

Pricing Procedures for long-term timber sales contracts

Application

1. This is version 0.1 of these procedures and where they are referenced in version 0.1 of the terms and conditions of Forestry England's sales contracts for 'Forest Products' and for 'Standing Trees and Other Products to be Harvested', these procedures are incorporated into those terms and conditions.
2. These procedures apply specifically to long-term contracts (LTC) for the sale of all forestry Products as indicated, and include standing trees, roundwood or other Products (such as biomass, fibre or residues).
3. Nothing in these procedures can or is intended to change or affect the provisions in the sales Contracts. These procedures set out, for the avoidance of doubt, how certain Contract provisions are to be implemented.
4. "You" (and other terms used in this document) are as defined herein or in the Contract.
5. The standard terms and conditions for timber sales contracts along with these procedures and other incorporated documents and information are held on Forestry England's Contract Documents Webpage at <https://www.forestryengland.uk/timber/contract-documents>

Contractual requirements

6. Following acceptance of Your Bid for an LTC the Price for the first tranche / year / part-year / period ("Period") of that LTC will be as per Your Bid. The Price for each Lot in subsequent Periods will be the revised Price agreed in accordance with these procedures.
7. You have no rights under the Contract to access the associated Work Sites, Stacking Sites or Authorised Access Routes, and no trees may be felled, no Products may be harvested, and no Products may be removed from the Stacking Sites until a Price, a revised Price, or a temporary Price is agreed by Forestry England in writing under these procedures.
8. Subject to the terms and conditions of the Contract, You agree to buy, and Forestry England agrees to sell, the Total Quantity or Estimated Quantity (as defined in the Contract) set out in the Lot Information and Conditions relevant to each Period of the LTC.

LTC Pricing Procedures for the sale of standing trees and other products to be harvested

9. Forestry England will arrange a sales event in eSales for the Estimated Quantity of trees or Products for the subsequent LTC Period (in this document the "Offer"). The complete Offer may be made as a single Lot, or in several Lots which may be offered at different times.
10. Forestry England will provide You with the relevant Lot information and Conditions for the subsequent LTC Period and will invite You, as a sole bidder, to make an online Bid using eSales. For each Lot, Your Bid must be made before the sales event closes to bids and if You do not Bid You will not be awarded that part of the Offer for the subsequent Period of the LTC.
11. If Your Bid on any Lot meets or exceeds Forestry England's reserve price You will be notified in writing and Your LTC will then include that part of the Offer for the subsequent Period of the LTC at the revised Price.

12. If Your Bid on any Lot is less than Forestry England's reserve price, You will not be awarded that part of the Offer for the subsequent Period of the LTC unless Forestry England, at its sole discretion, chooses to offer to negotiate a revised Price with You.
13. If, for any Lot, negotiation does not result in a revised Price agreed in writing by Forestry England before the start of the LTC (or before any later date that Forestry England may have agreed in writing), that part of the Offer for the subsequent Period of the LTC may be withdrawn by Forestry England.

LTC pricing procedures for the sale of forest products¹

14. One month before the end of the first Period of the LTC Forestry England will provide You with the relevant Lot information and Conditions for the next LTC Period and will arrange a meeting with You to determine a revised Price for the next Period.
15. Where a pricing mechanism has been agreed in writing, You and Forestry England shall share any relevant information according to the pricing mechanism timetable and shall agree in writing the revised Price before the start of the next LTC Period.
16. Where a negotiation is required, Forestry England and You shall agree to recognise and consider relevant and appropriate factors such as the performance of the Contract to date and the open market price received by Forestry England for similar Products and the open market value of Your range of milled and manufactured products, taking into account factors such as haulage costs and the distribution of sizes in the Total Quantity to be removed or delivered in the forthcoming LTC Period.
17. A revised Price can apply for the whole quantity of the Products to be removed or delivered over the whole of the Period, or it can apply to only the first part of the Period and /or a part of the quantity of Products, as shall be agreed in writing between Forestry England and You as part of the negotiation.

A revised Price is not agreed

18. If a revised Price is not agreed in writing before the start of the next LTC Period, then Forestry England may suspend Your removal, or pause the delivery, of the Products until a revised Price is agreed or until the Contract expires or is otherwise terminated.
19. Forestry England may however decide to continue to allow You to remove, or may continue to deliver, the Products while a revised Price is being negotiated. If so the continued removal or delivery will be subject to the following terms;
 - a. The continued removal or delivery of Products will be assigned to the prior LTC Period and You will pay for the Products at the Price agreed for that prior Period and there will be no obligation on You or Forestry England to make a retrospective financial adjustment when a revised Price is agreed, or if a temporary Price is applied.
 - b. The continued removal or delivery will be at such rate of supply as Forestry England may reasonably decide in the light of Your willingness to engage in the negotiation process during the period of the continued removal or delivery of Products.
 - c. A quantity of Products equal to the quantity removed or delivered during the continued removal or delivery of Products will be withdrawn from the next LTC Period. Forestry England, acting reasonably, will decide which specific Products are to be withdrawn.
20. The continued removal or delivery of Products against the prior LTC Period as per point 19 will cease when the first of the following events occurs:

¹ This contract type covers the sale of Products that have been harvested by Forestry England and sold at roadside (also known as 'Direct Production' (DP))

- a. A revised Price is agreed. In this event the removal or delivery of Products for the next Period will start immediately, or on a near date agreed in writing, and the revised Price will take effect on that date. The provisions of point 19c will apply.
 - b. The quantity of Products removed or delivered against the prior LTC Period reaches 110% of the quantity offered for that Period. This limit includes any over-supply of Products already made during the Period.
 - c. 2 calendar months pass since the next LTC Period should have started.
 - d. A temporary Price (see points 22 to 32) is implemented by Forestry England.
21. If the continued removal or delivery of Products ceases under point 19b, point 19c or point 19d, no further removal or delivery of Products shall take place and Forestry England shall then decide whether to withdraw the Offer for the next period and manage the LTC in accordance with the procedure in points 33 to 40, or whether to continue the LTC by starting the next Period, and using a temporary Price calculated as per point 23. Forestry England will notify You in writing of their decision.

Temporary Price

22. In the event that Forestry England decides to continue the LTC by starting the next Period and applying a temporary Price, Forestry England shall use the Forestry Commission Competitive Softwood Log Index (“Index”) which is published biennially at webpage <https://www.forestresearch.gov.uk/tools-and-resources/statistics/statistics-by-topic/timber-statistics/timber-price-indices/> and as soon as practicable following the next publication of the Index, Forestry England shall determine a temporary Price for the LTC using the calculation at point 23 and numbers rounded to 2 decimal places.
23. The calculation will be; **Current Price, multiplied by Index A, divided by Index B** where Index A is the newest indexed value, and Index B is the previous indexed value, both from the latest published Forestry Commission Competitive Softwood Log Index.
24. Forestry England shall notify You in writing of the temporary Price and the date on which the temporary Price and the removal or delivery of Products for the next Period shall start. Any continued removal or delivery of the Products against the prior LTC period under point 19 will cease on the same date.
25. A quantity of Products equal to the quantity removed or delivered during the continued removal or delivery of Products will be withdrawn from the next LTC Period. Forestry England, acting reasonably, will decide which specific Products are to be withdrawn.
26. If required, You shall apply the notified temporary Price on the notified date within Your systems such that You meet all of the requirements of the Self-billing Procedures and the terms and conditions of the Contract for payment for the Products.
27. Should You fail to implement a temporary Price as per point 26 that has been correctly calculated and notified to You under these procedures, Forestry England will suspend Your rights to access the Stacking Sites and Authorised Access Routes and accordance with the Contract may extend that suspension to some or all of Your other timber sales contracts with Forestry England.
28. The monthly rate of removal or rate of delivery of the Products under a temporary Price will not at any time significantly exceed or fall below the rate required to remove or deliver the Total Quantity (as adjusted for any withdrawn quantity) during the remaining part of the LTC Period.

Duration of a temporary Price

29. If at any time You do not remove or do not accept delivery of the Products under a temporary Price in accordance with point 28, Forestry England may give You notice in writing and immediately withdraw the remaining part of the Offer for that LTC Period and Forestry England will not be in breach of the Contract.

30. Where a revised Price is agreed while a temporary Price is in use, the temporary Price shall cease when the revised Price comes into effect and there will be no obligation on You or Forestry England to make a retrospective financial adjustment.
31. Otherwise, a temporary Price shall apply as per these Procedures until six calendar months have passed since the LTC Period should have started. At that time, You shall cease removal of the Products under the temporary Price (or Forestry England shall cease delivery of Products) and Forestry England will then withdraw the remainder of the Offer for the Period from the LTC and Forestry England will not be in breach of the Contract.
32. If under point 29 or point 31 a temporary Price ends, all removal or delivery of Products shall cease under the LTC until Forestry England again seeks to arrange a meeting with You to agree a revised Price for the subsequent LTC Period. If a revised Price is not agreed before the start of the subsequent Period and a temporary Price has been set or applied to the LTC once before, Forestry England will move to terminate the LTC.

When the Offer for the subsequent LTC Period is withdrawn

33. Forestry England will not make a new or revised offer of trees and /or Products for the subsequent Period (or for the remainder of a Period in which a temporary Price has been applied).
34. You will have no rights under the LTC to buy or harvest or remove the trees and /or Products in accordance with the LTC, and You will have no obligation to pay for those trees and /or Products that are withdrawn from the LTC under these pricing procedures.
35. Subject to the provisions of point 32, the LTC will be held open, but in abeyance, until Forestry England again gives You notice that a Price revision for the next LTC Period is to be agreed.
36. When Forestry England next gives You notice of a Price revision, the LTC pricing procedures will be repeated in respect of the next Period and the pricing procedure will continue to repeat for each future Period until the LTC expires or is otherwise terminated in accordance with the contract.
37. The unsold trees and /or Products included in the Offer and then withdrawn from the LTC under the pricing procedures will be for Forestry England to retain or dispose of as Forestry England sees fit.

Sale of trees and /or Products withdrawn from the LTC

38. If Forestry England decides to offer all or some of the unsold trees and /or Products for sale by open or competitive tender, any or all of the quantities, contract timings and the Lot information and Conditions may be changed.
39. You may make a further Bid for the trees and /or Products as offered in the open sale. If Your Bid is then accepted by Forestry England in writing, You will be awarded a standard timber sale contract under the standard terms and conditions of sale, and point 35 will continue to apply to Your LTC.
40. You will not be liable for any of Forestry England's costs or losses arising from the sale of the trees and /or Products that have been withdrawn from the LTC under these pricing procedures.

Continuity considerations

41. Where all the trees and Products within the Offer for the current LTC Period have already been harvested or removed to Forestry England's satisfaction, Forestry England may agree with You a Price revision earlier than scheduled.

42. If a revised Price is agreed in writing before the start of the Period to which it applies, Forestry England shall be entitled to permit the harvesting and /or the removal of Products to commence before the subsequent Period was due to start if You agree. Forestry England will not increase the quantity of the Offer but the Period will be extended to expire as originally intended.
43. If all the trees and Products within the Offer for the current LTC Period have not been harvested and /or removed to Forestry England's satisfaction at the start of a subsequent Period, Forestry England shall be entitled to withdraw the entire Offer for the subsequent Period and the procedures in points 33 to 40 will apply.
44. Where under point 43 the Offer is not withdrawn entirely for the subsequent Period, Forestry England will be entitled to reduce the quantity in the Offer for the subsequent Period and to re-start these pricing procedures when the trees and Products within the Offer for the prior Period have been (or are close to being) harvested and /or removed to Forestry England's satisfaction. In this case Forestry England will not extend the next LTC Period and it will expire as originally intended.

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