacking Sites, in the period between the Commencement Date and the Removal Date, details of which are set out 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 the map or set of maps shown as part of the Lot Information and Conditions;

**“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 in the Lot Information and Conditions, on which the Products will be presented;

**“Total Quantity”** means the total amount of the Products specified as such in the Lot Information and Conditions and to be removed pursuant to the Agreement

**“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](http://www.forestry.gov.uk/auctions)

**“You”** means the party accessing and using this website to purchase sawlogs 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 including any Authorised Access Routes And Stacking Sites, at all times located within the area(s) shown by hatching, or otherwise identified on the Location Map.

## 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 buy the Total Quantity.

2.3 Neither party will be deemed to be in breach of condition 2.2 where the amount of Products made available, purchased or uplifted is within plus or minus 10% of the Total Quantity.

2.4 Parties may from time to time agree to the sale of additional products, which unless otherwise agreed in writing, shall be subject to these Terms and Conditions.

### **3 REMOVAL OF THE PRODUCTS**

3.1 In relation to this section 3, where We have agreed to deliver the Products to You, only conditions 3.1, 3.4 and 3.8 of these Terms and Conditions apply. Where You are collecting the Products only conditions 3.1, 3.4, 3.8 and 3.9 apply.

3.2 For the purposes of the Agreement only and subject to Conditions 3.1 and 6.10 or as otherwise provided in the Agreement, We shall:-

3.2.1 subject to Condition 3.3, allow You access to and egress from the Stacking Sites using the Authorised Access Routes, to remove the Products, with the exception of restrictions as stated in the Lot Information and Conditions;

3.2.2 supply the Products stacked at Stacking Sites in such a manner as will facilitate safe removal by You from the Stacking Sites using the Authorised Access Routes;

3.2.3 make the products available for collection at Stacking Sites in reasonably equal monthly quantities having regard to the effect of seasonal working conditions and holidays;

3.2.4 notify You on a weekly basis between the Commencement Date and the Removal Date which Products are available in accordance with Condition 3.1.2 (hereinafter referred to as a "Weekly Notification");

3.2.5 authorise You to remove the Products following the service of a Weekly Notification.

3.3 You, as purchaser:-

3.3.1 shall only be entitled to remove any Products in accordance with Our approved dispatch procedure in respect of each individual load;

3.3.2 shall give Us reasonable notice of the date and time when You will remove any of the Products;

3.3.3 save as may otherwise be provided in the Agreement, shall remove any Products specified in any Weekly Notification within fifteen Business Days of the issue of the Weekly Notification; If You fail to remove the Products within three weeks from the date of notification in accordance with this

- condition 3.2.3, We reserve the right in Our 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 stacked at the stacking site for less than fifteen Business Days. For the Purpose of this sub-clause 3.3.3, this estimate shall be regarded as the weight ticket weight;
- 3.3.4 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 and approved Codes of Practice, including but not limited to the Road Traffic Act which may be in force from time to time whilst accessing and egressing from the Stacking Sites and whilst using any Authorised Access Routes;
- 3.4 the weight of Products purchased and sold under the Agreement shall be the net weight of Products over a weighbridge approved by Us and recorded on a weight ticket issued to You. The weighing of each load shall be at Your expense and weight tickets must be returned to the Us together with a copy of the relevant Forestry Commission Conveyance Note not more than ten Business Days after removal of the load to which the weight ticket relates. Where in respect of any load You fail to return the weight ticket within the specified period then We reserve 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.
- 3.5 You shall procure that:-
- 3.5.1 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. We give no warranty that any other road is suitable for use by vehicles;
- 3.5.2 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;
- 3.5.3 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;
- 3.5.4 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 upon Our request;
- 3.5.5 the Authorised Access Routes and all roads in and around the Stacking Sites (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 the Your operations which would prevent free flow of traffic except for a minimum of delay;

- 3.5.6 no unauthorised or unlawful discharges are made as a result of the 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.
- 3.6 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.
- 3.7 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.
- 3.8 Without prejudice to any other of Our rights You shall be liable for any wilful, reckless or negligent damage (including without limitation damage specified in Condition 14.2) due to any act or default by You or Your employees, agents, contractors, sub-contractors or the employees of any of them and shall make good the same to Our satisfaction within ten Business Days where practicable of its occurrence.
- 3.9 If We are to deliver the Products;
- 3.9.1 the Products shall be made available to the address indicated in Your user profile section of the Website between such reasonable time of the day as You shall from time to time notify to Us in writing and You shall be responsible for unloading and shall use best endeavour to unload each lorry within the time periods specified in the Lot Information and Conditions; and
- 3.9.2 if any vehicle shall be delayed beyond the period specified for unloading in the Lot Information and Conditions, as a consequence of Your failure to provide adequate facilities for weighing and unloading then You shall indemnify Us against any claims for demurrage or loss arising which are raised against Us by any haulier employed by Us.

#### **4 SPECIFICATION OF PRODUCTS, STACKING SITES AND ACCESS**

- 4.1 If You are to collect, the Products, Stacking Sites and Authorised Access Routes referred to in this Agreement are specified in the Lot Information and Conditions, and You shall remove the whole of the said Products.
- 4.2 If on inspection of any load at the time of collection or delivery, as appropriate, You consider that the whole or any significant part of the load does not conform to the specification contained in the Lot Information and Conditions, You may reject the load or part of the load and shall immediately contact Us by telephone, and both parties shall keep a written record of the reason for the rejection.
- 4.3 If We consider the rejection of any load is unreasonable We shall notify You within 1 Business Day by telephone to this effect and the load shall be held for inspection

by Our representative. The reject load shall be inspected within 3 Business Days of the original notification and if after such inspection the parties cannot agree, the Inspector appointed under Condition 11.1 of this these Terms shall immediately be requested to inspect the load within and decide whether or not the whole or any part of the load complies with the specification. The decision of the inspector shall be final.

- 4.4 Where Products have been delivered to Your premises We shall remove any load that does not comply with the specification as soon as possible at Our own expense

## **5 RISK AND PROPERTY**

- 5.1 Unless We are to deliver the Products to You, the risk in Products shall pass to You immediately upon, collection or 3 weeks following the issue of Weekly Notification in respect of those Products whichever is the sooner and the 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. Products supplied by Us under the Agreement shall be at Your risk immediately upon commencement of the unloading of the Products from the vehicle making delivery on Our behalf.
- 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 Total Quantity property in and title to all the Products purchased and sold 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 If You are to collect, in the event that access and/or egress to or from the Stacking Sites and or Authorised Access Routes has been curtailed as a

consequence of circumstances pertaining to Condition 3.5.3 or Condition 3.6 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 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. We shall have an absolute discretion whether to refuse such request or grant the same on such terms as We shall think fit. Agreement to change will not be unreasonably withheld.
- 6.1.3 Any change to Expiry Date shall be recorded in writing.
- 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 2.4.1, 3.3.1, 8.2, 8.3, 12, 14.8, 14.13, 14.14, 14.18 or 14.19 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 the Products cannot viably be produced so as to be available on the relevant Stacking Sites;
  - 6.3.5 that other party ceases to carry on business.
- 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, 14.2, 14.5, 14.6, 14.7, 14.9, 14.11, 14.12 or 14.15.
- 6.6 If You are to collect, 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 on payment for them.
- 6.7 If You are to collect, 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 If You are to collect, 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 shall be the price accepted by Us in Your successful Bid, which price be shown in the "My contracts" section of the Website...

## **8 PAYMENTS**

- 8.1 Payment 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 If Condition 8.3 does not apply You shall be required to pay Us Instalments on the Instalment Dates as invoiced by Us and if You are to collect, You shall not be permitted to remove Products until after the relevant payment has been made.
- 8.3 If You have a credit facility, We shall render invoices up to the credit limit determined by Us from time to time at Our sole discretion, being the maximum which may be owed by You to Us at any time under this and any other agreement between Us. Payment shall be made by You 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 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 a payment is due until actual payment. Payments received by Us from You shall be applied first by Us against accrued interest and second against sums incurred under 14.3 and then against the principal debt.
- 8.4 If the credit limit referred to in Condition 8.3 is, or is likely to be exceeded for any reason (of which We shall be sole judge), then the provisions of Condition 8.5 shall apply.
- 8.5 When this sub-condition is applicable under any provision We may, without prejudice to any other remedies available to it under the Agreement or otherwise, notify You that, if You are to collect, no Products may be removed under this or any other agreement between the Us until You have made such payment as We shall, in Our sole discretion determine.
- 8.6 In the event that We issue a notice to You under Condition 8.5, You will not thereby be relieved of any of Your obligations under the Agreement including, without prejudice to the generality of the foregoing, the obligation to remove the Products before the Expiry Date.
- 8.7 We reserve the right to demand a deposit of 10% of the total value of the Agreement. Where We exercise the right to demand a deposit, the deposit shall be lodged by You with Us by 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 Our satisfaction and the payment in full of all sums due by You to Us.

In the event that:

- 8.7.1 You fail to pay in full any sums due by You to Us; and/or
- 8.7.2 We incur costs or suffers losses as a result of You not performing Your obligations under the Agreement to Our satisfaction;

notwithstanding and without prejudice to all other rights and remedies available to Us under the Agreement or otherwise We shall be entitled to appropriate the said deposit or so much thereof as may be required in or towards meeting Our 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 Condition or otherwise under the 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 ASSIGNMENTS**

- 9.1 In the event that We reorganise or of a reorganisation or 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 purchase the Products as appropriate in accordance with the Agreement shall be suspended and that party shall not be liable to meet the obligation to make available or purchase the Total Quantity but shall continue to make available or purchase such Products in such amount as can be made available or purchased 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 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 matters as the Total Quantity as defined in the Lot Information and Conditions, the suitability of Authorised Access Routes 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 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 Throughout the term of the Agreement (and during any further period granted by Us for the removal of Products after the Expiry Date), You shall at Your own expense maintain in force, with an insurance company approved by Us, insurance 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 the works, operations, processes and other acts and omissions pursuant to the Agreement carried out by You and of any agent, contractor, or sub-contractor engaged by You in connection with the exercise of Your rights or the performance of Your obligations under the Agreement (and of their respective employees). Your obligations under this sub-condition in relation to any agent, contractor, or sub-contractor (and their respective employees) shall be deemed to be satisfied to the extent that You procure that such agent, contractor, or sub-contractor has effected insurance (with an insurance company and in an amount acceptable to Us) which provides the same level of protection to Us as if such insurance had been effected by You. Furthermore, We may, in Our discretion, agree that Your obligations under this sub-condition in relation to You and Your employees shall be deemed to be satisfied in the event that it is demonstrated to Our satisfaction that an agent, contractor, or sub-contractor has effected insurance (with an insurance company and in an amount acceptable to Us) which provides the same level of protection to Us as if such insurance had been effected by You. Whenever required by Us, You shall produce to Us the policy or policies relating to all such insurances and the receipts for the then current year's premiums in respect of them. The maintenance of insurance in accordance with the provisions of this sub-condition shall not serve to limit or exclude any liability of You to Us in delict or negligence or in respect of any breach of the Agreement.
- 12.2 You shall not do or permit or suffer to be done on the Stacking Sites 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 Stacking Sites. We shall provide a non-exclusive list of hazards on the Authorised Access Routes and Stacking Sites from which risks may arise and these shall be shown in the Lot Information and Conditions. 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 You shall adopt a reasonable method of working such that :-
- 14.2.1 if You are to collect, the Products are removed in an orderly and workmanlike manner;
  - 14.2.2 the Products and any debris resulting from removal thereof are kept clear of all existing buildings, archaeological sites, walls, gates, fences, hedges, drains, watercourses, roads, rides and tracks;
  - 14.2.3 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
  - 14.2.4 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
  - 14.2.5 You shall be liable to Us for any damage to Our property due to any act or default by You, and shall make good any such damage as soon as reasonably practicable; and
- 14.3 If You shall fail to comply with any of the provisions in Condition 14.2 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 then, 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.
- 14.4 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).

- 14.5 You shall at all times comply with all Employment Law and additionally the following:-
- 14.5.1 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.
- 14.5.2 Any overhead electric lines in the area covered by the Agreement, will be indicated on the Sale Map. The agent responsible for any such overhead electric lines will be listed in the Lot Information and Conditions. We will ensure that the Products are stacked outwith 2 tree lengths of any overhead powerline at all times. 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.
- 14.6 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 Stacking Sites. We shall in accordance with Condition 13.2, estimate the potential frequency of incursions to the Authorised Access Routes and Stacking Sites by the general public and this shall be indicated in the Lot Information and Conditions.
- 14.7 During the Pine Shoot Beetle breeding season, from May to September inclusive in any year We shall have the right to peel any logs of pine which have not been removed by You in accordance with the terms of the Agreement and to recover the costs thereof from You.
- 14.8 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 under Our direction to prevent the risk of fire on the Work Site or Your operations causing fires on or spreading to any adjoining or surrounding ground.
- 14.9 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 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.
- 14.10 If for some reason not foreseen at the time You 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 and amendment to the terms of the Agreement. Any new terms reasonably agreed as a result of that or any subsequent meeting shall be deemed to form part of the Agreement. Where this condition applies, We shall be deemed not to be in breach of the Agreement.
- 14.11 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 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.

- 14.12 No caravans, mobile homes, campervans or equivalent vehicle or tent shall be brought on Commission Land without Our written consent.
- 14.13 You shall at all times comply with all Environmental Law and any other regulation affecting the conduct of Your business and ensure that no harm to any person, property, any living organisms or the environment may result from Your acts or omissions or those of Your employees, agents, contractors, sub-contractors and the employees of any of them, in relation to the Agreement.
- 14.14 You shall not offer any reward, inducement, emolument or incentive whatsoever, to any person in the employment or performing a contract for services on Our behalf.
- 14.15 We both agree to provide all necessary safety signs (the Lot Information and Conditions will detail 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 the likely presence of children.
- 14.16 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.
- 14.17 We shall be entitled at all times to enter the Work Site and 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.
- 14.18 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 Our power to provide or assist in the provision of tourist, recreational or sporting facilities.
- 14.19 You undertake to comply and to procure the compliance of Your employees, agents, contractors, sub-contractors and the employees of any of them at all times with Our 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 Us at Your request.

## **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**

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.

## **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/despatched/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 If the Products are located in England or Wales, then the Agreement shall be construed according to and governed by the law of England and Wales and each of the parties hereby irrevocably submits to the jurisdiction of the English and Welsh courts. If the Products are located in Scotland, then 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.