

**FORESTRY ENGLAND**  
**STANDARD CONDITIONS GOVERNING THE SALE OF**  
**FOREST PRODUCTS**  
**VERSION 0.1**

You have offered in auction or tender or negotiation to purchase forest Products from Forestry England and Forestry England’s acceptance of that offer is subject to the following terms and conditions which will govern the purchase.

**CONTENTS**

1. INTERPRETATION .....	3
2. SALE OF THE PRODUCTS .....	7
3. REMOVAL OF THE PRODUCTS .....	7
WORK PLANNING .....	8
WORK METHODS.....	9
PRE-COMMENCEMENT .....	9
STACKS OF PRODUCE .....	9
ROAD CONDITION AND REPAIR .....	9
WET AND/OR COLD WEATHER .....	10
DAMAGE TO PROPERTY .....	10
SUPERVISION AND CORRECTIVE ACTIONS .....	11
MANAGEMENT OF SAFETY & PROTECTION OF THE ENVIRONMENT .....	11
4. RIGHT OF VETO.....	12
5. DELIVERY OF THE PRODUCTS.....	12
6. MEASUREMENT OF THE PRODUCTS .....	12
DISPATCH PROCEDURES.....	13
WEIGHT TICKETS .....	13
EFIDS.....	13
SUPPLIER’S INVOICES (SELF-BILLING) .....	13
MEASURED LOADS.....	12
UNWEIGHED LOADS.....	13
7. RISK AND PROPERTY .....	13
8. DURATION .....	14
CURTAILED ACCESS .....	14
CHANGE OF EXPIRY DATE.....	14
9. RENEGOTIATION .....	14
10. SANCTIONS AND SUSPENSION.....	15
11. TERMINATION .....	16
REMEDIAL BREACH .....	16
REMAINING PRODUCTS .....	16
REMOVAL OF EQUIPMENT .....	17
POWER OF ATTORNEY.....	17

12. PRICE ..... 17

13. PAYMENT ..... 18

    AGREED CREDIT ..... 18

    DEPOSITS ..... 19

14. ASSIGNMENTS AND SUBCONTRACTING ..... 20

15. FORCE MAJEURE ..... 20

16. DISPUTE AND ARBITRATION ..... 20

17. LIABILITY, INDEMNITY AND INSURANCE ..... 21

18. RELATIONSHIP OF THE PARTIES ..... 21

19. CONFIDENTIALITY ..... 22

20. SPIRIT, AIMS AND INTENT ..... 22

21. REWARDS ..... 22

22. WAIVER ..... 22

23. NOTICES ..... 23

24. COSTS AND EXPENSES ..... 23

25. SET OFF ..... 23

26. GOVERNING LAW AND JURISDICTION ..... 24

## 1. INTERPRETATION

**“Applicable Laws”** means and includes all European Union law (as are applicable at the date of and during the course of the Contract), 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 that are applicable to the removal of the Products including but not limited to Employment law and Environmental Law

**“Authorised Access Routes”** means the forest roads to be used by You pursuant to the Contract in relation to the removal of the Products, marked as such on the Sale Map. Authorised Access Routes are suitable for use by 44 tonne (gross) articulated lorries unless other restrictions are stated in the Lot Information and Conditions. Forestry England’s forest roads are classed as public roads and are subject to the appropriate parts of the Road Traffic Act 1988 (as may be amended from time to time).

**“Bid”** means the offer by You to purchase the Products from Forestry England, either by tender, auction or negotiation as provided for in the Lot Information and Conditions and made in the style prescribed by Forestry England as set out from time to time in eSales or as otherwise agreed in writing by Forestry England. Your Bid must include all of the costs of removing (or accepting delivery of) the Products including but not limited to adequate allowance for said removal to be supervised and fully completed using safe systems of work and to meet the welfare needs of Your Operators.

**“Business Day”** means any day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England.

**“Contract”** means the written agreement to purchase the Products from Forestry England, which will be created by Forestry England’s acceptance of Your Bid in the manner more fully described in Condition 2 below and which is on the terms set out in these Terms and Conditions and the Lot Information and Conditions.

**“Contract Documents Webpage”** is a part of the Website at <https://www.forestryengland.uk/contract-documents> and it holds these terms and conditions and the procedures documents and administration cost information incorporated into this Contract. For the avoidance of doubt, the documents and information incorporated into this Contract bear the same version number as that shown in the title of these terms and conditions.

**“Contract Manager”** means Forestry England’s named representative who is responsible for the management of this Contract and to whom all notices, correspondence and dialogue must be directed initially. The Contract Manager may appoint a colleague or a contractor to act as their deputy. You will be notified in writing of all necessary contact details.

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

**“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 or radioactive substance whether or not such emission, substance or waste is referred to specifically in or regulated under any Environmental Law.

**“Dispatch Procedures”** means the procedures and requirements (which may be amended from time to time) set out on the Contract Documents Webpage, that You must follow to obtain Forestry England authorisation to load the Products onto your vehicle and take them from the Work Site.

**“Dispatch Reference Note”** (DRN) means a uniquely numbered paper or electronic document that is assigned to an individual Load (or other identified quantity) of Products to provide a unique reference number that is to be associated with every transactional process for that specific Load (or identified quantity) including loading, removal, weighing and payment.

"EFIDS" means the 'Electronic Forestry Information Data Schema'. This is the Forestry England data standard for the transfer of weighbridge data from Your systems to Forestry England's system, either directly or via an emailed document containing that data in a form acceptable to Forestry England. Where Forestry England has so agreed, the data transfer may include 'self-billing' arrangements where You create the required supplier's invoice and send it to Forestry England for validation.

"Employment Law" means and includes all European Union law (as are applicable at the date of and during the course of the Contract), 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 Forest Products 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 Union law (as are applicable at the date of and during the course of the Contract), 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.

"eSales" means the third-party online service that Forestry England uses to provide an electronic sales functionality and to manage user access to Forestry England sale events over the internet. eSales is linked from the Timber Sales Webpage at <https://www.forestryengland.uk/timber/timbersales>.

"Expiry Date" means the date that the Contract expires or otherwise terminates, or the Expiry Date set out in the Lot Information and Conditions, whichever is the earlier.

"Forestry England Land" means any land placed at the Forestry Commission's disposal by the Secretary of State under his powers under the Forestry Act 1967.

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

"Forestry England" means the forestry business agency of the Forestry Commission acting in exercise of the powers and duties contained in the Forestry Act 1967. Forestry England has its principal place of business at 620 Bristol Business Park, Coldharbour Lane, Bristol, BS16 1EJ.

"Force Majeure" means an event, or a series of related events, that is outside the reasonable control of the party affected (including but not limited to power failures, internet disruption, industrial disputes affecting any third party, changes to the law, disasters, tree disease, explosions, fires, floods, storms and hurricanes, riots, terrorist attacks and war whether declared or not) other than the provisions in Condition 8.1.

"Forestry Works Manager" (FWM) means the management role that is responsible for commissioning the Work and for discharging all the planning and safety duties set out by FISA for that role as is applicable to the whole forestry industry. You shall appoint a competent person or persons to fulfil the duties of the FWM role and to commission the removal of the Products and to be responsible for the planning and execution of all necessary activities for that in accordance with the Contract.

"Load" means a quantity of Product removed to Your premises or other destination of Your choosing under Forestry England's Dispatch Procedures by a lorry or other vehicle in a single journey.

"Long Term Contract" (LTC) means a multi-period sales Contract which provides for a number of sequential offers of a quantity of Product (comprising one or more Lots which may variously be

repeated or different in specification) within each period of the Contract. LTC Contract numbers are distinguished with the prefix 'L'.

**"Lot"** means a specified quantity of Product that is made available for sale by tender, auction or negotiation.

**"Lot Information and Conditions"** means the schedules to the Contract that contain the maps, detailed information and conditions relating to each Lot and these are available for each Lot on eSales linked from the Timber Sales Webpage.

**"Lump Sum Sale"** means a sale of Products where payment is to be made in one or more instalments as set out in the Lot Information and Conditions, each payment being made in advance of the dispatch of that part of the Total Quantity of Products to which it relates.

**"Pre-Commencement Procedures"** means the procedures documented in Forestry England's pre-commencement forms for recording the transfer of information between the parties to the Contract including any discussions or meeting(s) held at the Work Site or elsewhere prior to the Commencement Date, to discuss safe systems of work and the Lot Information and Conditions in relation to the Work Site.

**"Price"** means the price that You must pay for the Products agreed in accordance with Condition 12.

**"Products" and "Forest Products"** means the parts of felled trees or other material specified in the Lot Information and Conditions that have been harvested by Forestry England. The forest Products are placed on the Stacking Sites for Your removal or they are dispatched by Forestry England to Your premises, all in accordance with the Contract.

**"Red-Amber-Green" (RAG)** means Forestry England's RAG procedures set out on the Contract Documents Webpage for managing safety and environmental protection in contracts under which Forestry England may impose a temporary pause in all or part of Your activities on the Work Site or Authorised Access Routes until corrective measures are put in place by You.

**"Remaining Products"** means the Products paid for or otherwise, that remain on the Stacking Sites upon termination or expiry of the Contract.

**"Road Haulage of Round Timber Code of Practice"** means the document published by the Timber Transport Forum on their website at <https://timbertransportforum.org.uk/work/good-practice> which may be updated from time to time.

**"Roadside"** is a term used to describe the location of the Products once placed on the Stacking Sites

**"Sale Map"** means the map or maps that Forestry England provide to You as part of the Lot Information and Conditions showing the location of the Stacking Sites.

**"Sanctions Procedure"** means Forestry England's procedures described on the Contract Documents Webpage for addressing irregularities with the Dispatch Procedures and over-loaded lorries by applying sanctions that involve a temporary suspension of Forestry England's authorisation to remove the Products.

**"Self-Billing Procedures"** means the set of rules set out on the Contract Documents Webpage that You must follow if Forestry England agrees in writing that You may produce supplier's invoices for the Weight Sale Products that You buy from Forestry England

**"Stacking Sites"** means those locations adjacent to Authorised Access Routes at all times located within the area shown by hatching (or otherwise identified) in the Sale Map, on which the Products will be placed by Forestry England ready for despatch.

**"Timber Sales Webpage"** is part of the Website at <https://www.forestryengland.uk/timber/timbersales> and it provides access to the online eSales service where the Lot Information and Conditions are made available and where the bidding and award of contracts for the sale and purchase of timber is conducted.

**"Total Quantity"** means the quantity of Products (including the attached bark) to be bought and sold as stated in the Lot Information and Conditions subject to Conditions 2.3 and 2.4.

**"UK Forestry Standard"** means the UK Governments' published approach to sustainable forestry, including standards and requirements, regulations, monitoring, and reporting. It is available at from the webpage at [www.gov.uk/government/publications/the-uk-forestry-standard](http://www.gov.uk/government/publications/the-uk-forestry-standard)

**"UKWAS"** means the version of the 'UK Woodland Assurance Standard' that is the latest published at the time the Contract is made and any published amendment or updated version that may come into force during the Period of the Contract. It is available from the webpage at [www.ukwas.org.uk/standard](http://www.ukwas.org.uk/standard)

**"Volume Sale"** means a sale of Products where the value is calculated on the basis set out in Condition 6.1.

**"Website"** means Forestry England's website at <https://www.forestryengland.uk> and those parts of any other website which Forestry England may link to or nominate from time to time.

**"Weight Sale"** means a sale of Products where the value is calculated on the basis set out in Condition 6.2.

**"Weight Ticket"** means a physical or electronic document or an electronic record of the gross, tare and net weights of each Load of the Products created by a weighbridge system that has been verified by Trading Standards to be acceptable for 'Use for trade' unless Forestry England expressly agrees, in advance and in writing, to alternative arrangements to determine the Weight Ticket weight other than as provided for in the Contract. A valid Weight Ticket is one that meets the above requirements and can also be shown to correspond to a particular Load or quantity of Products.

**"You"** means the purchaser of the Products who is party to the Contract to which these Terms and Conditions apply and in this Contract "You" includes Your employees, agents, contractors, sub-contractors and the employees of any of them. "Your" has a corresponding meaning.

## **2. SALE OF THE PRODUCTS**

- 2.1 The Products which are subject to this Contract are those specified in the Lot Information and Conditions.
- 2.2 The Contract to sell the Products to You shall be created by the acceptance by Forestry England of Your Bid, such acceptance being by electronic mail. The Contract will constitute a valid contract of sale, which will be subject to these Conditions, together with the Lot Information and Conditions and such other Terms and Conditions as Forestry England and You may agree in writing. In the event that Forestry England is unable for whatever reason to send Forestry England's acceptance by electronic mail it shall be sent by first class recorded delivery post to the address stated in Your user-profile in eSales.
- 2.3 Subject to the terms of the Contract, Forestry England shall sell and You shall purchase the Total Quantity allowing a margin of 10% above or below that figure for the actual quantity supplied and purchased, notwithstanding the provisions of Condition 2.4.
- 2.4 The Parties may from time to time agree to the sale and purchase of additional Products, which unless otherwise agreed in writing, shall be subject to these Terms and Conditions and such other special Terms and Conditions that Forestry England may, at its sole discretion, decide to impose on the sale and purchase of such additional Products.

### **REJECTED PRODUCTS**

- 2.5 Forestry England shall deem that the Products conform to the specification contained in the Lot Information and Conditions and in this regard it is Your responsibility to inspect the Products.
- 2.6 If on inspection of any Load at the time of delivery to Your premises (whether delivered by Forestry England or by You) You consider that all or most of the Products do not conform to the specification contained in the Lot Information and Conditions, You may reject those Products and shall notify Forestry England of this within 1 Business Day and both parties shall keep a written record of the reason for the rejection;
- 2.7 You shall hold any rejected Products at Your premises for up to 5 Business Days from your original notification to Forestry England, for inspection and confirmation by Forestry England's Contract Manager (or delegate).
- 2.8 Subject to Conditions 2.9 and 2.10:
  - 2.8.1 Where it is seen that You have removed Products of the wrong specification from Forestry England land in error you will return said Products at Your expense to the place from which they were taken as soon as practicable.
  - 2.8.2 Where it is seen that You have removed the correct Products from Forestry England land, Forestry England will remove that part of the Products that does not comply with the agreed specification as soon as practicable at Forestry England's expense.
  - 2.8.3 Where Forestry England has delivered the Products to You in accordance with Condition 5 Forestry England will remove that part of the Products that does not comply with the agreed specification as soon as practicable at Forestry England's expense.
- 2.9 Forestry England will not reimburse the costs of Your haulage, weighing or handling of Products that You have rejected.
- 2.10 Either party may request to negotiate to buy and sell said rejected Products under this Contract in accordance with Condition 2.4.

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

- 3.1 All parts of this Condition 3 apply in all circumstances except where Forestry England undertakes to deliver the Products as described in the Lot Information and Conditions.
- 3.2 For the purposes of this Contract only and subject to Condition 3.3, unless otherwise provided in this Contract, Forestry England shall.

- 3.2.1 Subject to any restrictions stated in the Lot Information and Conditions or otherwise imposed in accordance with the Contract allow You access to and egress from the Stacking Sites using the Authorised Access Routes only to remove the Products in accordance with the Contract.
  - 3.2.2 Place the Products at the 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 Use best endeavours to make the Products available at the Stacking Sites according to a timetable agreed with you. The quantity of the Products available at the Stacking Sites at any time shall be subject to the overall progress of the Contract, including but not limited to Your timely removal of the Products in accordance with the contract, the provisions of Condition 3.32, the effects of seasonal working conditions, holidays and other operational practicalities that from time to time may affect the rate and timing of the production of the Products.
  - 3.2.4 Notify You from time to time when Products have been made available in accordance with Condition 3.2.2 for Your removal (“Notification”).
  - 3.2.5 Authorise Your removal of the Products under Forestry England’s Dispatch Procedures set out on the Contract Documents Webpage.
- 3.3 You shall;
- 3.3.1 Agree to be bound by the Sanctions Procedures as set out on the Contract Documents Webpage for breaches of Dispatch Procedures and /or for overweight loads.
  - 3.3.2 Save as may otherwise be provided in this Agreement, remove the Products specified in any Notification within fifteen Business Days of the issue of that Notification. If You fail to remove the Products in accordance with this Condition 3.3.2 Forestry England reserves the right, at all times acting reasonably, to estimate the weight of any Product that has not been weighed by measuring the logs and/or the stacks on the relevant Stacking Sites using the measuring procedures set out on the Contract Documents Webpage and to invoice You at the Price for that quantity plus Forestry England’s additional costs and expenses. For the purposes of Condition 13 (Payment) Forestry England’s estimate of any such quantity of Products shall be regarded as the Weight Ticket weight and payment shall be made by You within 10 Business Days of Your receipt of said invoice.
  - 3.3.3 Ensure that Your employees, agents, contractors, sub-contractors and employees of any of them at all times will comply with the Road Traffic Act 1988 and the Road Haulage of Round Timber Code of Practice.
  - 3.3.4 Where Forestry England has agreed to load the Products on to Your vehicles, accept full responsibility for ensuring the loaded vehicle and its load is safe and complies with the law and the Road Haulage of Round Timber Code of Practice.
- 3.4 Under the terms of the Contract, You shall have access to the stacking Areas and Authorised Access Routes as a licensee only and will not at any time take possession or occupation nor acquire any rights to security over said areas or access to it. This license shall not create a tenancy or any relationship of landlord or tenant and shall, save where terminable pursuant to the terms of the Contract or as may otherwise be agreed in writing, subsist only until the expiration of the period provided for in Condition 8.
- 3.5 You shall comply with Forestry England’s Working Procedures as set out on the Contract Documents Webpage and You shall produce to Forestry England if requested such evidence as Forestry England may reasonably require to show that You have satisfied these procedures.

### **WORK PLANNING**

- 3.6 You shall appoint an individual employed or engaged by You to be the person responsible for the removal of the Products and for fulfilment in all respects of the duties of Forestry Works Manager (FWM) as set out by FISA. You shall notify the Forestry England of the identity of Your FWM and their contact details verbally or in writing as soon as practicable following



award of the Contract. Your FWM by shall be the point of contact for Forestry England in terms of communications and instructions relating to any and all activities being carried out by You in and around the Stacking Sites and Authorised Access Routes and shall be available as and when necessary to receive such communication and implement instructions. Your FWM shall liaise with Forestry England's Contract Manager or such other persons as Forestry England shall advise from time to time.

- 3.7 Your FWM shall make all arrangements to plan, manage, supervise, execute and conclude Works in a professional and competent way. Competence for the purposes of this Condition 3.7 will be determined by Forestry England with reference to relevant FISA guidance and Your FWM's demonstration during this Contract of the FWM's ability, capacity and willingness to meet the provisions of the Contract and to discharge all their duties as FWM as set out by FISA for the forestry industry.
- 3.8 From the Commencement Date up until the Expiry Date You will not temporarily or otherwise cease or curtail the removal of the Products until the Total Quantity has been removed unless You give Forestry England written notice requesting a pause in the removal of the Products together with a firm date for the removal to re-commence and Forestry England accepts such a request in writing.

### **WORK METHODS**

- 3.9 You shall plan and implement a reasonable method of working such that the removal of Products shall comply with this Contract and meet the requirements of UKWAS which requires You to meet all Applicable Laws, the UK Forestry Standard and associated guidelines, and all pertinent FISA guidance and You agree that You shall be responsible for complying with all aspects of The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, 1995 (RIDDOR).
- 3.10 You shall not use any machine or method of working which in Forestry England's opinion causes, or is likely to cause, avoidable harms or damage to standing trees or any road, path, track or drain, or to people, property, living organisms or the environment.

### **PRE-COMMENCEMENT**

- 3.11 You shall give Forestry England a minimum of 10 Business Days' notice of your intention to access Forestry England Land pursuant to the Contract and during that notice period You will, in conjunction with Forestry England undertake the Pre-Commencement Procedures which may include a meeting with Forestry England's Contract Manager or any other nominated Forestry England employee and Your FWM.
- 3.12 Notwithstanding the Commencement Date You agree that Your rights under the Contract to access the Stacking Sites or Authorised Access Routes and remove the Products will only start when Forestry England confirms in writing that the Pre-Commencement procedures have been completed.

### **STACKS OF PRODUCE**

- 3.13 At all times when loading haulage vehicles, You will leave the stacks of Products in a secure and orderly condition and in compliance with all current and applicable FISA guidance and Your FWM's written risk assessment for loading.
- 3.14 Loads must be secured appropriately and /or strapped after loading in accordance with FISA guidance before moving off.

### **ROAD CONDITION AND REPAIR**

- 3.15 You shall not operate machinery or vehicles fitted with off-road tracks or other traction aids on any surfaced forest road or Stacking Sites save in an emergency without Forestry England's written permission which will be granted only on such reasonable terms as Forestry England decides and which may include a requirement for You to meet the full costs of any repairs necessary to the affected forest roads following such use.
- 3.16 Where it can be established to the satisfaction of Forestry England that any Authorised Access Route or Stacking Site requires repair through no fault of Yours, Forestry England

shall (where practicable within 10 Business Days of that fact being made known to Forestry England) endeavour to repair such damaged part(s) to the standard of the road classification as stated in the Lot Information and Conditions, subject always to the following:

- 3.16.1 Forestry England shall be entitled, after consultation with You, to close all or part of the Authorised Access Routes while the repair work is carried out.
- 3.16.2 You will not be entitled, save in an emergency and as agreed in advance by Forestry England, to undertake or cause or permit others to undertake repairs or modify the construction or surface of the Authorised Access Routes and Stacking Sites.

#### **WET AND/OR COLD WEATHER**

- 3.17 Forestry England reserves the right at its sole discretion to temporarily relocate or close some or all of the Stacking Sites and /or Authorised Access Routes during periods of severe weather conditions if in Forestry England's opinion the removal of Products under those conditions is likely to cause or lead to unacceptable road damage.
- 3.18 You shall take every reasonable precaution to prevent any damage to the Authorised Access Routes and Stacking Sites including but not limited to ensuring they are not used during or immediately after heavy rains or a surface thaw until firm enough for use without causing damage.
- 3.19 The application of common salt to water-bound forest roads will cause extensive damage to the structure and is expressly forbidden at any time and may result in termination of this Contract. Without prejudice to any other remedies that are available to Forestry England under the Contract, You agree that You will pay the full costs of any reconstruction necessary within 10 Business Days of receipt of an invoice from Forestry England, should You apply salt to Forestry England forest roads.
- 3.20 Forestry England will not be required to remove snow from the Authorised Access Routes. Your use of Authorised Access Routes in such conditions will be at Your risk and You may only remove snow from Authorised Access Routes with Forestry England's prior written consent. Such consent shall be at Forestry England's reasonable discretion and shall be granted on such terms as Forestry England sees fit and may include a requirement for You to pay the full costs of any repairs to the Authorised Access Route where Your work to remove snow causes or leads to damage including that covered by Condition 3.19.

#### **DAMAGE TO PROPERTY**

- 3.21 While removing the Products, You shall take all necessary precautions to ensure the Products and any debris arising from removal thereof do not cause damage (wilfully, recklessly, negligently or otherwise) to any and all buildings, archaeological sites, walls, gates, fences, hedges, drains, watercourses including groundwater, roads, rides, tracks, soil profiles, vegetation, plantations, trees, people, living organisms or the environment.
- 3.22 No unauthorised or unlawful discarding of waste or discharges shall be made as a result of Your work including without limitation the release of contaminants or silts into any forest soils, drains, sewers, controlled waters or other waters either in contravention of Environmental Laws or which may otherwise cause harm to man, any other living organism or the environment.
- 3.23 You shall not use forest roads, unsurfaced tracks or other forest areas that Forestry England in its sole discretion reasonably excludes You from and You will plan the removal of Products to take all reasonable precautions and to meet Forestry England's reasonable requests to prevent damage to the natural and man-made surfaces on the Stacking Sites and the Authorised Access Routes including preventing the unwarranted impedance of any associated natural and man-made drainage.
- 3.24 You shall repair or make good any damage, referred to within Conditions 3.21, 3.22 and 3.23, within 10 Business Days of receiving written notice from Forestry England (or after such shorter time as Forestry England deems reasonable where the need for remedial work is urgent). If You fail to make the required repairs then Forestry England, without prejudice to any other remedies that are available to Forestry England under the Contract, may do all such necessary work to make good such damage and in this event all costs

incurred by Forestry England (including but not limited to the direct cost of repairs and directly associated management and overhead costs) shall be reimbursed by You within 10 Business Days of receipt by You of an invoice from Forestry England.

### **SUPERVISION AND CORRECTIVE ACTIONS**

- 3.25 Forestry England shall meet its legal duties as landowner as set out by FISA for the forestry industry and, save in an emergency, shall not manage or supervise the removal of the Products. If You do not, in Forestry England's opinion, adequately manage or supervise the removal of Products, Forestry England may provide direction or supervision to any person operating on Your behalf to protect people or living organisms or the environment or to prevent harm, damage or loss to any Forestry England property or interests. In such circumstances and without prejudice to any other remedies that are available to Forestry England under the Contract management and overhead costs shall be reimbursed by You within 10 Business Days of receipt by You of an invoice from Forestry England.

### **MANAGEMENT OF SAFETY & PROTECTION OF THE ENVIRONMENT**

- 3.26 If at any time it appears to You that Forestry England has omitted to inform you of a significant physical hazard on the Stacking Sites or Authorised Access Routes and that hazard can reasonably be shown to have existed before the Commencement Date and it is such that You consider that You cannot safely remove the Products in the manner You have planned You may give notice to Forestry England to that effect. Upon receipt of such notice from You Forestry England shall decide whether to make reasonable alternative arrangements as necessary to permit safe removal of the Products by You.
- 3.27 If at any time, in Forestry England's opinion, Your actions or omissions on Forestry England land during the removal of the Products is creating or is likely to create a risk of harm to people or the environment, without prejudice to any other remedies that are available to Forestry England under the Contract, Forestry England retains the right at its sole discretion to intervene and apply the Red-Amber-Green (RAG) procedures to temporarily pause the removal of Products under this Contract and require at Your cost such remedial works to mitigate or remove those risks before You may continue to remove Products.
- 3.28 Where in Forestry England's opinion the actions or omissions or delay of Your FWM are material factors in Forestry England's decision to apply the Red-Amber-Green (RAG) procedures then Forestry England may at its sole discretion and at all times acting reasonably pause all removal of Products under this Contract and under any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested where Your FWM is the same under any such Contract.
- 3.29 Forestry England will not be liable for any of Your costs or losses arising from Forestry England exercising its right to pause Your removal of Products or other work under the RAG procedures.
- 3.30 Forestry England may, without prejudice to any other remedies available to it under this Contract, provide written notice to You may not continue to remove Products under the Contract or any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested until You have fulfilled the requirements of this Condition 3 in relation to the removal of Products as determined at Forestry England's reasonable but sole discretion. On receipt of such a notice You shall stop the removal of Products immediately.
- 3.31 Forestry England shall have the right to notify You that no Products may be removed under the Contract if You have breached any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested. On receipt of such notice You shall stop all removal of Products immediately and You shall not recommence until Forestry England (at its sole discretion) deems the breach to have been satisfactorily remedied.

## **4. RIGHT OF VETO**

- 4.1 Forestry England, acting reasonably at all times, shall be entitled upon giving 24 hours' notice (save in situations deemed by Forestry England to be emergencies where this entitlement will have immediate effect) to require You to cease use of any agent, employee, contractor or sub-contractor whom Forestry England does not consider to be suitable or sufficiently equipped, trained, capable or competent to carry out any or certain obligations in the Contract to any of the standards required and You shall ensure within the required timescale that such party immediately ceases work and vacates the Stacking Sites and Authorised Access Routes.
- 4.2 Forestry England, acting reasonably at all times, shall be entitled to veto in respect of the Work and with immediate effect the use by You of any person (including but not limited to any of Your employees, contractors, sub-contractors or employees of any of them) who threatens or abuses any Forestry England employee or any other person on Forestry England land, or who in Forestry England's opinion (by dint of that person's actions or omissions at any time and under any circumstances) might present a risk of harm to Forestry England staff or any other person on Forestry England land or a risk to the security of Forestry England property or to other's property on Forestry England Land.

## **5. DELIVERY OF THE PRODUCTS**

- 5.1 This Condition 5 applies only where Forestry England has specified in the Lot Information and Conditions that it will deliver the Products to You;
- 5.2 Forestry England shall deliver the Products to Your premises as agreed with You between such reasonable hours of the day as You shall from time to time notify Forestry England in writing;
- 5.3 You shall ensure that Your premises and working methods are safe for the purposes of delivery, including safe places to unstrap the Load and sweep down the vehicle and You will ensure that Your unloading of vehicles complies with the Road Haulage of Round Timber Code of Practice.
- 5.4 You shall allow all delivery drivers free and reasonable access to welfare facilities whilst on Your premises;
- 5.5 You shall be responsible for overseeing unloading and shall use best endeavours to ensure each lorry is unloaded within one hour of arrival at Your premises. If any vehicle shall be delayed beyond this period as a consequence of Your failure to provide adequate facilities for weighing and /or unloading then You shall indemnify Forestry England against any claims for demurrage or loss arising which are raised against Forestry England by any haulier it employs or contracts;

## **6. MEASUREMENT OF THE PRODUCTS**

- 6.1 The Total Quantity of material upon which the payment is calculated for a Volume Sale shall be determined by Forestry England using the methods stated in the Lot Information and Conditions and set out in the measuring procedures on the Contract Documents Webpage unless the Products are to be sold by weight under Condition 6.2.
- 6.2 Except where otherwise provided in Condition 3.3.2 the weight on which the payment is calculated for a Weight Sale of Products purchased and sold under the Contract, shall be the net weight of Products correctly weighed on a weighbridge that is, at the time of the weighing, certified as 'Use for Trade' as described in the weighing procedures set out on the Contract Documents Webpage and the weighing of each Load shall be at Your expense.

### **MEASURED LOADS**

- 6.3 If You consider that for practical or logistical reasons a Load sold under a Weight Sale cannot reasonably be weighed in accordance with the weighing procedures set out on the Timber Documents Webpage, You must give notice to Forestry England before the Load is

removed. On receipt of such notice Forestry England will agree with You how the Load is to be measured to assign a Weight Ticket weight, following the measuring procedures on the Timber Documents Webpage. If such agreement cannot be reached You may not remove the Load unless You then weigh it in accordance with the weighing procedures set out on the Timber Documents Webpage.

#### **DISPATCH PROCEDURES**

- 6.4 You shall only be entitled to remove any Products in accordance with Forestry England's dispatch procedures as set out on the Contract Documents Webpage and You agree to be bound by the Sanctions Procedures as set out on the Contract Documents Webpage for breaches of Forestry England's Dispatch Procedures and for overweight Loads and for unweighed Loads

#### **WEIGHT TICKETS**

- 6.5 Weight Tickets must be returned to Forestry England's Contract Manager together with a copy of the approved Dispatch Reference Note not more than ten Business Days after collection of the Load to which each Weight Ticket relates unless EFIDS arrangements are in place as set out in Condition 6.6.

#### **EFIDS**

- 6.6 Only where Forestry England has agreed in writing are you permitted to transfer Your weighbridge data and any associated information to Forestry England electronically via EFIDS and this is subject to You doing so in the manner and at the intervals that Forestry England agrees with You in writing. You must retain the physical Weight Tickets and the associated Dispatch Reference Note or the original electronic images or equivalent data for each Load for inspection by Forestry England from time to time, for a period of no less than 12 months.

#### **SUPPLIER'S INVOICES (SELF-BILLING)**

- 6.7 Where Forestry England has agreed that You may use Your weighbridge data to produce supplier's invoices for self-billing purposes You shall agree to follow and abide by the Self-Billing Procedures set out on the Contract Documents Webpage and any additional requirements and procedures that Forestry England may agree with You in writing. You must retain the physical Weight Tickets and the associated Dispatch Reference Note or the original electronic images or data for each, for inspection by Forestry England from time to time, for a period of no less than 12 months.

#### **UNWEIGHED LOADS**

- 6.8 If in respect of a Weight Sale You fail to weigh any Load (unless Condition 6.3 applies) or fail to return to Forestry England a valid Weight Ticket for any Load in accordance with Condition 6.5 (unless Condition 6.6 applies), Forestry England shall be entitled to terminate the Contract forthwith in accordance with Condition 11.3 unless Forestry England (at its sole discretion) decides to deem any such Load to be an 'unweighed' Load. The Weight Ticket weight of an unweighed Load will be determined by Forestry England as set out in the weighing procedure set out on the Contract Documents Webpage and Forestry England will give you notice to pay for that unweighed Load at the Price and You must pay Forestry England within 10 Business Days of receipt of that notice otherwise Forestry England shall then be entitled to terminate the Contract forthwith in accordance with Condition 11.3.
- 6.9 You will be liable to pay Forestry England's administration costs as set out on the Contract Documents Webpage in respect of unweighed loads.

### **7. RISK AND PROPERTY**

- 7.1 The risk in the Products shall pass to You immediately upon collection or fifteen Business Days after Forestry England notifies You that some or all of the Products are available for removal from the Stacking Sites and You shall be responsible to Forestry England for any loss

or damage to or caused by the Products from such date as a result of any act or omission by You unless Condition 7.2 applies.

- 7.2 If Forestry England delivers the Products to You the risk in the Products shall pass to You immediately when You start unloading the Products from the delivery vehicle unless the vehicle is unloaded by the delivery driver, in which case the risk will become Yours once the Products have been unloaded.
- 7.3 Notwithstanding the passing of risk under Conditions 7.1 and 7.2, unless and until You have paid Forestry England all sums due for any Product removed from the Stacking Sites (plus any other costs and charges) or You have removed from the Stacking Sites all Products You have paid for pursuant to the Agreement, property in and title to all such Products purchased and sold shall remain with Forestry England and the following Conditions shall apply:
- 7.3.1 You grant to Forestry England an irrevocable license to enter Your premises or any other premises in Your occupational control where the Products are or are believed by You or Forestry England to be located, and to inspect and/or remove the Products at any time while they remain the property of the Forestry England.
- 7.3.2 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 recovery of the Products by Forestry England at any time while they remain the property of Forestry England.
- 7.3.2 All costs incurred by Forestry England in repossessing the Products whether or not they are still under Your control shall be borne by You;

## **8. DURATION**

- 8.1 This Contract shall come into force on the date that Forestry England accepts Your Bid and shall end on the Expiry Date, unless terminated earlier in accordance with the terms of this Contract.
- 8.2 Any change to the Expiry Date shall be determined by Forestry England at their sole discretion and Forestry England shall give You written notice of the new Expiry Date.

### **CURTAILED ACCESS**

- 8.3 Subject always to Condition 8.2, 8.4 and 8.5, in the event that access and or egress to or from the Stacking Site and or Authorised Access Routes has been curtailed as a consequence of circumstances pertaining to Conditions 3.17, 3.18, 3.19 or Condition 9 Forestry England will agree to such extension of the duration of the Contract and the applicable timescales provided for in the Contract as is reasonable, and a new Expiry Date;
- 8.4 Forestry England shall not on the basis of Condition 8.3 be required to extend the Expiry Date if the applicable delay has resulted from a breach by You of the Contract or due to Your wilful, reckless or negligent actions or omissions.

### **CHANGE OF EXPIRY DATE**

- 8.5 Subject always to Conditions 8.4 and 9, if the Contract is incomplete 10 Business days before the Expiry Date Forestry England shall have an absolute discretion to grant an extension to the Expiry Date on such terms as Forestry England shall deem reasonable.

## **9. RENEGOTIATION**

- 9.1 In addition to the provisions of Conditions 3.26, 3.27 and 3.28 either party shall be entitled to renegotiate forthwith if any part of the forest covered by this Contract from which the Products are to be produced or the access to it is the subject of serious fire, serious windblow damage, serious landslip or is seriously affected by a controlled pest or disease or is seriously affected by any other unexpected restriction or constraint such that in the

opinion of the party proposing the renegotiation the nature of the production of the Products or the Stacking Sites or Authorised Access Routes has changed such that the Products cannot be produced or removed in a safe manner under the existing terms.

- 9.2 Forestry England will not be bound by Condition 9.1 if You have breached Condition 3.8 or if Your act or omission or Your failure to remove the Products within the original period of the Contract (subject to the provisions of Condition 9.3) is in Forestry England's reasonable opinion a contributing factor in the occurrence of the event or events provided for in Condition 9.1.
- 9.3 If for any reason related to Forestry England's environmental, social and /or public safety duties and obligations Forestry England is required to stop You removing the Products for all or part of the duration of the Contract Forestry England shall give You notice and provided you are not in breach of the Contract may request a meeting with You to agree reasonable amendments to the terms of the Contract. Where this condition applies Forestry England shall be deemed not to be in breach of the Contract.
- 9.4 Any renegotiation under Condition 9.1 or Condition 9.3 that results in a change to the Price or the Total Quantity or any other term must be agreed in writing and shall be deemed to form part of the Contract.

## **10. SANCTIONS AND SUSPENSION**

- 10.1 You agree that Forestry England shall have the right to apply the Sanctions Procedures on the Contract Documents Webpage in relation to breaches of the Dispatch Procedures and over-weight Loads, to temporarily suspend Your access to the Stacking Sites and the Authorised Access Routes, and whilst acting reasonably at all times, to also suspend Your access to any other Forestry England Land that is the subject of any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested.
- 10.2 Without prejudice to any other remedies that Forestry England may have under this Contract, in the event of a breach by you of Conditions 3.3.1, 3.5, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.18, 3.21, 3.23, 3.24, 3.25, 5.3, 5.4, 6.3, 6.4, 6.5, 6.7, 6.9, 7.3, 13.2.1, 13.3.1, 13.5, 13.6, 13.8, 14.3 and /or 24.2 Forestry England shall have the right to suspend delivery of the Products or to suspend Your rights under the Contract to access the Stacking Sites and the Authorised Access Routes, and whilst acting reasonably at all times, to also suspend other timber deliveries or to suspend Your access to any other Forestry England Land that is the subject of any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested.
- 10.3 The rights of Forestry England referred to in Conditions 10.1 and 10.2 above shall be exercised by the way of written notice setting out the Forestry England Land to which the Sanction and/or the suspension of access rights apply and upon receipt of such a notice You shall stop the removal of Products from the applicable Forestry England Land and remove all equipment and personnel (employees, contractors and subcontractors) within 20 Business Days.
- 10.4 In the event of the issue of a notice in accordance with Condition 10.3, the suspension shall apply until the Contract and /or any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested. has terminated or all relevant breaches have been remedied (where capable of remedy) in accordance with the requirements of Conditions 11.6 and 11.7.
- 10.5 You accept that on the basis of this Condition 10 Forestry England has the right to suspend your rights of access under this Contract to the Stacking Sites and Authorised Access Routes in the event that You breach any other contract between You and Forestry England in relation to the sale of timber, standing trees or other products to be harvested in a manner that triggers such a right of suspension under that other contract.

## 11. TERMINATION

- 11.1 You shall immediately notify Forestry England 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 Condition 11.2 are to Your knowledge considered likely to arise.
- 11.2 Either party shall be entitled to terminate the Contract forthwith by written notice to the other if:
- 11.2.1 The holder of any security takes possession or a receiver is appointed over any of the property or assets of the other party.
- 11.2.2 The other party makes any voluntary arrangement with its creditors or becomes subject to any administration order.
- 11.2.3 The 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 Contract).
- 10.2.4 The other party ceases to carry on business.
- 11.3 Forestry England shall be entitled to terminate the Contract forthwith by written notice to You, if You commit any breach of Conditions 3.9, 3.12, 3.19, 3.22, 3.24, 4.1, 4.2, 6.2, 6.4, 6.8, 10.1, 11.8, 13.2.2, 13.7, 13.14, 13.17, 14.2, 17, 18, 19, and /or 21.
- 11.4 Forestry England shall be entitled to terminate the Contract on giving 10 Business Day's written notice if You commit a breach of any term of the Contract that is not covered by Conditions 11.2 or 11.3 and is not a Remediable Breach as defined in Condition 11.6.
- 11.5 The right to terminate the Contract pursuant to Condition 10 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.

### REMEDIAL BREACH

- 11.6 Forestry England shall notify You, in writing, if You have committed a breach of a term of this Contract which Forestry England considers to be remediable.
- 11.7 A breach shall be considered to be remediable if:
- 11.7.1 You can comply with the Contract in all respects other than as to the time of performance provided that Forestry England considers it reasonable to change the Expiry Date.
- 11.7.2 You can comply with the Contract in all respects provided that Forestry England considers it reasonable to allow You a suitable period of time within which You must remedy the breach to Forestry England's satisfaction ("Remediable Breach").
- 11.8 If You do not remedy the notified Remediable Breach within the given period, or if within that period You commit a further similar Remediable Breach, Forestry England shall be entitled to terminate the Contract forthwith in accordance with the terms of Condition 11.3.
- 11.9 Upon termination of the Contract whether by written notice or expiry of time, You shall immediately cease to remove the Products unless Forestry England agrees in writing to a further period to allow you to remove, in accordance with the Contract, some or all of the Products placed on the Stacking Sites and to pay for them.

### REMAINING PRODUCTS

- 11.10 On the later of termination or expiry of any further period granted under Condition 11.9 any Remaining Products shall, if title has at that time passed to You, vest in and become Forestry England property and Forestry England will not be liable to meet any of Your costs



or liabilities or obligations that You may have invested in or assigned to those Remaining Products.

- 11.11 You shall take all necessary steps including execution of documentation to facilitate title to the Remaining Products referred to in Condition 11.10 transferring to Forestry England.
- 11.12 Forestry England shall be entitled either to retain or to re-sell any part of those Remaining Products on an open market basis and (subject always to Forestry England having the right to use such sums along with any deposit paid by You to offset any sums owed by You to or due from You to Forestry England under the Contract or any other contract for the sale of timber, standing trees or other products to be harvested that you have with Forestry England, Forestry England shall reimburse to You the lesser of the remainder of any sums received from You for any Remaining Products and the sums received by Forestry England on reselling any Remaining Products. In either case the amount of the reimbursement will be less all Forestry England costs and expenses as set out on the Contract Documents Webpage relating to such re-selling along with any fees and losses directly and naturally resulting in the ordinary course of events.
- 11.13 Should the costs and losses in relation to any resale by Forestry England under Condition 10.12 exceed the total sum received by Forestry England from any such resale then You shall on demand pay to Forestry England, within 10 Business days of Your receipt of the demand, the full amount by which said costs and losses exceed said total sum.

#### **REMOVAL OF EQUIPMENT**

- 11.14 Within one calendar month of the termination (for whatsoever reason) or expiry of the Contract You shall remove any materials, waste or equipment You may have placed or left on Forestry England Land and in respect of which there is no valid storage Contract with Forestry England that would allow You right of storage post the termination date or the Expiry Date (whichever is applicable).
- 11.15 If You fail to comply with the requirement of Condition 11.14, You hereby acknowledge and accept that Forestry England shall have the right to retain, remove and dispose of the items remaining as it see fit and You shall within 10 days of receipt of a written demand reimburse Forestry England for all costs and expenses incurred in their removal and disposal and making good any damage resulting therefrom.

#### **POWER OF ATTORNEY**

- 11.16 As security for the performance of Your obligations under Conditions 11.10, 11.12, 11.14 and 11.15, You hereby irrevocably appoint Forestry England as Your attorney to execute all documents and to do all things within the scope of Conditions 11.10, 11.12, 11.14 and 11.15 on Your behalf.

### **12. PRICE**

- 12.1 The Price to be paid for the Products shall be either the total price or the unit price set out in Your Bid and accepted by Forestry England in writing or in the case of an electronic Bid the Price shown in the "My contracts" section of your online account in eSales. The Price does not include Value Added Tax.
- 12.2 In the case of an LTC, Condition 12.1 shall apply for the first period of supply for each Lot only, as set out in the Lot Information and Conditions. The Price for each Lot in subsequent periods will be the revised Price agreed in accordance with the LTC Price Procedures set out on the Contract Documents Webpage.
- 12.3 No Products may be removed until a revised Price for the subsequent period is agreed. In the event that a revised Price is not agreed in accordance with the LTC procedures set out on the Contract Documents Webpage then You agree that the Total Quantity offered for that subsequent period in said Lot may be removed from the LTC and Forestry England will not be in breach of the Contract. In this event Forestry England reserves the right to reject any Bid You may subsequently make for those Products.

## 13. PAYMENT

- 13.1 Subject always to the provisions of this Condition 13, payment for the Products shall (unless otherwise stated) be made to Forestry England in 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 Forestry England.
- 13.2 For Lump Sum Sales.
- 13.2.1 Forestry England will issue invoices in advance of each Instalment and you shall be required to pay each within 30 days or in advance of removing the Products whichever is earlier. You shall not be entitled to start or continue Work until the relevant Instalment has been paid in full.
- 13.2.2 If the whole or part of any invoice shall not be paid by the due date Forestry England shall have the right to terminate the Contract forthwith or, at Forestry England's discretion, You shall pay interest on the sums due at the current Bank of England base lending rate plus 3% from the date upon which payment was due until payment in full of the invoiced sum including any costs incurred by Forestry England in recovery of such late payment.
- 13.2.3 In the event that Condition 13.2.2 results in termination Conditions 11.8 to 11.15 inclusive will apply.
- 13.2.5 Late payments (referred to in Condition 13.2.2 above) received by Forestry England from You shall be applied first by Forestry England against accrued interest and second against any costs incurred by Forestry England in recovery of such late Payment and in the execution of Condition 13.2.3 and then against the principal debt in the form of the invoiced sum.
- 13.3 For Weight Sales:
- 13.3.1 Unless Forestry England has agreed credit arrangements with You as described in Conditions 13.4 to 13.10 inclusive, Forestry England shall at the start of the Contract issue You with an invoice and You shall be required to make an advance payment within 30 calendar days of said invoice. You shall not be entitled to remove any Products until the relevant invoice has been paid in full and then only in accordance with the Dispatch Procedures set out on the Contract Documents Webpage up to a value not exceeding the advance payment made by You.
- 13.3.2 This payment process will repeat until the Total Quantity or other such quantity that the parties may agree in writing has been removed and paid for in full. Any value remaining on Your account will be held by Forestry England as a credit against your next purchase unless you request that it is returned to you in which case Forestry England will do so within 10 Business Days of receiving your request.

### AGREED CREDIT

- 13.4 If You have a credit facility agreed with Forestry England You shall be permitted to remove the Products (in accordance with the Dispatch Procedures set out on the Contract Documents Webpage) up to a value not exceeding the agreed credit limit being the maximum sum which may be owed by You to Forestry England at any time under this and any other contract between You and Forestry England. Forestry England's finance department will act reasonably in determining Your credit limit with Forestry England from time to time.
- 13.5 Where a credit facility is in place Forestry England shall at the end of each calendar month tender an invoice (or You will provide a supplier's invoice where that arrangement has been agreed in writing) for the Products You have removed in that month and You shall be required to pay each invoice in full by the last Business Day of the month following the month in which the Products were removed.
- 13.6 Where Forestry England has agreed in writing that You may produce the invoices for the Products removed, You shall do so in strict compliance with the Self-Billing Procedures set

out on the Contract Documents Webpage and make payment of these invoices in accordance with Condition 13.5.

- 13.7 If you fail to provide Forestry England with the correct data to reconcile Your Self-Billing invoices within the period set out in Self-Billing Procedures then Forestry England shall have the right to withdraw the right for You to Self-Bill and /or to terminate the Contract forthwith.
- 13.8 If the whole or any part of the invoiced money is unpaid 10 Business Days after the due date Forestry England shall have the right to suspend further removal of Products under this Contract and any other contract for the sale of timber, standing trees or other products to be harvested You may have with Forestry England until all outstanding sums are paid in full.
- 13.9 Notwithstanding the provisions of Condition 13.8 you shall be required to pay interest on outstanding sums due at the current Bank of England base lending rate plus 3% from the date the payment was due until the date the payment is received in full including any accrued interest and any costs incurred by Forestry England in recovery of such late payment.
- 13.10 Any late payment referred to in Condition 13.8 will be allocated in accordance with Condition 13.2.5.
- 13.11 If Your agreed credit limit with Forestry England is, or is likely to be exceeded for any reason (of which Forestry England shall be sole judge) then Forestry England may without prejudice to any other remedies available to Forestry England under the Contract or otherwise, notify You in writing that no Products may be removed from the Stacking Sites or Forestry England Land under this or any other contract for the sale of timber, standing trees or other products to be harvested You may have with Forestry England until You have made such payment as Forestry England shall determine (acting reasonably) to ensure the credit limit is not at risk of being breached.
- 13.12 If Forestry England issues a notice to You under Condition 13.11 you will not thereby be relieved of any of Your obligations under the Contract or any other contract for the sale of timber, standing trees or other products to be harvested between You and Forestry England including, without prejudice to the generality of the foregoing, the obligation to remove the Products before the Expiry Date.

## DEPOSITS

- 13.13 In accordance with the Deposits Procedures on the Contract Documents Webpage, Forestry England reserves the right to demand a deposit that shall be lodged by You with Forestry England at least 10 Business Days prior to the Commencement Date. The deposit will be held by Forestry England until completion of the Contract to Forestry England's reasonable satisfaction and until payment has been made in full of all sums due by You under the Contract.
- 13.14 Where Forestry England requires payment of a deposit in accordance with Condition 13.13 (and without prejudice to any other remedies available to Forestry England under the Contract or otherwise) You shall have no right to access the Stacking Sites or Authorised Access Routes to remove Products until You have made the deposit payment along with any payment for the Products in accordance with Conditions 13.2.1 and 13.3.1.
- 13.15 Without prejudice to all other rights and remedies available to Forestry England under the Contract or otherwise, Forestry England shall be entitled to appropriate any deposit received from You under Condition 13.13 or a proportion of it as may be required towards the payment of any outstanding interest charges payable in respect of any money owing to Forestry England under the Contract including but not limited to costs or losses as a result of:
  - 13.15.1 You failing to pay in full any sums due under the Contract.
  - 13.15.2 Forestry England incurring costs or suffering losses as a result of You failing to perform Your obligations under the Contract.

## **14. ASSIGNMENTS AND SUBCONTRACTING**

- 14.1 In the event that Forestry England is reorganised or in the event of a reorganisation of any of Forestry England's commercial trading activities that results in its business and activities being implemented, performed, carried out, effected or undertaken by a new body ("Reorganised Business") Forestry England shall, on giving written notice to You, be entitled to assign all of its rights and/or transfer all of its obligations under the Contract to the Reorganised Business which shall be entitled to enforce those rights as if the Contract were made between You and the Reorganised Business.
- 14.2 You shall not assign Your rights or liabilities under the Contract without Forestry England's consent in writing and this consent shall not be unreasonably withheld.
- 14.3 You will not appoint any subcontractor to engage in the recovery of tipped machines or broken-down vehicles or vehicles stranded off-road without first giving Forestry England notice of the intended appointment of the subcontractor and demonstrating to Forestry England the fitness of that subcontractor to do that work in a safe manner.
- 14.4 Subcontractors appointed by You as general service providers for the servicing and repair of Your lorries and equipment may not work on Forestry England Land unless You give Forestry England prior notice and follow Forestry England's directions on where You may undertake such work. Your FWM must ensure that Your service providers are fully aware of all site safety requirements and comply with all Working Procedures set out on the Contract Documents Webpage.
- 14.5 Notwithstanding any Forestry England acceptance of any subcontracting of under Conditions 14.3 and 14.4 You shall remain fully responsible for the removal of all Products and for any failure to perform in compliance with the requirements of the Contract.

## **15. FORCE MAJEURE**

- 15.1 If either party is unable to perform all or any of their obligations under the Contract 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 Contract and the reasons for it.
- 15.2 On the giving of such notice by either party the liability of the party serving notice to make available or purchase the Products in accordance with the Contract 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 standing trees or other harvestable Products in such amount as can be made available or purchased in the circumstances. As soon as circumstances permit, the full provisions of the Contract shall be resumed, and the Expiry Date as set out in the Lot Information and Conditions may be extended as in Condition 8.
- 15.3 If a Force Majeure event which gives rise to relief from liability under this Condition 15 continues for two calendar months or more the other party will be entitled to terminate this Contract immediately by giving written notice to that effect to the affected party.

## **16. DISPUTE AND ARBITRATION**

- 16.1 The parties shall use all reasonable efforts to settle through negotiations any dispute or difference arising between the parties including any dispute concerning the construction, meaning or effect of the Contract or concerning the rights and liabilities of the parties.
- 16.2 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, 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 the President for the time being of the Chartered Institute of Arbitrators to make an appointment.

- 16.3 Any reference under this Condition shall be to arbitration within the meaning of the Arbitration Act 1996. 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.

## **17. LIABILITY, INDEMNITY AND INSURANCE**

- 17.1 Without prejudice to any other of Forestry England's rights, You shall be liable for any wilful, reckless or negligent damage including without limitation damage resulting from any failure to comply with this Contract due to any act or omission of Yours and You shall recompense or make good the same to Forestry England's satisfaction within 10 Business Days where practicable of its occurrence.
- 17.2 You hereby undertake to indemnify Forestry England and hold it harmless from and against any and all losses, costs, damages, liabilities and expenses suffered or incurred by Forestry England directly or indirectly as a result of any act or omission by You in connection with the carrying out of the Contract, and against any and all actions, suits, proceedings, claims, demands, assessments and judgements with respect to any of the foregoing.
- 17.3 Subject to Condition 17.4 below, Forestry England's liability under the Contract shall not exceed the total Price and where the Price is based on Condition 12.2 that shall be the total Price for the year in which the liability accrued.
- 17.4 Nothing in this Contract will operate to exclude or restrict any Liability of a party;
- 17.4.1 that cannot be excluded or restricted in this Contract in respect of death or personal injury resulting from negligence by operation of Section 2(1) Unfair Contract Terms Act 1977.
- 17.4.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable.
- 17.4.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979.
- 17.4.4 for breach of its obligations arising under section 2 Supply of Goods and Services Act 1982. or
- 17.4.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 17.5 You shall, throughout the term of this Contract and during any further period granted by Forestry England for the removal of the Products after the Expiry Date (without prejudice to any liability You may owe to Us) at Your own expense insure with an insurance company against loss of Product, and all loss, damage and insurable risks of third party liability up to a minimum of £5,000,000 (five million pounds) per claim, arising out of Your acts or omissions, works, operations or processes pursuant to this Contract as Forestry England shall in its sole discretion and reasonably determine, and shall pay or have paid all premiums and other monies necessary for said insurance.
- 17.6 Whenever required by Forestry England, You shall produce the policy or policies of such insurance and if requested the receipt(s) for the then current year's premium.
- 17.7 You shall not do, or omit to do, or permit or suffer to be done, or to be omitted from the removal of the Products, Stacking Sites or the Authorised Access Routes or otherwise anything that may render the policy or policies of insurance effected in accordance with Condition 17.2 void or voidable.

## **18. RELATIONSHIP OF THE PARTIES**

- 18.1 Nothing herein contained shall be deemed to constitute You as a partner, agent or representative of Forestry England and accordingly You as an independent entity hereby agree and undertake not without Forestry England's prior written consent at any time:
- 18.1.1 To incur or purport to incur any liability or obligation whatsoever in Forestry England's name or on Forestry England's behalf or in any manner of way to hold

yourself out as Forestry England's agent or otherwise to represent yourself as having ostensible authority to act on Forestry England's behalf.

18.1.2 In Forestry England's name or on Forestry England's behalf to make any representation or give any warranty, whether express or implied, about Forestry England or the Products in any manner of way not previously authorised in writing by Forestry England.

18.1.3 To pledge or purport to pledge Forestry England's credit.

18.1.4 To make or purport to make Forestry England bound as guarantor or surety in any manner of way whatsoever.

## **19. CONFIDENTIALITY**

19.1 Subject to Condition 19.2, each party agrees to maintain secret and confidential all information obtained from the other both pursuant to the Contract and prior to and in contemplation of it to respect the other's rights in terms of the Contract, to use the same exclusively for the purposes of the Contract, and to disclose the same only to those of its employees and contractors pursuant to the Contract (if any) to whom and to the extent that such disclosure is reasonably necessary for the purpose of the Contract.

19.2 The parties acknowledge that the Forestry Commission may receive requests from third parties to disclose certain information under of the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("EIR"). Where the Forestry Commission determines such disclosure is necessary to enable the Forestry Commission to meet its obligations under the FOIA or the EIR and that the information is held by Forestry England, Forestry England will be required to provide that information to the Forestry Commission. The Forestry Commission will endeavour to advise You prior to disclosing the information to the relevant third party. You agree that any disclosure by the Forestry Commission under the FOIA or the EIR will not constitute a breach of Condition 18.2 or of any of Forestry England's other obligations under the Contract.

## **20. SPIRIT, AIMS AND INTENT**

20.1 The parties 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 Contract, and the parties further agree to co-operate in and implement the spirit, aims and intent of the arrangements contemplated hereunder.

20.2 In addition, Forestry England undertakes to be reasonable at all times in its determination and application of Forestry England's rights and discretionary provisions under the Contract.

## **21. REWARDS**

21.1 You shall not offer any reward, inducement, emolument or incentive whatsoever, to any person in Forestry England's employment or performing a contract for services on Forestry England's behalf or to any person who is performing a contract for services for You or for any other person to act in contravention of the terms and conditions of this Contract.

## **22. WAIVER**

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

## **23. NOTICES**

- 23.1 Any notice or document required or permitted to be given or served under the Contract should where possible be given by email, failing which by first class recorded delivery post or by personal delivery as follows:
- 23.1.2 In Your case to Forestry England's Contract Manager specified in the Lot Information and Conditions.
- 23.1.3 In Forestry England's case to the email address or postal address specified in Your user profile section of eSales or to such other email or postal address as has been last notified to Forestry England for that purpose.
- 23.2 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 hand delivered at the time of delivery and. if sent by email when sent, provided that no failed delivery notice is received. In proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and posted/despached/sent.

## **24. COSTS AND EXPENSES**

- 24.1 Save as otherwise provided in the Contract, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of the Contract.
- 24.2 You will indemnify Forestry England on demand in respect of all costs and expenses (and any Value Added Tax thereon) incurred by Forestry England in connection with the following.
- 24.2.1 The granting of any waiver or consent sought by You or in connection with any variation, amendment, extension or modification of the Contract requested by You and in the enforcing, perfecting, protecting or preserving or seeking to enforce, perfect, protect or preserve any of Forestry England's rights, or in suing for the recovery of any sum due from You under the Contract.
- 24.2.2 Forestry England's intervention in Your activities on Forestry England Land in the interests of safety to people or property, or the protection of wildlife and the environment to prevent, stop or reduce loss or damage arising from Your actions or omissions whilst removing the Products.
- 24.2.3 Making good, making safe or remedying any breach of the provisions of this Contract by You should You fail to do so.
- 24.2.4 Forestry England's additional actions to measure or estimate quantities of Product in order to determine payments for Products that you have not removed in breach of the Contract or to preserve Forestry England's rights under the Contract.
- 24.3 Forestry England's standard costs and charges for interventions or additional administration of the Contract arising from Your decisions, acts or omissions will be as set out the administration costs procedure set out on the Contract Documents Webpage.

## **25. SET OFF**

- 25.1 Forestry England will be entitled to set off any liability which You have to Forestry England against any liability which Forestry England has to You, whether such liability is present or future, liquidated or unliquidated, under the Contract or under any other contract between You and Forestry England or other cause of action.

## **26. GOVERNING LAW AND JURISDICTION**

26.1 This Contract is 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.