

# Natural Resources Wales

## TERMS AND CONDITIONS FOR STANDARD PURCHASE OF SAWLOGS OR SMALL ROUNDWOOD BY WEIGHT

You have offered in auction or tender or negotiation to purchase sawlogs or small roundwood by weight 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 is contained within these terms and conditions and which will be created by Our acceptance of Your Bid, all as more fully described in clause 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 1988 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 a day other than a Saturday, Sunday or public holiday when banks in London are not open for Business;

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

**"Confidential Information"** means all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

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

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**"Environmental Law"** means and includes all European Union (for so long as it shall be binding in the United Kingdom), 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;

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

**"FISA"** means the Forest Industry Safety Accord, registered at 59 George Street, Edinburgh, EH2 2JG;

**"Felling Order"** means the order specified in the Lot Information and Conditions any change to which must be agreed between the parties;

**"Felling Removal Date"** means the date by which the Products are to be removed from the Work Site, as specified in the Lot Information and Conditions, any change to which must be agreed between the parties;

**"Force Majeure"** has the meaning set out in clause 10.1;

**"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;

**"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;

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

**"Price"** means the price as specified in or agreed pursuant to clause 7.

**"Products"** means the sawlogs or small roundwood located on the Stacking Sites in the period between the Commencement Date and the Removal Date, details of which are set

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out in the Lot Information and Conditions. In relation to sawlogs, these shall be classified in accordance with the Forestry Commission Field Book 9 ("*Classification and Presentation of Softwood Sawlogs, Second Edition*" hereinafter "**Forestry Commission Field Book 9**") or any subsequent edition in force as at the time of sale.

**"Road Haulage of Round Timber Code of Practice"** means the document published by the Timber Transport Forum 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 crosses or otherwise identified in the Sale Map, 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 to be removed pursuant to the Agreement, plus or minus 10% in accordance with clause 2.3;

**"UK Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**"We"** means Natural Resources Wales, acting in exercise of the powers contained in the Forestry Act 1967 and having its principal place of business at Tŷ Cambria, 29 Newport Road, Cardiff, CF24 0TP. **"Our"** and **"Us"** have a corresponding meaning;

**"Website"** means the part of the Natural Resources Wales website dedicated to electronic sales. The address of the timber sales homepage <https://esales.naturalresources.wales>;

**"You"** means the party accessing and using this website to purchase sawlogs or small roundwood 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 shown by crosses or otherwise identified on the Sale Map; and

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

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force from time to time.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

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1.8 Any words following the terms “including”, “include”, “in particular” or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.9 The words “writing” or “written” also include email.

## 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 Lot Information and Conditions and such other terms and conditions as We may agree with You. 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 by You in the ‘Your User Profile’ section of the Website.

2.2 Pursuant to the Agreement, We shall sell and You shall purchase the Total Quantity.

2.3 Neither party will be deemed to be in breach of their obligations under this Agreement where the amount of Products made available, purchased or uplifted is within plus or minus 10% of the Total Quantity specified in the –Lot summary or such variance as specified in the special conditions.

2.4 The 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 For the purposes of this Agreement only and subject to clauses 3.1.1 to 3.1.5 inclusive and clause 6.13 or as otherwise provided in the Agreement, We shall:-

3.1.1 subject to clause 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 any restrictions as stated in the Lot Information and Conditions;

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

3.1.3 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;

3.1.4 notify You on a weekly basis between the Commencement Date and the Expiry Date which Products are available in accordance with clause 3.2.3 (hereinafter referred to as a “**Weekly Notification**”);

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

3.2 You, as purchaser:-

3.2.1 shall only be entitled to remove any Products in accordance with Our approved dispatch procedure in respect of each individual load as set out in Schedule [NUMBER];

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

3.2.3 save as may otherwise be provided in the Agreement, shall remove any Products specified in any Weekly Notification within 15 Business Days from the date of issue of

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the Weekly Notification. If You fail to remove the Products within 15 Business Days from the date of notification in accordance with this clause 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 15 Business Days. For the Purpose of this clause 3.2.3, this estimate shall be regarded as the weight ticket weight;

3.2.4 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 1988 which may be in force from time to time whilst accessing and egressing from the Stacking Sites and whilst using any Authorised Access Routes.

3.3 The weight of Products purchased and sold under this 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 Us together with a copy of the Conveyance Note not more than twelve Days after removal of the load to which the weight ticket relates. Where in respect of any such 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.

3.4 You shall procure that:-

3.4.1 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;

3.4.2 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;

3.4.3 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;

3.4.4 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;

3.4.5 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 Your operations which would prevent free flow of traffic except for a minimum of delay;

3.4.6 no unauthorised or unlawful discharges are made as a result of Your operations to any drains, sewers, controlled waters or other waters either in contravention of Environmental Laws or which may cause damage to man, any other living organism or the environment.

3.5 In the event that all or part of the Authorised Access Routes require repair works or maintenance, 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.

3.6 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 10 Business Days of that fact being made known to Us endeavour to repair

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such damaged part or parts of that Authorised Access Route to the standard of the road classification as stated in.

3.7 Without prejudice to any of Our other rights, You shall be liable for any wilful, reckless or negligent damage (including without limitation damage specified in clause 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 10 Business Days where practicable of its occurrence.

3.8 In relation to small Roundwood, if We are to deliver the Products:

3.8.1 the Products shall be made available to the address indicated in the '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 the unloading and shall use best endeavours to unload each lorry within the time periods specified

3.8.2 if any vehicle shall be delayed beyond the period specified for unloading in 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 Stacking Sites and Authorised Access Routes referred to in the Agreement are specified in the Lot Information and Conditions, and You shall remove the Total Quantity no later than the Expiry Date.

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 one 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 clause 11.1 of this Agreement 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 the 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 it is agreed that We will deliver Products to you, the risk in all the Products (whether sawlogs or small roundwood) shall pass to You immediately upon collection or 15 Business Days following the issue of the Weekly Notification in respect of those Products whichever is the sooner and You shall be responsible to us for any loss or damage to or caused by the Products from such date as a result of any act or omission by You or Your employees, agents, contractors, sub-contractors or the employees of any of them. Any Products delivered by Us 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 clause 5.1 above, unless and until You have paid Us all sums due pursuant to the Agreement and removed the Total Quantity of the Products (if

applicable), property in and title to all the Products purchased and sold shall remain with Us and the following provisions shall be applicable:-

- 5.2.1 You grant to Us an irrevocable licence to enter Your premises or any other premises in Your occupational control where the Products are or are believed by You or 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 Us in repossessing the Products whether or not they are still under Your control shall be borne by You;
- 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 Your creditors or if any of the other circumstances specified in clauses 6.6.1 to 6.6.6 inclusive are to Your knowledge considered likely to arise;
- 5.2.3 You shall not remove, deface or obscure any identifying mark or packaging on or relating to the Products; and
- 5.2.4 You shall maintain the Products in satisfactory condition and keep them insured against all risks for their full price.

## **6 DURATION AND TERMINATION**

- 6.1 The Agreement shall come into force on the Commencement Date and shall continue in force until the earlier of the fulfilment of delivery of the Total Quantity in accordance with this Agreement or the Expiry Date.
- 6.2 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 clause 3.4.3 or clause 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.
- 6.3 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.
- 6.4 Any change to the Expiry Date shall be recorded in writing.
- 6.5 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 clauses 2.4.1, 3.3.1, 8.2, 8.3, 12, 14.8, 14.13, 14.14 or 14.18 with immediate effect.
- 6.6 Either party shall be entitled forthwith to renegotiate (in the case of clause 6.6.8) or terminate the Agreement by written notice to the other if:
  - 6.6.1 the other party fails to pay any amount due to it under this Agreement on the due date for payment and remains in default not less than [10] Business Days after being notified in writing to make such payment;

- 6.6.2 the other party commits a material breach of any term of this Agreement which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [20] Business Days after being notified in writing to do so;
- 6.6.3 the other party suspends or ceases, or threatens to suspend or cease carrying on all or a substantial part of its business;
- 6.6.4 an order is made or resolution passed for the winding up of the other party;
- 6.6.5 a provisional liquidator is appointed in respect of the other party, a notice of intention to appoint an administrator is filed or an administration order is made in respect of the other party, a receiver is appointed in respect of the other party or all or any of its assets or if the other party is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986 or if any voluntary arrangement is proposed under Section 1 of the Insolvency Act 1986 in respect of the other party;
- 6.6.6 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 6.6.3 to 6.6.6 above; or
- 6.6.7 that part of the forest covered by the Agreement from which the Products are to be produced becomes subject to serious fire or serious windblow damage such that the Products cannot viably be produced so as to be available on the relevant Stacking Sites;
- 6.7 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 clauses 6.5 or 6.6 above, save that in the case of a Remediable Breach (as that expression is defined in clauses 6.7.1 and 6.7.2) 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 You commit a second similar Remediable Breach, We shall be entitled to terminate the Agreement forthwith. A breach shall be considered to be a Remedial Breach if:
- 6.7.1 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
- 6.7.2 You fail to comply with clauses 13.4, 14.2, 14.5, 14.6, 14.7, 14.9, 14.11, 14.12 or 14.15.
- 6.8 Upon termination of the Agreement whether by written notice or expiry of time, You shall immediately cease the removal of the Products but We may, at our discretion, allow You a further period in which to remove any Products on payment for them.
- 6.9 On the later of termination or expiry of any further period granted, any Products remaining on Natural Resources Wales 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.
- 6.10 Within two months of the termination of the Agreement You shall remove any buildings, erections or equipment You may have placed on Natural Resources Wales 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 We think fit and You shall on demand reimburse Us for all costs incurred in their removal and disposal and making good any damage resulting therefrom.



6.11 The right to terminate the 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.

6.12 It is hereby agreed that You will have access to the Work Site as a licensee only and You 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 clause 6.10.

## **7 PRICE**

7.1 The Price to be paid for the Products shall be the price accepted by Us in Your successful Bid

## **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 clause 8.2, 8.3 and 8.4.

8.2 In relation to sawlogs, if clause 8.4 does not apply You shall be required to make advance payment as invoiced by us and You shall not be permitted to remove Products until after the relevant payment has been made.

8.3 In relation to small roundwood, if clause 8.4 does not apply, You shall be required to pay Us in Instalments on the Instalment Dates as invoiced by Us and if You are to collect, You shall not be permitted to remove the Products until after the relevant payment has been made.

8.4 If You have a credit facility, We shall render invoices for the Products uplifted in relation to sawlogs and up to the credit limit in relation to small roundwood 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 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.

8.5 If the credit limit referred to in clause 8.4 is exceeded, or is likely to be exceeded for any reason (of which We shall be sole judge), then the provisions of clause 8.6 shall apply.

8.6 We may, without prejudice to any other remedies available to Us under the Agreement or otherwise, notify You that 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.

8.7 In the event that We issue a notice to You under clause 8.6, 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 Quantity before the Removal Date or the Expiry Date.

8.8 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 10 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:

8.8.1 You fail to pay in full any sums due by You to Us; and/or

8.8.2 We incur costs or suffer 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 this clause 8.8.2 and/or the sum due to Us specified in clause 8.8.1 above. The said deposit or any balance of it remaining after the application of this clause 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 in the event of a reorganisation of any of Our commercial trading activities that results in Our business and activities being implemented, performed, carried out, effected or undertaken by a new body We shall be entitled at any time to assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of Our rights and obligations under this Agreement and such dealing shall be binding on You upon Us giving notice to You.

9.2 You shall not assign, transfer, mortgage, charge, subcontract, delegate declare a trust over or deal in any other manner with any of Your rights or obligations under this Agreement without Our consent in writing, which consent shall not unreasonably be withheld for the purposes of this clause 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 **Force Majeure** means any circumstances not within a party's reasonable control including, without limitation:

10.1.1 acts of God, flood, drought, earthquake, fire or other natural disaster other than fire or windblow damage as referred to within clause 6.6.7;

10.1.2 epidemic or pandemic;

10.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

10.1.4 nuclear, chemical or biological contamination or sonic boom;

10.1.5 any law or other action taken by a government or public authority, including without limitation imposing an export or import restriction, quota, prohibition or failing to grant a necessary licence or consent;

10.1.6 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and

10.1.7 interruption or failure of utility service.

10.2 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 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.

10.3 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

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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 Clauses 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, or Force Majeure shall be referred to the Inspector. In deciding any question referred to him hereunder the Inspector shall act on his own skilled judgement after making any inspection or enquiries which he may think necessary. The Inspector's decision on any such question shall be final and binding on both parties. The costs and charges of the Inspector shall be paid by the parties in equal shares. Both parties shall provide the Inspector with any documentation or assistance he may require to discharge his functions under this 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 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 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 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 (or to such higher level of indemnity as may be specified in the Lot Information and Conditions) 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-clause 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-clause 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-clause 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 clause 12.1 void or voidable.

## 13 INDEMNITY

13.1 Nothing in this Agreement shall limit or exclude Our liability for:

13.1.1 death or personal injury caused by Our negligence;

13.1.2 fraud or fraudulent misrepresentation; or

13.1.3 breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.1, We shall not be liable to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

13.2.1 loss of profits;

13.2.2 loss of sales or business;

13.2.3 loss of agreements or contracts;

13.2.4 loss of anticipated savings;

13.2.5 loss of or damage to goodwill; or

13.2.6 any indirect or consequential loss.

13.3 Subject to clause 13.1, Our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to 100% of the total cost of the Products under the Lot to which the breach relates, or such other amount contained in the Lot Information and Conditions.

13.4 You hereby undertake 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.

13.5 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 nonexclusive list of hazards on the Authorised Access Routes and Stacking Sites from which risks may arise and these shall be shown on the location site or contained within 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.

13.6 The terms implied by Sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

## 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

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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, that 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;

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.

14.3 If You shall fail to comply with any of the provisions in clause 14.2 above then, within 10 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 Natural Resources Wales 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 Vocational Qualification. During consolidation training prior to full assessment against a national standard a valid "Record of Training and Achievement" or qualifications issued by NPTC 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 also be indicated on the Sale Map or will be listed in the Lot Information and Conditions. We will ensure that the Products are stacked out with 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 FISA 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 Natural Resources Wales Land and in and around the Authorised Access Routes and Stacking Sites. We shall in accordance with clause 13.4, 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 Natural Resources Wales 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 chainsaws or any other machines on Natural Resources Wales 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 clause 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 Natural Resources Wales Land by You without Our written consent. Any animals employed to remove Products or brought on to Natural Resources Wales 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 Natural Resources Wales 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 Both parties agree to provide all necessary safety signs (the Location Map or the Lot Information and Conditions will 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 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 1949 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.

## **15 RELATIONSHIP OF THE PARTIES**

15.1 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;

15.1.1 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;

15.1.2 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;

15.1.3 to pledge or purport to pledge Our credit; nor

15.1.4 to take or purport to make Us bound as guarantor or surety in any manner of way whatsoever.

## **16 CONFIDENTIALITY**

16.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own Confidential Information of a similar nature, being at least a reasonable degree of care.

16.2 Confidential Information may be disclosed by the receiving party to its employees, agents, contractors and sub-contractors and the employees of any of them only for the purposes of carrying out its obligations under this Agreement.

16.3 The obligations set out in this clause 16 shall not apply to Confidential Information which the receiving party can demonstrate:

16.3.1 is or has become publically known other than through breach of this clause 16;

16.3.2 was in the possession of the receiving party prior to disclosure by the other party;

16.3.3 was received by the receiving part from an independent third party who has full right of disclosure; or

16.3.4 was required to be disclosed by a governmental authority, stock exchange or regulatory body or pursuant to any law, provided that where not restricted from doing so, the other party subject to such requirement to disclose gives the other party prompt written notice of the requirement;.

16.4 You acknowledge that We may receive requests from third parties to disclose certain information in terms of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. Where We feel that such disclosure is necessary to enable Us to meet Our obligations under the Act or the Regulations, We will endeavour to advise You prior to disclosing the information to the relevant third party. You acknowledge that any disclosure by Us under the Act or Regulations will not constitute a breach of this clause 16 or of any of Our other obligations under the Agreement.

## **17 SPIRIT, AIMS AND INTENT**

17.1 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**

18.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **19 NOTICES**

19.1 Any notice or document required or permitted to be given or served under or in connection with this Agreement should where possible be given by email, failing which by first class recorded delivery post or personal delivery, 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 the '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 received:

19.2.1 if sent by first class recorded delivery post at 09:00 hours on the second Business Day after the letter containing same was posted;

19.2.2 if hand delivered at the time of delivery; or

19.2.3 if sent by email when sent, provided that no failed delivery notice is received or, if that is not between 09:00 hours and 17:00 hours on a Business Day, at 09:00 hours on the first Business Day following the date of despatch.

19.3 In proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and posted/despached/sent.

## **20 THIRD PARTY RIGHTS**

20.1 No one other than a party to this Agreement, their successors in title and permitted assignees, shall have any right to enforce any of its terms.

## **21 SEVERENCE**

21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

21.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended,

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it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22 VARIATION**

22.1 No variation of this Agreement shall be effective unless it has been agreed by both parties and is in writing and signed by both parties (or their authorised representatives).

## **23 ENTIRE AGREEMENT**

23.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between both parties, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **24 COSTS AND EXPENSES**

24.1 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.

24.2 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.

## **25 GOVERNING LAW AND JURISDICTION**

25.1 The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation 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.

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